

KEEGAN WERLIN LLP

ATTORNEYS AT LAW
99 HIGH STREET, SUITE 2900
BOSTON, MASSACHUSETTS 02110

(617) 951-1400

TELECOPIER:
(617) 951-1354

March 27, 2023

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

Re: In re: Investigation of Misconduct by The Narragansett Electric Company Relating to Past Payments of Energy Efficiency Program Shareholder Incentives
Docket No. 22-05-EE

Dear Ms. Massaro:

On behalf of National Grid USA (“National Grid”), enclosed is the supplemental response to Data Request Division 9-1 Supplemental in the above-referenced docket.

This filing also contains a Motion for Protective Treatment of Confidential Information in accordance with Rule 1.3(H) of the Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure and R.I. Gen. Laws § 38-2-2(4). National Grid seeks protection from public disclosure of confidential information contained in the response to Data Request Division 9-1 Supplemental. Due to the size of the materials produced, National Grid is providing the Commission with a secure electronic link to the complete, unredacted copy of the confidential materials in lieu of one complete, unredacted hard copy of the confidential materials. National Grid will provide a complete, unredacted hard copy of the confidential materials to the Commission upon request. National Grid is in the process of redacting the voluminous materials in response to Data Request Division 9-1 Supplemental and will provide the redacted version of the materials for the public filing as soon as it is available.

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

Very truly yours,



Robert J. Humm

Enclosures

cc: Docket No. 22-05-EE Service List

Nicholas Vaz, Esq. Alison Hoffman, Esq.	ahoffman@riag.ri.gov ;	
RI EERMC Marisa Desautel, Esq. Office of Marisa Desautel, LLC 55 Pine St. Providence, RI 02903 Sam Ross, Optimal Energy	marisa@desautelesq.com ; mdewey@desautelesq.com ; ross@optenergy.com ;	401-477-0023
Office of Energy Resources (OER) Albert Vitali, Esq. Dept. of Administration Division of Legal Services One Capitol Hill, 4 th Floor Providence, RI 02908	Albert.Vitali@doa.ri.gov ; Nancy.Russolino@doa.ri.gov ; Christopher.Kearns@energy.ri.gov ; Steven.Chybowski@energy.ri.gov ; William.Owen@energy.ri.gov ; Anika.Kreckel@energy.ri.gov ; Nathan.Cleveland@energy.ri.gov ;	401-222-8880
Original & 9 copies file w/: Luly E. Massaro, Commission Clerk John Harrington, Commission Counsel Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	Luly.massaro@puc.ri.gov ; John.Harrington@puc.ri.gov ; Alan.nault@puc.ri.gov ; Todd.bianco@puc.ri.gov ; Emma.Rodvien@puc.ri.gov ;	401-780-2107
Interested Party/Individual		
RI Infrastructure Bank Chris Vitale, Esq.,	cvitale@hvlawltd.com ; USatine@riib.org ; Larry@massenergy.org ;	
Acadia Center Hank Webster, Director & Staff Atty.	HWebster@acadiacenter.org ;	
Green Energy Consumers Alliance Larry Chretien, Executive Director Kai Salem	Larry@massenergy.org ; kai@greenenergyconsumers.org ; priscilla@greenenergyconsumers.org ;	

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

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In re: Investigation of Misconduct by)	
The Narragansett Electric Company Relating)	Docket No. 22-05-EE
to Past Payments of Energy Efficiency)	
Program Shareholder Incentives)	
)	

**NATIONAL GRID USA’S MOTION FOR
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

National Grid USA (“National Grid”) hereby requests that the Rhode Island Public Utilities Commission (“PUC” or “Commission”) grant protection from public disclosure of certain confidential, competitively sensitive, and investigatory information submitted in this proceeding, as permitted by 810-RICR-00-00-1.3(H) (“Rule 1.3(H)”) and 1.19(E) (“Rule 1.19(E)”) and R.I. Gen. Laws § 38-2-2(4)(B). National Grid also requests that, pending entry of that finding, the Commission preliminarily grant National Grid’s request for protective treatment pursuant to Rule 1.3(H)(2).

