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February 13, 2023

VIA ELECTRONIC MAIL AND HAND DELIVERY

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: The Narragansett Electric Company d/b/a Rhode Island Energy
In Re: Advanced Meter Functionality Business Case – Docket No. 22-49-EL

Dear Ms. Massaro:

Enclosed please find an original and nine copies of The Narragansett Electric Company d/b/a Rhode Island Energy's (the "Company") Motion for Appeal of Procedural Order Regarding Request for Confidentiality.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Adam M. Ramos'.

Adam M. Ramos

AMR:cw
Enclosures

cc: Service List 22-49-EL (via e-mail only)

The Narragansett Electric Company d/b/a Rhode Island Energy
Docket No. 22-49-EL Advanced Meter Functionality (AMF)
Service list updated 2/6/2023

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STATE OF RHODE ISLAND

RHODE ISLAND PUBLIC UTILITIES COMMISSION

In re: The Narragansett Electric Company)	
d/b/a Rhode Island Energy’s Advanced)	Docket No. 22-49-EL
Metering Functionality Business Case)	

**THE NARRAGANSETT ELECTRIC COMPANY D/B/A RHODE ISLAND ENERGY’S
MOTION FOR APPEAL OF PROCEDURAL ORDER REGARDING
REQUEST FOR CONFIDENTIALITY**

I. Introduction

The Narragansett Electric Company d/b/a Rhode Island Energy (the “Company”) respectfully appeals from that portion of the February 6, 2023 Procedural Order Regarding Request for Confidentiality (Order No. 24856) issued in this docket regarding the Company’s request for confidential treatment of Attachment PUC 1-13 (the “Preliminary Decision”). For the reasons set forth in this memorandum, the Company still has a need and an obligation to maintain the information it seeks to protect as confidential and to avoid any further disclosure of such information. The temporary and limited inadvertent disclosure of such information does not defeat the Company’s current request for confidential treatment. The Company has a need to maintain the confidentiality of this information based on its contract with the third party that provided it to the Company. Accordingly, the Company requests that the Public Utilities Commission (the “PUC”) reverse its preliminary decision set forth in the Preliminary Decision and maintain the confidentiality of Attachment PUC 1-13.

II. Relevant Factual Background

The Company made its initial filing in this matter on November 18, 2022. As part of that initial filing, the Company filed a motion for confidential treatment seeking to protect a

document identified as Attachment H, which consisted of a benefit-cost analysis (“BCA”) spreadsheet and a BCA narrative, which the Company provided as a companion document to facilitate review and understanding of the BCA spreadsheet. On December 8, 2022, the PUC served its first set of data requests on the Company (“PUC Set 1”).¹ On December 23, 2022, PUC counsel advised the Company that the Company should re-evaluate whether full-scale confidential treatment of the BCA narrative document was necessary and to consider presenting a redacted version of the BCA narrative that sought protection of targeted confidential and sensitive information contained within the BCA narrative.

In that context, the Company prepared its responses to PUC Set 1, taking a focused and targeted view to determine whether any of the information it provided in response to PUC Set 1 required confidential treatment. In conducting that review, however, the Company inadvertently overlooked that Attachment PUC 1-13 contained information that the Company had identified as confidential. The Company has identified the same confidential information in Attachment PUC 1-13 as confidential within the BCA narrative and continues to press for it to receive confidential treatment. On January 19, 2023, the Company provided its responses to all 35 data requests in PUC Set 1, seeking confidential treatment for only a limited portion of the response to one of the data requests not relevant to this appeal.²

Shortly thereafter, a third-party vendor that had provided some of the information included in the Company’s response to data request PUC 1-13 advised the Company that it believed that the information contained in Attachment PUC 1-13 was its confidential information and should not be publicly disclosed. After receiving this request from the third-party vendor,

¹ On December 22, 2022, the PUC granted the Company an extension of time to respond to PUC Set 1 until January 19, 2023.

² By the time the Company provided these responses, the service list for this docket had expanded to include numerous proposed interveners and other interested parties.

the Company undertook an independent analysis to determine whether it was the type of information within the focused scope for which the third-party vendor had a right to have the Company maintain the information as confidential. Once the Company determined that the third-party vendor's claim was appropriate, the Company took steps to claw back the public nature of the information and seek confidential treatment.

Accordingly, 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. In that motion, the Company requested that the PUC “withdraw the unredacted version of Attachment PUC 1-13 from the public docket” and “pending decision on th[e] motion . . . remove the unredacted version of Attachment PUC 1-13 from the public docket . . . and direct all parties on the Service List who have not signed a Nondisclosure Agreement with the Company to confirm destruction of the unredacted version of PUC 1-13.” In response to that motion, the PUC has provisionally treated Attachment PUC 1-13 as confidential and removed it from the public docket.

