

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

The Narragansett Electric Company d/b/a National Grid
2021-2023 System Reliability Procurement Plan

Docket No. 5080

**THE DIVISION OF PUBLIC UTILITIES AND CARRIERS’
RECOMMENDATION TO THE PUBLIC UTILITIES COMMISSION
REGARDING NATIONAL GRID’S MOTION FOR PROTECTIVE TREATMENT**

I. BACKGROUND

On November 20, 2020, the Narragansett Electric Company, d/b/a National Grid (the “Company”) filed a Motion for Protective Treatment with the Public Utilities Commission (“Commission”) to prevent public disclosure of the Company’s Rhode Island Non-Wires Alternatives Benefit Cost Analysis Model (“BCA Model”) in connection with the 2021-2023 System Reliability Procurement Three Year Plan (“SRP Plan”).¹

On February 26, 2021, Hank Webster for the Acadia Center (“Acadia”) filed comments in which it respectfully requested that either the Commission publish, or order the Company to publish the RI NWA BCA Model. Acadia averred that the Company’s BCA for Massachusetts was available online and that “gaining insights into National Grid’s Rhode Island-specific assumptions and other data could help a variety of stakeholders and vendors better inform utility proposals to invest ratepayer funds.”²

¹ 2021-2023 System Reliability Procurement Three Year Plan at 5-9 (Nov. 20, 2020); [http://www.ripuc.ri.gov/eventsactions/docket/5080-NGrid-SRP%202021-2023%20Three-Year%20Plan\(11-20-2020\)V1.pdf](http://www.ripuc.ri.gov/eventsactions/docket/5080-NGrid-SRP%202021-2023%20Three-Year%20Plan(11-20-2020)V1.pdf).

² Acadia Center Comments at 4 (Feb. 26, 2021); <http://www.ripuc.ri.gov/eventsactions/docket/5080-Acadia%20Center%20Comments-%20Dkt%205080%20SRP%203YP.pdf>.

Also on February 26, 2021, the Rhode Island Energy Efficiency and Resource Management Council (“EERMC”) filed comments urging the Company “to provide enhanced transparency on the evaluation process for specific NWA proposals”³ by providing an “opportunity to review assessment rubrics at the time NWA RFPs are proposed, including point allocations to different factors in that rubric.” The EERMC posited that such enhanced transparency would “help clarify stakeholders’ understanding of the prioritization among the factors listed in Table 7 in the Plan.”

Finally, on February 26, 2021, Handy Law, LLC (“Handy”) filed public comment critical of the Company’s motion for protective treatment, alleging that the Company did not provide “any good reason” to treat such information as confidential.⁴ Handy also argued that such confidentiality would violate one of the principles of the National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resources, (August 2020).⁵ Handy also argued that “there is nothing in a cost-benefit model that can rightly be considered proprietary commercial information” and that it is “absolutely the customers’ right to have transparency into the analysis of whether non wires alternatives are cost-effective.”⁶

On March 12, 2021, the Company filed its response to these comments.⁷ The Company contended that revealing specific evaluation scorecards and weightings of bids would: (1) be contrary to the Company’s procurement practices because it would allow bidders insight into specific issues to “game” their bid and potentially result in not meeting the actual need the RFP

³ The Energy Efficiency and Resource Management Council’s Comments at 3 (Feb. 26, 2021); <http://www.ripuc.ri.gov/eventsactions/docket/5080-EERMC-Comments%202-26-21.pdf>.

⁴ Handy Law LLC’s Comments at 1 (Feb. 26, 2021); <http://www.ripuc.ri.gov/eventsactions/docket/5080-SethHandy%2021.2.26%20System%20Reliability%20Plan.pdf>.

⁵ National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resources, (Aug. 2020); https://www.nationalenergyscreeningproject.org/wp-content/uploads/2020/08/NSPM-DERs_08-24-2020.pdf.

⁶ *Id.* at 3.

⁷ National Grid’s Reply Comments (Mar. 12, 2021); [http://www.ripuc.ri.gov/eventsactions/docket/5080-NGrid-Reply%20Comments%20\(Intervenor%20&%20Seth%20Handy\)\(PUC%203-12-2021\).pdf](http://www.ripuc.ri.gov/eventsactions/docket/5080-NGrid-Reply%20Comments%20(Intervenor%20&%20Seth%20Handy)(PUC%203-12-2021).pdf).

is looking to solve⁸; (2) be a violation of the Company's non-disclosure agreement with vendors and would put any participating bidder at a competitive disadvantage⁹; and (3) be contrary to industry best working practices.¹⁰

In addition, the Company argued that SRP Plans and their associated BCA models have a significantly different context than the disclosed BCA models in Energy Efficiency ("EE") dockets because the SRP handles external third party bid proposals for evaluation, while EE evaluates the Company's internal measures.¹¹ The Company further argued that the Commission is authorized by law to keep the BCA Model confidential, citing R.I. Gen. Laws §38-2-2 (4) (B) and 810-RICR00-00-1.3(H).

