

**STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION**

**IN RE: RHODE ISLAND ENERGY ADVANCED           :**  
**METERING FUNCTIONALITY BUSINESS CASE       :**       **DOCKET NO. 22-49-EL**  
**AND COST RECOVERY PROPOSAL                   :**

**PROCEDURAL ORDER  
REGARDING REQUEST FOR CONFIDENTIALITY**

This is a Procedural Order issued by the Chairman of the Public Utilities Commission regarding motions filed by The Narragansett Electric Company d/b/a Rhode Island Energy (Rhode Island Energy or Company) seeking confidential treatment of certain documents that were filed with the Commission in this docket. This Order is issued as a preliminary determination, consistent with Rule 1.3(H)(2) of the Commission’s Rules of Practice and Procedure. As explained in this Order below, the Company’s motions are preliminarily granted in part, and denied in part.

**Travel of the Case**

On November 18, 2022, Rhode Island Energy made a filing with the Commission relating to a proposal to deploy Advanced Metering Functionality (AMF) in its service area. The Company has estimated that the AMF deployment would cost approximately \$289 million over a period of years.<sup>1</sup> The filing also includes a proposal to recover the revenue requirement of the capital and O&M costs in electric distribution rates as the expenses are incurred annually.<sup>2</sup>

The filing contained a business case (AMF Business Case) supporting its proposals, including a benefit/cost analysis (BCA) and accompanying pre-filed testimony, documentation,

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<sup>1</sup> Pre-filed Testimony of Walnock & Reder, Bates page 88 of Book 1.

<sup>2</sup> Pre-filed Testimony of Briggs & Johnson, Bates page 5 of Book 2.

and related schedules. The filing was supported by an excel spreadsheet reflecting a financial model (BCA Model) used to calculate the BCA upon which the AMF Business Case was based. In addition, the Company filed a narrative description which explained the business case, designed to accompany the BCA Model. This accompanying narrative was entitled “Benefit Cost Guide Memo” and was identified as “Attachment H” to the filing. Attachment H is a 38-page document which was submitted to provide evidentiary support for the asserted reasonableness of the output of the BCA Model, including high level descriptions of the various costs and benefits supporting the Company’s proposal to deploy AMF and recover the costs from ratepayers. Within the narrative are high level estimates of the costs and quantification of asserted benefits.

When the Company made its initial filing, it included a Motion for Protective Treatment of Confidential Information (Initial Motion), seeking confidential treatment of certain documents in accordance with the provisions of the Access to Public Records Act, chapter 2 of Title 38 (APRA). The documents for which confidential treatment was sought was all of Attachment H, along with the excel spreadsheet BCA Model. The Initial Motion asserted without any specificity that all of the information contained in Attachment H and the BCA Model “contains confidential and proprietary commercial and financial information relating to the Company’s business operations.”<sup>3</sup> The Company did not file a public copy of Attachment H with redactions. Instead, the Company claimed confidentiality of Attachment H in its entirety.

The Commission treated Attachment H and the BCA Model as confidential until the presiding officer (the Chairman) had an opportunity to review the filing. In the meantime, the Commission commenced the discovery process for its investigation of the proposal on December

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<sup>3</sup> Initial Motion, at 3.

8, by issuing what is referred to as its first set of data requests to the Company, consisting of thirty-five informational discovery requests.<sup>4</sup>

After initial review of the filing was completed, counsel for the Commission was directed by the Chairman to notify the Company that the claim of confidentiality over the entire Attachment H appeared overbroad, and to suggest the Company review the document and narrow the request before any rulings were made. Such notification was provided via email on December 23.<sup>5</sup>

On January 19, 2023, the Company filed the thirty-five responses to the Commission's first set of data requests. There was no accompanying motion for confidentiality. The filing was made electronically with copies provided via email to the service list in the docket. The service list consisted of some interested members of the public, as well as several parties who had filed Motions to Intervene still pending before the Commission.<sup>6</sup> The total number of individual email recipients, excluding the Commission and Company personnel, was over forty emails. The responses were also posted on the Commission's website, as is customary for non-confidential materials that are filed in Commission dockets.<sup>7</sup>

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<sup>4</sup> Public Utilities Commission First Set of Data Requests to Rhode Island Energy, Issued December 8, 2022.

<sup>5</sup> The email cc'd counsel for the Division of Public Utilities and Carriers who was the only other party in the case at the time.

<sup>6</sup> The parties filing motions were the Attorney General, the George Wiley Center, Acadia Center, Conservation Law Foundation, the NRG Retail Companies, and Mission:data. The Office of Energy Resources filed a notice of intervention which allows participation as a matter of statutory right. All of the pending motions to intervene were granted at Open Meeting on January 25, 2023.