In the Preliminary Decision, the PUC Chairman concluded that the temporary public disclosure of the information in Attachment PUC 1-13 meant that the information was in the public domain and that there could no longer be a basis for treating this information confidentially. The Chairman noted that the information had been on the PUC website for approximately one week and that it had been shared with approximately 40 recipients on the service list. The Chairman also expressed the position that the harm from public disclosure already has been realized. The Chairman finally noted that there was no practical or legal way to direct the recipients to return the copies of the information they had received. To date, the

Company is not aware of any further disclosure of the confidential information, nor any action that has been taken by any party using that information.

III. Argument

The temporary inadvertent disclosure of confidential information does not mean that such information can no longer be treated as confidential. “There are no fixed legal standards that establish the reasonable degree of care you must take to protect the confidential information you receive from another.” 2 Law of Purchasing § 39:6, How do you treat confidential information you give to your vendors, receive from your vendors, or exchange with your vendors?—What is a reasonable degree of care? (2d ed.). It is generally accepted that, to protect information as confidential, a company must take reasonable steps to ensure that the information is protected. Just because competitors might have some idea of the nature and content of the confidential information does not necessarily render it non-confidential. *See Baris v. Steinlage*, 2003 WL 23195568, *11 (R.I. Super. Ct. Dec. 12, 2003) (discussing nature of confidential information at issue). Further, confidential information can be shared and still remain confidential, provided that the party sharing the confidential information takes appropriate steps to ensure that such information is not further disseminated. The PUC, like the courts, has the authority to enter protective orders. 810-RICR-00-00-1.19(E).

The information for which the Company is seeking confidential treatment was provided to the Company as confidential third-party vendor information. As soon as the Company received notice from the third-party vendor that the information in Attachment PUC 1-13 should be treated as confidential and should not be disclosed publicly, the Company began the process of assessing whether it had a basis for asserting confidentiality and determining the appropriate process by which it should do so. Within a short period of time, the Company concluded that it

should seek to protect this information as confidential, non-public information shared by its third-party vendor. In particular, the third-party vendor provided the information under the express condition that the Company could only “use and disclos[e]” the information for the specific purpose for which it was provided or “as required by law.”

Although the condition authorizes disclosure required by law, at most that authorizes disclosure to the PUC for purposes of evaluating the Company’s AMF Business Case, but only on a confidential basis. Accordingly, upon notification from the third-party vendor that this information was to be treated as confidential under this condition, the Company had a legal obligation to seek to protect it from public disclosure.³

The need to maintain this information as confidential is important to the Company and to the third-party vendor. The Company must maintain its commercial relationships with its vendors to be able to continue to deliver safe and reliable service affordably. For the third-party vendor, the information contained in Attachment PUC 1-13, if associated with that third-party vendor, puts it at a competitive disadvantage with respect to its competitors.

The temporary, inadvertent disclosure of this information does not negate the necessity of maintaining it as confidential going forward. The information was publicly available for only a short time – approximately one week. There is no indication that, during this time period, the information was accessed by anyone in particular, other than the interested parties in this docket. Although the risk remains that it has been accessed beyond the parties in this docket, that possibility is not reason to ensure that the information in Attachment PUC 1-13 will be available to anyone who wants to see it in the future. Right now, the exposure to the public domain has

³ The Company is not disclosing the identity of the third-party vendor or providing a copy of the contract because to do so would create further risk of misuse of the confidential information.

been limited. The Company is now continuing to take reasonable steps to keep it as limited as possible.

Finally, with respect to those who already have received the information, there are multiple avenues to ensure that the information is used by those persons only for purposes of this proceeding and no other purpose. First, if the PUC determines that the information is subject to confidential treatment, the Company will specifically request that each party who received a copy either sign a non-disclosure agreement with respect to the information, return the information, or destroy it. Second, the Company proposes that the PUC has the authority under 810-RICR-00-00-1.19(E) to enter a protective order that limits anyone who received the information as a result of their participation in this docket to using it solely for purposes of assessing the issues in this docket, and for no other purpose – the terms that would be typical of a non-disclosure agreement.

IV. Conclusion

For the reasons set forth herein, the Company respectfully requests that the PUC vacate the Preliminary Decision and grant protective treatment to Attachment PUC 1-13.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC
COMPANY d/b/a RHODE ISLAND ENERGY**

By its attorney,



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/s/ Adam M. Ramos

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Dated: February 13, 2023

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2023, I sent a copy of the foregoing to the service list by electronic mail.

/s/ Adam M. Ramos