I. BACKGROUND

On July 11, 2022, the Commission issued Order No. 24441, opening the above-captioned docket entitled “In Re: Investigation of Utility Misconduct or Fraud by The Narragansett Electric Company Relating to Past Payment of Shareholder Incentive.” Order No. 24441 announced that “the Commission will investigate [Narragansett’s] actions and the actions of its employees during the time it was a National Grid affiliate, relating to the alleged manipulation of the reporting of invoices affecting the calculation of past energy efficiency performance incentives and the resulting impact on customers” (Order No. 24441 at 5-6). On July 14, 2022, National Grid

voluntarily intervened in this docket to continue its participation in the Commission’s investigatory process.

On October 17, 2022, the Division of Public Utilities and Carriers (“Division”) issued its Ninth Set of Data Requests (“Division Set 9”). Division Set 9 includes Data Request Division 9-1 (“Division 9-1”), which seeks: (a) copies of workplans, timelines, statements of work with outside vendors, and other pertinent information describing the scope of the continuing investigation; (b) findings, evidence, or observations, even if in draft form or incomplete, associated with the investigation, including supporting documentation; and (c) a schedule of when National Grid expects to update the Division and Commission on findings and what will be reported. On November 7, 2022, National Grid filed a response to Division 9-1 that provided a detailed and descriptive update to its internal investigation.¹ The response to Division 9-1 stated that, “[b]ased on the intensive retrieval work necessary to perform the investigation, National Grid estimates that it will be in a position to present findings and documentation to the Commission and the Division by March 1, 2023” (Division 9-1). National Grid later informed the Commission that it planned to file the report from its internal investigation by March 10, 2023. On March 10, 2023, National Grid filed the Report on Investigation of Out-of-Period Invoicing within the Rhode Island Energy Efficiency Program (2012-2021) (the “Report on Investigation”), which provides a compilation of the responsive factual findings determined through National Grid’s internal investigation.

On March 27, 2023, National Grid filed a supplemental response to Division 9-1 (“Division 9-1 Supplemental”), through which National Grid is producing responsive documents related to

¹ The response to Division 9-1 filed on November 7, 2022 is accompanied by a Motion for Protective Treatment of Legally Privileged Information and Objection of National Grid USA to Data Request Division 9-1 because Division 9-1 seeks information and documentation that is part of an internal investigation and therefore protected by the attorney-client privilege and work product doctrine.

out-of-period invoicing. The responsive documents include: (1) the documents determined to be relevant to out-of-period invoicing through the email review, described in Section II.C of the Report on Investigation (folder provided as Attachment DIV 9-1-1); and (2) the data analyzed to complete the transaction analysis to derive the out-of-period percentage, described in Section IV.B of the Report on Investigation (folder provided as Attachment DIV 9-1-2) (collectively, the “Documents”). The Documents are not themselves confidential, but contain certain confidential information that must be redacted from a public filing. In particular, the Documents include names and other identifying information of employees, and also of customers and other third-party individuals and businesses (the “Confidential Information”). The public disclosure of the Confidential Information during an investigatory proceeding would be an unwarranted invasion of the personal privacy of the individuals and businesses appearing in the Documents. As such, National Grid is filing the Documents confidentially with the Commission and is redacting the Confidential Information from the Documents to file a public redacted version of the Documents.

Therefore, National Grid requests that, pursuant to Rules 1.3(H) and 1.19(E), the Commission afford protective treatment of the Confidential Information appearing in the Documents.

II. LEGAL STANDARD

Rule 1.3(H) of the PUC’s Rules of Practice and Procedure provides that access to public records shall be granted in accordance with the Access to Public Records Act (“APRA”), R.I. Gen. Laws § 38-1-1, et seq. Under APRA, any record received or maintained by a state or local governmental agency in connection with the transaction of official business is considered public, unless information in a record falls within one of the exemptions specifically identified in R.I. Gen. Laws § 38-2-2(4). To the extent that information in a record provided to the Commission

falls within one of the designated APRA exemptions, the Commission has the authority to deem such information confidential and to protect that information from public disclosure.