<sup>7</sup> The Commission is not certain of the precise date that PUC 1-13 was posted on the website, but the Clerk's practice is to post the filings as soon as practicable and the Commission believes it was posted on either Friday, January 20 or early in the following week.

On January 20, the Commission held an open meeting and the Chairman discussed the pending motion for confidentiality and reiterated the need for the Company to narrow the request for confidentiality and provide support for each claim of confidentiality.

On January 31, 2023, the Company filed a “Renewed Motion for Protective Treatment of Confidential Information and Motion to Withdraw Confidential Information from the Public Record.” (Second Motion) The Second Motion was accompanied by a redacted version of Attachment H, which appears to represent a good faith attempt by counsel for the Company to significantly narrow the scope of claimed confidentiality by redacting portions of the document. The Second Motion also contained a table with short descriptions to support each redaction.

The Second Motion, however, also sought confidential treatment for one of the responses to the first set of data requests which had been filed with the Commission on January 19, copies of which had been distributed to more than forty email addresses on the service list, as noted above, and was posted on the Commission’s website. Specifically, the Company asked the Commission to withdraw PUC 1-13 from the public record and substitute a redacted version.<sup>8</sup>

PUC 1-13 was the following request:

Referring to Schedule SAB/BLJ-1, page 9, please provide number of meters being placed into service upon which the capex costs were calculated in the CapEx column for each year, including (a) the forecasted costs per meter, and (b) any other costs associated with the meters which are included in the calculation.

The response provided a 4-page schedule of information regarding the meter cost components, including some information regarding estimated components of vendor costs.

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<sup>8</sup> The data requests were numbered as “PUC 1-1 through PUC 1-35.”

Upon receiving the motion, the Commission Clerk removed PUC 1-13 from the Commission's webpage and replaced it with a redacted version which had been provided by the Company with its Second Motion, pending the Commission's ruling on the request for confidential treatment.

### **Decision on the Motions**

The Chairman has reviewed the relevant documents and the Company's motions. There are essentially three separate requests. One is the request relating to PUC 1-13. The second is the BCA Model reflected in excel spreadsheets. The third is the request regarding the redacted version of Attachment H. Each of these will be discussed separately below.

#### *Request to Withdraw PUC 1-13 from the Public Record*

In reviewing the Attachments to PUC 1-13 which contained redacted portions of meter cost schedules, the Chairman notes that the type of information being redacted appears to be similar to information that is regularly and routinely provided on a non-confidential basis to the Commission in distribution rate cases. However, there is no need to address the extent to which the redacted information might be fall within any exception to APRA contained in R.I. General Laws § 39-2-2. The information which the Company is seeking to exclude from the public record was already placed in the public domain when the Company sent the information to over forty email accounts and the information was posted on the Commission's website for what appears to be at least one week for any member of the public to view and download. Moreover, while there were over forty e-mail recipients, there is no way to know the extent to which any of those recipients may have forwarded along the electronic copy to organization members or other interested parties.

Unlike circumstances where there might be an inadvertent submittal of confidential or privileged information to the Commission and/or a limited number of recipients discovered very soon after the submittal, this inadvertent disclosure was far more widespread. No request has been made to order the return of the documents from those forty recipients, nor is it possible, as a practical or legal matter, for the Commission to retrieve those copies from all recipients or order the recipients to keep the information confidential. The Commission questions whether it has the authority to do so under these circumstances. Further, there is no way of knowing the extent to which other interested parties in the utility industry (or even competitive vendors) may have reviewed or downloaded the information during the week when this document was on the Commission's website.

Given the significant dissemination of the information through email and the public posting that existed for at least a week, the Chairman finds that there is no basis to claim that the information in the redacted schedules constitute "[t]rade secrets or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature."<sup>9</sup> Because the Company never sought confidential treatment when it filed the data response in question, the information, as a practical matter, now resides in the public domain and can no longer be claimed to be secret, privileged, or confidential. Further, the Company provided no explanation of how it would be materially harmed and how the requested remedy would avoid that harm. If the potential for harm existed, the potential has already been realized. The Commission cannot "un-ring the bell."<sup>10</sup> Given this finding, there is no need to address the question of whether the

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<sup>9</sup> R.I. General Laws § 38-2-2(4)(B).

<sup>10</sup> It is important to note that this situation does not involve inadvertent disclosure involving a waiver of an evidentiary privilege, which has a different purpose and standard. This is not an issue of whether a privilege such as attorney-client communications or attorney work product was waived and a determination must be made to determine whether the document can be used as evidence in the proceeding.

redacted information might even have met the standard for confidentiality had the dissemination not occurred.