On June 1, 2021, the Company filed the System Reliability Procurement Plan 2020 Year-End Report, together with a renewed motion for confidential treatment of the BCA Model.¹² On June 4, 2021, the Commission issued its procedural schedule, directing the Company to file a brief on its motion by June 11, 2021 and for the Division of Public Utilities & Carriers ("Division") and other parties to respond by June 18, 2021. In its brief, the Company modified and limited its request for protective treatment to only six (6) certain parts of the thirteen (13) part BCA Model. This position statement is respectfully submitted in response to the Commission's procedural schedule.

II. THE COMPANY'S MODIFIED MOTION

In its June 11 filing, the Company explained that its BCA Model is an Excel spreadsheet containing thirteen (13) sheets or tabs which was provided at confidential Appendix 4 in the

⁸ *Id.* at 9.

⁹ *Id.*

¹⁰ *Id.* at 13.

¹¹ *Id.* at 9.

¹² [http://www.ripuc.ri.gov/eventsactions/docket/5080-NGrid-2020%20SRP%20Year-End%20Plan%20\(6-1-21\).pdf](http://www.ripuc.ri.gov/eventsactions/docket/5080-NGrid-2020%20SRP%20Year-End%20Plan%20(6-1-21).pdf)

2020 Year-End Report. The Company reviewed the various tabs and assigned a Tier Rating to each tab, ranging from Tier 1 (likely to have the greatest impact on the Company's position) to Tier 4 (least impact to the Company's position). The Company modified its motion for protective treatment to seek confidentiality for only Tier 1 and Tier 2, totaling six (6) of the thirteen (13) tabs. On page 3-4 of its filing, the Company provided a chart describing each sheet. The tabs for which the Company still seeks protective treatment from disclosure are: (1) Inputs-System - Tier 2 (This tab is to enter the electric system input information for the target feeder(s) and/or substation(s). This tab also contains market factors, system peak coincidence, and environmental information); (2) Inputs-Proposal - Tier 2 (This tab is structured to contain the solution information for each respective proposal); (3) Proposals Comparison - Tier 2 (This tab is structured to contain the calculated costs, benefits, and BCA output for each respective proposal); (4) Benefits Calc - Tier 1 (This tab calculates the benefits respective of the solution technology type and according to the input parameters of each respective bid); (5) Coincidence Factors - Tier 1 (This tab maintains the coincidence factors by technology type); and (6) Cost Calculator - Tier 1 (This tab calculates the costs according to the proposed solution contract and input parameters if each respective bid.)

III. ACCESS TO PUBLIC RECORDS

R.I. Gen Laws §38-2-2 (4) (B) provides that trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature are not deemed to be public records and do not need to be disclosed to the public. As such, for the BCA Model to be shielded from disclosure, it must be either a trade secret, or commercial or financial information of a privileged or confidential nature.

a. The BCA Model is commercial information of a confidential nature

The purpose of the Company-developed BCA Model is to evaluate competing commercial non-wires alternative (NWA) bids from third parties. According to the SRP Plan, the Company created the BCA as a derivative of the RI Test and utilizes the same Rhode Island Docket 4600 Benefit-Cost Framework (Framework), to more accurately assess NWA opportunities benefits and costs.¹³ The Company also stated: “The cost test and cost-effectiveness analyses of SRP investments use avoided cost impact factors developed by Synapse Energy Economics as part of the “Avoided Energy Supply Components in New England: 2018 Report” (2018 AESC Study), sponsored by New England’s electric and gas energy efficiency program administrators. The study utilizes state level avoided costs to reflect current and expected market conditions and are highly influenced by the cost of fossil fuels and expectations about ISO-NE’s forward capacity market. Where applicable, the company utilizes site-specific calculations to augment the state level data. The cost-effectiveness analyses also include estimates of economic benefits applicable to System Reliability Procurement. Project-specific transmission and distribution capacity values are also included. The company has developed a deferral calculator that utilizes the location-specific wires solution expected cost, related operations and maintenance (O&M) costs, depreciation, and revenue requirements over the course of the expected lifetime of a wires solution. A distribution deferral value is obtained by delaying the need date for a wires solution.”¹⁴ The Division believes that the foregoing description of the development of this BCA model qualifies it as commercial information of a confidential nature.

¹³ National Grid 2021-2023 System Reliability Procurement Three-Year Plan at 31.

¹⁴ *Id.* at 32.

b. May this commercial information of a confidential nature be shielded from disclosure under APRA?

Commission Rule 310 RICR-00-00-1.3 (H) (1), provides: “Access to public records shall be granted in accordance with the Access to Public Records shall be granted in accordance with the Access to Public Records Acts, RI Gen. Laws §3802-1 et seq. Except where the Commission directs otherwise, all pleadings, orders, communications, exhibits and other documents shall become matters of public record as of the day and time of their filing. Any claim of privilege shall be governed by the policy underlying the Access to Public Records Act (APRA), with the burden of proof resting upon the party claiming the privilege.”

