

August 17, 2021

**BY ELECTRONIC MAIL**

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

**RE: Docket No. 22-05-EE  
Investigation of Misconduct by The Narragansett Electric Company Relating to  
Past Payments of EE Program Shareholder Incentives  
Responses to Division Data Requests – Set 6**

Dear Ms. Massaro:

On behalf of The Narragansett Electric Company d/b/a Rhode Island (“Rhode Island Energy” or the “Company”), enclosed are the Company’s responses to the Division of Public Utilities and Carriers’ Sixth Set of Post-Decisional Data Requests in the above-referenced matter. The Company received an extension to August 24, 2022 to respond to data request Division 6-9.<sup>1</sup>

Thank you for your attention to this matter. If you have any questions, please contact me at 401-709-3359.

Very truly yours,



Steven J. Boyajian

Enclosures

cc: Docket No. 22-05-EE Service List  
Margaret Hogan, Esq.

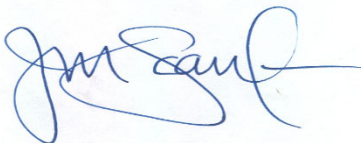
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<sup>1</sup> Pursuant to the Commission’s request, the Company will provide bound versions of its complete set of responses to Division Set 6 once the set is complete.

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.



\_\_\_\_\_  
Joanne M. Scanlon

August 17, 2022  
Date

**Docket No. 5189 – The Narragansett Electric Company 2022 Annual Energy Efficiency Program**  
**Service list updated 8/5/2022**

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**STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION**

_____	)	
In re: Investigation of Misconduct by	)	
The Narragansett Electric Company Relating	)	Docket No. 22-05-EE
to Past Payments of Energy Efficiency	)	Docket No. 5189
Program Shareholder Incentives	)	
_____	)	

**MOTION FOR PROTECTIVE TREATMENT OF LEGALLY PRIVILEGED  
INFORMATION AND OBJECTION OF THE NARRAGANSETT ELECTRIC  
COMPANY D/B/A RHODE ISLAND ENERGY AND NATIONAL GRID USA  
TO DATA REQUESTS DIVISION 5-4 AND DIVISION 6-8**

The Narragansett Electric Company d/b/a Rhode Island Energy (“Rhode Island Energy” or “Narragansett”) and National Grid USA (“National Grid”) hereby move for protective treatment, pursuant to Rules 1.3(H) and 1.19(E) of the Public Utilities Commission’s (“PUC” or the “Commission”) Rules of Practice and Procedure, and object, in part, pursuant to Rule 1.19(C)(3) of the Commission’s Rules of Practice and Procedure, to Data Requests Division 5-4 (“Division 5-4”) and Division 6-8 (“Division 6-8”) issued by the Division of Public Utilities and Carriers (the “Division”) in the above-referenced docket because the documents requested in Division 5-4 and Division 6-8 are protected by the attorney-client privilege and work product doctrine.<sup>1</sup>

**I. BACKGROUND**

On July 11, 2022, the Commission opened this docket to investigate The Narragansett Electric Company’s (“Narragansett”) 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 shareholder incentives and the resulting impact

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<sup>1</sup> In addition, the companies are seeking protective treatment of the legally privileged notes of the employee interviews in response to Division 5-4 and the legally privileged presentations to the Board of Directors and senior management in response to Division 6-8 because they are documents relating to a client/attorney relationship and work product. See R.I. Gen. Laws § 38-2-2(A)(I)(a) and (K).

on customers. See PUC Order No. 24441. The Division issued its Fifth Set of Data Requests (“Division Set 5”) to Rhode Island Energy on July 27, 2022.<sup>2</sup> Division Set 5 includes Division 5-4, which seeks copies of all notes for each employee interview conducted as part of Narragansett’s internal investigation. As explained in the response to Division 5-4, the interviews were conducted by Narragansett’s Legal department under the protection of the attorney-client privilege and work product doctrine. Interviewers consisted of attorneys on behalf of Narragansett and certain other interviewers who participated at the direction of Narragansett’s legal counsel. Therefore, although the attorneys conducting the employee interviews on behalf of Narragansett, and other interviewers who participated at the direction of Narragansett’s legal counsel, took notes, copies of any notes from the employee interviews are protected by the attorney-client privilege and work product doctrine.