Nevertheless, given that this Order is a preliminary decision, the Company may appeal this decision to the full Commission by filing a motion and legal memorandum explaining the basis for its appeal within five business days of the date of this Order. During the interim, the Commission Clerk is directed to treat PUC 1-13 as provisionally confidential.

*Request for Confidentiality of the BCA Model*

The Chairman grants preliminary confidentiality for the BCA Model itself. These are created spreadsheets that may be proprietary in their development. The model itself is not the type of spreadsheet that general members of the public would ordinarily review, let alone understand without a significant degree of experience and expertise. For these reasons, the request for confidentiality for the spreadsheet model is granted preliminary confidentiality.

However, it is important to make a distinction between (i) the spreadsheet model which performs the calculations from (ii) the data inputs into the model and the outputs created from calculations arising out of the model. This Order should not be interpreted as a conclusion that every data input and output associated with the model (especially cost and benefit data that are used to justify rate recovery) is confidential. To the extent there are discovery requests that may implicate cost or benefit data that was input into the model or was an output of a calculation, the Company must make a strong case to keep the data confidential, other than simply referencing the fact that requested data inputs or outputs have been taken from the BCA Model model-spreadsheet which already has been given confidential treatment.

*Request for Confidentiality of Redacted Material in Attachment H*

The request relating to the redactions in Attachment H presents a different question. In this instance, the Chairman grants preliminary confidentiality for the redactions, pending a hearing to review the matter before the full Commission.

It is important to note, however, that the Company is a public utility requesting that members of the public fund this proposed high-cost initiative through regulated utility rates. In that regard, the Chairman believes it important to make some important observations regarding the nature of information that was redacted.

The narrative explanation in Attachment H is a core component of the Company's filing. It contains high level estimates of costs and benefits which are important for a complete vetting by the Commission and the parties in this docket. The Company is proposing to spend \$289 million on this initiative, including over \$181 million by the end of calendar year 2027.<sup>11</sup> Much of the information that is redacted relates to information that is routinely addressed in distribution rate cases without confidential treatment. For example:

- (1) The hourly cost of employees working on the initiative.
- (2) The average value of vehicles that have been previously purchased.
- (3) The number of vehicles that will be reduced from the meter reading operations.
- (4) The average cost of sensors to be installed on feeders.
- (5) The number of network gateways and routers to be installed.
- (6) The aggregate cost of licensing fees.
- (7) The total cost and maintenance of the MDMS.

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<sup>11</sup> See Attachment PUC 1-3, page 2 of 2, filed in Docket No. 22-53-EL.



- (8) The aggregate cost of coding to integrate systems.
- (9) The aggregate cost of project management by PPL employees.
- (10) Descriptions of the employees who will engage in change management.

These are some prominent examples of information which would be traditionally available in a distribution rate case without confidential treatment.

In addition, there were redactions of entire tables which broke down the nominal and NPV of benefits being claimed in the BCA where the information originated from National Grid. The justification given was that National Grid asked Rhode Island Energy to keep it confidential – a justification which fails on its face to meet any reasonable standard for confidential treatment.

Finally, it is important for the Company to consider how the transparency of the evidentiary hearings and public confidence in the process would be affected if on each occasion during the hearings the room would need to be cleared and the streaming video halted in order to ask basic questions about important cost items and assumptions that are included in a core component of the Company's business case. When there is an isolated item relating to a specifically identified contract or bid, navigating the confidentiality may be manageable, but it appears that the Company is seeking redactions of information that relate to aggregated information that do not, on their face, appear to be reasonable to withhold from the public record.

Nevertheless, the Company will be provided a third opportunity before the full Commission to support its request for confidentiality. A hearing will be scheduled and counsel for the Commission is directed to hold a pre-hearing conference to address the process. The Company will be provided an opportunity to file any additional information or arguments in

support of its case to respond to the observations in this order. But any such additional filing is optional. The date of the hearing will be set after the conference. In the meantime, the Chairman encourages counsel for the Company to determine whether the request for redactions can be further limited, given the observations in this Order. In that regard, the Company should consider that it carries a high burden of proof and must provide substantial legal and factual support to meet that high burden.<sup>12</sup>

So ordered. (24586)

DATED AND EFFECTIVE at Warwick, Rhode Island, on February 6, 2023.

PUBLIC UTILITIES COMMISSION



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Ronald T. Gerwatowski, Chairman  
Presiding Officer



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<sup>12</sup> See *In Re New England Gas Co.*, 842 A.2d 545, 556 (R.I. 2004).