The Company argues in its brief that the BCA Model is proprietary commercial trade secret information that is properly shielded from public disclosure by the government under R.I. Gen Laws §38-2-2 (4) (B). In support of its position, the Company cited *The Providence Journal Company v Convention Center Authority*, 774 A.2d 40 (R.I. 2001) and The Attorney General’s Guide to Open Government in Rhode Island, 6th Edition. In *Providence Journal*, the Court adopted the two-part test established in *National Parks and Conservation Association v Morton*, 498 F.2d 765 (D.D. Cir. 1974) which defined as confidential any financial or commercial information whose disclosure would be likely either: (1) to impair the Government’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.”¹⁵ In so holding, the Court stated that it was also including the protection afforded to commercial and financial information that the provider would not customarily release to the public.¹⁶

¹⁵ *The Providence Journal Company v Convention Center Authority*, 774 A.2d 40, 47 (R.I. 2001).

¹⁶ *Id.*

In this case, the first prong of the test is not applicable. As a regulated entity, the Company is obligated to provide whatever information the governmental regulatory authorities demand.

As for the second prong of the test, the Company avers that disclosing the BCA model could harm the Company's ability to procure third-party NWA solution bids in the most cost effective and unbiased manner, and ultimately harm customers. Further, the Company submits that publishing the BCA Model creates a risk that third-party solution vendors will use the model's detailed information to inflate and maximize the cost of their solution so that their bid provides maximum financial return for their company, instead of a bid that maximizes value for customers. The Company referred to a recent Massachusetts Department of Public Utilities case, D.P.U. 21-40 as further support of its position in Rhode Island because the Mass. DPU refused to permit the release of scoring criteria in an RFP for offshore wind energy.

The Division believes that the Company's argument on the second prong of the test misses the mark. As described by the Company, the harm that would result from the release of the BCA model in the form of bid manipulation will not cause substantial harm to the competitive position of the Company, but rather to the ratepayers. And, while protection of ratepayers is critically important, this is not a qualifying element of the APRA analysis.

However, the Division does believe that the BCA model qualifies for protection from disclosure under APRA as commercial information the Company would not customarily release to the public. In fact, the information has only been provided to the Commission because it was required under Section 1.3 B of the Least Cost Procurement Standards. It is counter-intuitive to believe that any entity conducting a competitive commercial bidding process would release the scoring criteria in advance to the bidding parties. Such a release would be an invitation and a risk to potential collusion and bid manipulation among bidders.

As such, the Division submits that the BCA Model components for which the Company seeks protective treatment is authorized under APRA.

II. TRANSPARENCY

Acadia and Handy argue that more transparency is needed or required. The Division submits that the Commission need not evaluate these arguments because the information sought to be protected qualifies under APRA. However, it is worth noting that, as described *supra*, the Company originally sought confidential treatment for the entire BCA model, but later re-evaluated its original request and modified it to seek confidential treatment for six of the thirteen elements of the BCA model. The elements for which the Company seeks confidentiality are those which provide the score key, or weighting criteria, for the bids. Moreover, the Company has indicated that the BCA model will be continually reviewed by internal cross-functional teams and, in alignment with the SRP Year-End Report filings, externally on an annual basis by the EERMC Consultant Team (EERMC C-Team), Division, and the PUC.¹⁷ The Division notes that the 182-page SRP Plan provides a vast reservoir of information for potential bidders and that future RFPs will provide substantial guidance and transparency, with oversight by the regulatory agencies.

Therefore, the parties charged with balancing the company's interests, promoting and advocating for least cost procurement, and protecting the ratepayers' interests will have oversight of the BCA model. Protective treatment from public disclosure limits the access of bidders to the scoring mechanism for their bids. The Division does not agree that transparency policies, such as that found in the Least Cost Procurement Standards, or the National Standard

¹⁷ *Id.*

Practice Manual for Benefit-Cost Analysis of Distributed Energy Resources intend to or do require the release of commercial information that would not normally be released to the public. Moreover, the Company modified its original request by categorizing the elements of the BCA Model into tiers and seeks only to protect the highest, most critical tiers.

CONCLUSION

For all the foregoing reasons, the Division supports protective treatment for Tiers 1 and 2 of the Company's BCA Model.

Division of Public Utilities and Carriers

By its attorney,

/s/ Christy Hetherington
Christy Hetherington Esq. (#6693)
State of Rhode Island
Division of Public Utilities and Carriers
89 Jefferson Blvd.
Warwick, R.I. 02888
Tel.: 401-780-2140

Dated: June 18, 2021

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of June 2021 that I transmitted an electronic copy of the within Recommendation to the Service List and to Luly Massaro, Division Clerk via electronic mail.

/s/ Christy Hetherington, Esq.