The Division also issued its Sixth Set of Data Requests (“Division Set 6”) to Rhode Island Energy on July 27, 2022.<sup>3</sup> Division Set 6 includes Division 6-8, which seeks copies of all presentations on the energy efficiency program invoices and incentives made to the Board of Directors or to senior management. As explained in the response to Division 6-8, all of the responsive documents were prepared by legal counsel for National Grid USA and are protected by the attorney-client privilege and work product doctrine.

## **II. ARGUMENT**

### **A. Attorney-Client Privilege**

In order “to encourage full and frank communications between attorneys and their clients,” the Rhode Island Supreme Court has long recognized that “communications made by a client to

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<sup>2</sup> The deadline to respond to Division Set 5 was extended to August 17, 2022.

<sup>3</sup> The deadline to respond to Division Set 6 was extended to August 17, 2022.

his attorney for the purpose of seeking professional advice, as well as the responses by the attorney to such inquiries, are privileged communications not subject to disclosure.” DeCurtis v. Visconti, Boren & Campbell, Ltd., 152 A.3d 413, 423 (R.I. 2017) (quoting Mortgage Guarantee & Title Co. v. Cunha, 745 A.2d 156, 158-59 (R.I. 2000)). “Genuine attorney-client communications are afforded the highest level of protection by our courts.” Id. The party asserting privilege must set forth the following elements:

- (1) the asserted holder of the privilege is or sought to become a client;
- (2) the person to whom the communication was made (a) is [the] member of a bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer;
- (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion of law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and
- (4) the privilege has been (a) claimed and (b) not waived by the client.

DeCurtis, 152 A.3d at 423 (internal citations and quotations omitted).

Moreover, “it is well settled ‘that the attorney-client privilege attaches to corporations as well as to individuals.’” State v. Doyle, 235 A.3d 482, 503 (R.I. 2020) (quoting Commodity Futures Trading Commission v. Weintraub, 471 U.S. 343, 348, 105 S.Ct. 1986, 85 L.Ed. 2d 372 (1985) (“Both for corporations and individuals, the attorney-client privilege serves the function of promoting full and frank communications between attorneys and their clients.”)); see also Upjohn Company v. United States, 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed. 2d 584 (1981). “[T]he power to waive the attorney-client privilege ‘rests with the corporation’s management and is normally exercised by its officers and directors.’” Doyle, 235 A.3d at 503 (quoting Weintraub, 471 U.S. at 348-49, 105 S.Ct. 1986)). “[W]hen control of a corporation passes to new management, the authority to assert and waive the corporation’s attorney-client privilege passes as well.” Id. (quoting Weintraub, 471 U.S. at 349, 105 S.Ct. 1986).

## B. Work Product Doctrine

While the attorney-client privilege covers only confidential communications between attorney and client, the work-product privilege, on the other hand, “protects both the attorney-client relationship and a complex of individual interests particular to attorneys that their clients may not share.” State v. von Bulow, 475 A.2d 995, 1009 (R.I. 1984) (citation omitted). The work product doctrine protects certain materials “obtained or prepared by an adversary’s counsel with an eye toward litigation.” Id., 475 A.2d at 1008 (quoting Hickman v. Taylor, 329 U.S. 495 (1947)).

The Rhode Island Supreme Court has recognized that there are two types of work product: opinion work product and factual work product. DeCurtis, 152 A.3d at 427-28 (citing Henderson v. Newport Cty. Reg’l Young Men’s Christian Ass’n, 966 A.2d 1242, 1247-48) (R.I. 2009)). Opinion work product “refers to a document or other written material containing the mental impressions of an attorney or his or her legal theories” and receives “absolute immunity from discovery.” Id. at 428. Factual work product casts a wider net and covers “any material gathered in anticipation of litigation.” Id. “Because factual work product does not include the actual thoughts of the attorney, it is afforded only qualified immunity from discoverability.” Id.