R.I. Gen. Laws § 38-2-2(4)(A)(I)(b) provides for the protection of “[p]ersonnel and other personal individually identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552, et seq.” 5 U.S.C. § 552(b)(6) similarly provides an exception for “personnel . . . and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

Moreover, R.I. Gen. Laws § 38-2-2(4)(P) provides an exception such that “[a]ll investigatory records of public bodies . . . pertaining to possible violations of statute, rule, or regulation other than records of final actions taken, provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.”

“[E]ven if a document does not fall into one of the categories under APRA, it is still incumbent upon the public body to exempt a record from public disclosure if the individual’s privacy interests outweigh the public’s interest in disclosure.” Advisory Opinion, ADV PR 03-01, 2003 WL 24172741 (R.I.A.G. May 7, 2003), citing Providence Journal v. Kane, 577 A.2d 661, 663-64 (R.I. 1990).

In addition, “[u]pon motion by a party from whom discovery is sought, and for good cause shown, the presiding officer may make an order when justice requires to protect the party from unreasonable annoyance, embarrassment, oppression, burden or expense, or from disclosure of confidential business and financial information.” See Rule 1.19(E).

III. BASIS FOR CONFIDENTIALITY

The names and other identifying information of employees, and also of customers and other third-party individuals and businesses such as vendors, should be protected from public disclosure in this investigatory proceeding pursuant to R.I. Gen. Laws § 38-2-2(4). The Confidential Information constitutes personnel and other personal individually identifiable records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

While generally the disclosure of a name on its own would not constitute an invasion of privacy, the very nature of this investigatory docket alleging “misconduct” or “fraud” in its title deems any disclosure of employee names, and the names of customers and other third-party individuals or businesses, an invasion of personal privacy. Just because an individual or business’ name is mentioned in a record from an investigation does not mean that the individual or business engaged in any alleged misconduct. However, disclosing such names and other identifying information to the public as appearing in this investigation can have a detrimental impact on their reputation and standing in the community. Moreover, disclosing such information regarding a customer or vendor could have an unwarranted detrimental impact on their business, reputation, and marketplace standing. That potential detrimental impact implicates the commercial information exception to the definition of public record, and the disclosure of the customer or vendor’s name in the context of this investigation could cause negative financial consequences to them. See R.I. Gen. Laws § 38-2-2(4)(B). Therefore, while the name of an employee, customer, or other third-party individual or business may not have a privacy or commercial significance in ordinary contexts, the specific context of this docket is quite different.

It is this very reason that likely led the General Assembly to exclude “[a]ll investigatory records of public bodies . . . pertaining to possible violations of statute, rule, or regulation other than records of final actions taken” from the public records definition, which is, in itself, an independent and sufficient basis for protective treatment. R.I. Gen. Laws § 38-2-2(4)(P). At this stage, the information is premature and ordinarily would not be made public.

At a minimum, the privacy interests of the individuals and businesses outweigh the public’s interest in disclosure based on the circumstances, so their identities should be exempt from public disclosure. See Providence Journal, 577, A.2d at 663. Moreover, justice requires the protection of these individuals and businesses from unreasonable annoyance or embarrassment of being publicly identified. See Rule 1.19(E).

Accordingly, National Grid is providing the Confidential Information on a voluntary basis to assist the Commission with its decision-making in this proceeding, but respectfully requests that the Commission provide protective treatment to the Confidential Information.

IV. CONCLUSION

For the foregoing reasons, National Grid respectfully requests that the Commission grant its Motion for Protective Treatment of Confidential Information.

Respectfully submitted,

NATIONAL GRID USA,

By its attorneys,



Cheryl M. Kimball, Esq.
Robert J. Humm, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
(617) 951-1400
ckimball@keeganwerlin.com
rhumh@keeganwerlin.com



Laura C. Bickel, Esq.
National Grid
170 Data Drive
Waltham, Massachusetts 02451
(781) 907-2126
laura.bickel@nationalgrid.com

Dated: March 27, 2023

Division 9-1 Supplemental

Request:

In responses DIV 8-2 and DIV 8-7 the Company states:

“National Grid’s internal investigation is continuing and National Grid plans to provide the results of its further investigation to the Public Utilities Commission as soon as it is complete.”

- a) Provide relevant documents such as workplans, timelines, statements of work with outside vendors, and other pertinent information describing the scope of the continuing investigation (s).
- b) Provide any findings, evidence, or observations, even if in draft form or incomplete, found to date associated with the investigation (s). Provide all supporting documentation for these activities.
- c) If the investigation (s) remains ongoing, provide a schedule of when the Company expects to update the Division and Commission on findings and what will be provided (e.g. report, memorandum or other form evidence).

Original Response:

National Grid USA (“National Grid”) appreciates this opportunity to explain the nature of the ongoing investigation into the issues under consideration in this docket.

As stated in discovery responses, the focus of the initial investigation undertaken by The Narragansett Electric Company (“Narragansett”) was to determine whether “out-of-period” invoicing occurred within the Residential Upstream Lighting Energy Efficiency program or other Energy Efficiency programs and, if so, to assess the customer impact for remediation (Data Requests Division 3-1 and Division 7-3). The phases of this investigation informed the June 7, 2022 “Review of Invoices within the Rhode Island Energy Efficiency Program” report (the “Report”) filed in Docket No. 5189.

Subsequent to the filing of the Report, National Grid determined that additional investigation was warranted to assure a full and complete assessment of what had occurred and to enable responsive and transparent participation in the regulatory proceeding commenced by the Rhode Island Public Utilities Commission (“Commission”). This additional investigation is ongoing. Ongoing work is focused on: (1) identifying the scope of the “out-of-period” invoicing; and (2) more precisely assessing the impact of the conduct on customers. National Grid is working with a forensic consultant to perform an expanded transaction analysis and to conduct additional retrieval,

Prepared by or under the supervision: Helen A. Burt, Christopher McCusker,
and James R. Meehan

screening, and examination of electronic media. This process is labor-intensive and time-consuming, yet necessary to identify communications that are relevant to the out-of-period invoicing that occurred. National Grid plans to continue this investigation until it reaches a point where the parameters of the "out-of-period" invoicing are defined as fully and accurately as possible to support resolution of this matter.

As of this writing, National Grid has not yet reached this point. Additional retrieval and review of electronic communications is ongoing, as is the expanded transaction analysis. The communications and work product generated in this phase of the investigation are protected by the attorney-client privilege and work-product doctrines. However, it is National Grid's plan, and firm commitment, to provide a comprehensive compilation of the facts discovered through this investigation to the Commission and to the Division of Public Utilities and Carriers ("Division") at the earliest opportunity. National Grid understands the regulatory concerns and acknowledges that a clear, full, and precise accounting of the actions that have transpired and the associated customer impact is necessary. National Grid's intention is to fulfill these objectives in a reasonable timeframe.

Review of Electronic Media Retrieval

The initial review of electronic media included approximately 5.2 million pieces of electronic media compiled from 27 available mailboxes for the period January 1, 2012 through August 18, 2021. The retrieved electronic media was compiled, processed, and screened against keyword searches. The application of 148 search terms to the 5.2 million pieces of electronic media produced approximately 162,000 pieces of reviewable electronic media. The forensic consultant then conducted a manual review of the reviewable electronic media to determine the relevant documents (Data Request Division 8-1).

The supplemental email review currently underway will retrieve records from approximately 40 additional mailboxes for the period January 1, 2012 through December 31, 2021, or as otherwise applicable. The supplemental email review is following the same sequenced process as the initial email review.

Expanded Transaction Analysis

The expanded transaction analysis is compiling additional data to validate the out-of-period invoicing percentages and to apply those percentages to more precisely assess the customer impact using the model described in response to Data Request Division 3-1. For example, the initial sample-based transaction analysis focused on the invoicing and payments associated with nine of the largest manufacturers in the Residential Upstream Lighting program, whereas a total of 90 manufacturers participated in the program between January 1, 2012 and June 30, 2021 (Data

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Request Division 3-1).¹ The expanded transaction analysis will review relevant documentation associated with the remaining manufacturers.