Factual work product is subject to disclosure only when “the party seeking discovery demonstrates a substantial need for the materials and that it cannot obtain the substantial equivalent without undue hardship.” DeCurtis, 152 A.3d at 428 (quoting Crowe Countryside Realty Associates, Co., LLC v. Novare Engineers, Inc., 891 A.2d 838, 842 (R.I. 2006)). Factual work product “encompasses *any material* gathered in anticipation of litigation. Henderson, 966 A.2d at 1248 (emphasis in original). Importantly, “[i]t is not necessary for the attorney to have prepared the materials or the documents for them to constitute work product.” Id. “Rather, a document prepared by a party’s representative or agent constitutes factual work product as long as the



document was prepared in anticipation of litigation.” Id. Additionally, work product privilege “applies not only to litigation in courts, but litigation before administrative tribunals.” S. Union Co. v. Sw. Gas Corp., 205 F.R.D. 542, 549 (D. Ariz. 2002) (quoting United States v. Am. Telephone & Telegraph Co., 86 F.R.D. 603, 627 (D.D.C. 1979)).

**C. Division 5-4**

The notes of the employee interviews requested in Division 5-4 should be protected as privileged because they constitute attorney-client communications and work product. The interview notes were prepared at the direction of legal counsel to gather information to aid in providing legal services. See Voelker v. Duetsche Bank AG, No. 11-CV-6362 VEC, 2014 WL 4473351, at \*1 (S.D.N.Y. Sept. 11, 2014) (“in the corporate context, the privilege may extend to communications among non-attorneys if they were made ‘at the direction of counsel, to gather information to aid counsel in providing legal services’”). Specifically, the interview notes were necessary for Narragansett’s legal counsel to assess the scope of the potential misconduct concerning “out-of-period” invoices and to be able to provide legal opinion on the next steps needed to correct any existing energy efficiency accounting and prepare for the forthcoming regulatory proceeding. Accordingly, any notes of the employee interviews are protected by the attorney-client privilege and work product doctrine.

**D. Division 6-8**

Similarly, the presentations made to the Board of Directors or senior management in response to Division 6-8 should be protected as privileged because they constitute attorney-client communications and work product. The responsive documents were prepared by legal counsel for National Grid USA for the purpose of communicating the legal review and analysis of issues relating to the investigation of the energy efficiency program and in anticipation of the forthcoming

regulatory proceeding. In addition to being attorney-client privileged communications from legal counsel to its client, the documents also constitute both opinion work product, because they contain the mental impressions of National Grid USA's legal counsel conveyed to the Board of Directors and senior management, and factual work product, because they were prepared in anticipation of litigation, i.e., in anticipation of the forthcoming regulatory proceeding. Accordingly, any notes of the employee interviews are protected by the attorney-client privilege and work product doctrine.

### **III. CONCLUSION**

For the foregoing reasons, the companies move to protect, and object to, Division 5-4 and Division 6-8 to the extent they seek privileged attorney-client communications and work product.

Respectfully submitted,

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

By its attorney,



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**NATIONAL GRID USA,**  
By its attorneys,



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Dated: August 17, 2022

**STATE OF RHODE ISLAND  
PUBLIC UTILITIES COMMISSION**

_____ )	
In re: Investigation of Misconduct by )	
The Narragansett Electric Company Relating )	Docket No. 22-05-EE
to Past Payments of Energy Efficiency )	Docket No. 5189
Program Shareholder Incentives )	
_____ )	

**MOTION OF THE NARRAGANSETT ELECTRIC COMPANY D/B/A  
RHODE ISLAND ENERGY FOR PROTECTIVE TREATMENT OF  
CONFIDENTIAL INFORMATION**

The Narragansett Electric Company d/b/a Rhode Island Energy (“Rhode Island Energy” or the “Company”) hereby respectfully requests that the Public Utilities Commission (“PUC” or “Commission”) grant protection from public disclosure certain confidential information submitted by the Company. The reasons for the protective treatment are set forth herein. The Company also requests that, pending entry of that finding, the PUC preliminarily grant the Company’s request for confidential treatment pursuant to 810-RICR-00-00-1.3(H)(2).

The records that are the subject of this Motion and require protective treatment are employee names, identification numbers, employment status and the circumstances of their departure from their employment contained in the following attachments to data request responses: (1) Attachment DIV 5-1 to the Company’s Response to the Division of Public Utilities and Carriers (“Division”) Fifth Set of Post-Decisional Data Requests, Division 5-1, issued on July 27, 2022; and (2) Attachment DIV 5-3 to the Company’s Response to Division 5-3 (collectively, the “Confidential Attachments”). The Company requests protective treatment of the Confidential Attachments in accordance with 810-RICR-00-00-1.3(H) and R.I. Gen. Laws § 38-2-2-(4)(A)(I)(b).