The expanded scope of the transaction analysis takes several steps to complete. First, efforts are underway to obtain the additional data needed to perform the expanded transaction analysis of out-of-period invoicing in Narragansett's Residential Upstream Lighting Energy Efficiency program. The additional data includes InDemand data from January 2018 through December 2021 and available supporting invoice data provided by the invoice processing vendor during that time frame.

Second, to the extent data is available from the invoice processor, additional transaction analysis will be performed for the period of January 2018 through December 2021. The invoice processor began capturing sales activity information as part of its migration to a new system that occurred in June 2018. There is the potential for sales activity prior to June 2018 to be captured in the new system. To the extent data is available, the additional testing will include:

- Review of the data associated with the remaining 81 manufacturers not previously reviewed as part of the initial scope to the extent that payment was received during the timeframe.
- Review of data for the nine manufacturers that was not included in the initial analysis. The sampling process in Phase 1 of the initial investigation involved the identification of the first three payments from years 2016, 2019, 2020, and 2021, and from those, review of the two largest payments for inclusion in the analysis based on the likelihood that these payments would capture out-of-period invoices. The additional analysis will analyze the remaining payments that were not selected during Phase 1 of the initial investigation.
- Additional analysis of the compiled data that will be combined into a single database in order to link payments (InDemand data) to sales activity (invoice processor data). The invoice processor's sales activity data will be leveraged in order to compare sales activity to when payments for the activity/services were made pursuant to the InDemand data. This analysis is entirely dependent on timely receipt of the data from the invoice processor, which has taken several months, and quality of the data after it is received.

¹ The nine manufacturers originally selected for analysis accounted for approximately 72 percent (or \$44,869,412) of the total payments made through Narragansett's Residential Upstream Lighting program between January 1, 2012 and June 30, 2021 (Data Request Division 3-1).

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The initial analysis that informed the Report yielded a reasonable estimate of the customer impact. The purpose of the expanded transaction analysis is to allow National Grid to quantify the customer impact more precisely for the Commission's purposes.

With respect to the specific questions posed in this Data Request, National Grid anticipates the following regarding the ongoing investigation and next steps.

- a) National Grid will produce any responsive, non-privileged documents relating to the ongoing investigation.
- b) National Grid will produce a compilation of the responsive factual findings determined through the additional investigation.
- c) Once the factual findings and associated documentation are submitted to the Commission and Division, National Grid expects to participate in a technical session in order to engage in informal discourse regarding the non-privileged aspects of the investigative process and the results generated therefrom. National Grid expects that conducting an informal discussion as a pre-cursor to next steps will assure that all interested parties are informed regarding the myriad details of the investigation and associated outcome.

Based on the intensive retrieval work necessary to perform the investigation, National Grid estimates that it will be in a position to present findings and documentation to the Commission and the Division by March 1, 2023. National Grid expects to update the Commission and Division on a regular basis in the interim.

Supplemental Response:

Please see the Report on Investigation of Out-of-Period Invoicing within the Rhode Island Energy Efficiency Program (2012-2021), filed by National Grid on March 10, 2023 (the "Report on Investigation"), for a compilation of the responsive factual findings determined through National Grid's internal investigation.

In this supplemental response, National Grid is producing responsive documents related to out-of-period invoicing. In particular, the documents include:

1. The documents determined to be relevant to out-of-period invoicing through the email review, described in Section II.C of the Report on Investigation (folder provided as Attachment DIV 9-1-1); and

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2. The data analyzed to complete the transaction analysis to derive the out-of-period percentage, described in Section IV.B of the Report on Investigation (folder provided as Attachment DIV 9-1-2).

As explained in the original response to this data request and the Motion for Protective Treatment of Legally Privileged Information and Objection of National Grid USA to Data Request Division 9-1, filed on November 7, 2022, the communications and work product generated in National Grid's internal investigation are protected by the attorney-client privilege and work-product doctrines.