Also included within the Division’s Fifth Set of Post-Decisional Data Requests was

Division Data Request 5-4 which seeks copies of all notes for each employee interview conducted as part of Narragansett's internal investigation. As explained in the response to Division 5-4, the interviews were conducted by Narragansett's Legal department under the protection of the attorney-client privilege and work product doctrine. Interviewers consisted of attorneys on behalf of Narragansett and certain other interviewers who participated at the direction of Narragansett's legal counsel. Therefore, although the attorneys conducting the employee interviews on behalf of Narragansett, and other interviewers who participated at the direction of Narragansett's legal counsel, took notes, copies of any notes from the employee interviews are protected by the attorney-client privilege and work product doctrine and have been withheld under a claim of legal privilege.

Finally, the Division also issued its Sixth Set of Post-Decisional Data Requests to Rhode Island Energy on July 27, 2022. Division Set 6 includes Division 6-8, which seeks copies of all presentations on the energy efficiency program invoices and incentives made to the Board of Directors or to senior management. As explained in the response to Division 6-8, all of the responsive documents were prepared by legal counsel for National Grid USA and are protected by the attorney-client privilege and work product doctrine. These presentations are contained in Attachments DIV 6-8-1, 6-8-2, 6-8-3, 6-8-4 and 6-8-5 all of which have been withheld under a claim of attorney-client privilege and work product (together with the documents withheld in response to Division 5-4, the "Privileged Documents").

## **I. LEGAL STANDARD**

For matters before the PUC, a claim for protective treatment of information is governed by the Access to Public Records Act ("APRA"), R.I. Gen. Laws § 38-2-1 et seq. See 810-RICR-00-00-1.3(H)(1). 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 such

record falls into one of the exemptions specifically identified by APRA. See R.I. Gen. Laws §§ 38-2-3(a) and 38-2-2(4). Therefore, if a record provided to the PUC falls within one of the designated APRA exemptions, the PUC is authorized to deem such record confidential and withhold it from public disclosure.

Rhode Island law specifically excludes “[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.” from its definition of “public records.” R.I. Gen. Laws § 38-2-2(4)(A)(I)(b).

The Rhode Island Supreme Court has also noted that the agencies making determinations as to the disclosure of information under APRA may apply a balancing test. *See Providence Journal v. Kane*, 577 A.2d 661 (R.I. 1990). Under this balancing test, after a record has been determined to be public, the Board may protect information from public disclosure if the benefit of such protection outweighs the public interest inherent in disclosure of information pending before regulatory agencies. *Kane*, 557 A.2d at 663 (“Any balancing of interests arises only after a record has first been determined to be a public record.”).

Rhode Island law also excludes from the APRA’s definition of “public records,” “[a]ll records relating to a client/attorney relationship...” and “preliminary drafts, notes, impressions, memoranda, working papers, and work products...” R.I. Gen. Laws § 38-2-2(A)(I)(a) and (K).

Here, the Company is seeking protection from public disclosure employee names, employee identification numbers, employment status and the circumstances under which such employees left their employment. Moreover, and in addition to the claims of attorney-client privilege and work product, the Company is also seeking protective treatment of the Privileged

Documents because they are records relating to a client/attorney relationship and work product.

## **II. BASIS FOR CONFIDENTIALITY**

The Confidential Attachments, which are the subject of this Motion, are exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2. Specifically, employee names, identification numbers, employment status and circumstances under which an employees' employment ended, contained in the Confidential Attachments, are “[p]ersonnel and other personal individually identifiable records,” and disclosing this information under the circumstances of this investigation docket “would constitute a clearly unwarranted invasion of personal privacy.” *See* R.I. Gen. Laws § 38-2-2(4)(A)(I)(b). The very nature of this investigatory docket into alleged misconduct warrants the protection from any disclosure of current or former employee names or other potentially identifying characteristics, without any suggestion that all the individuals listed were involved in the alleged wrongdoing, and constitutes an invasion of person privacy.<sup>1</sup> Unless and until there is a finding that the employees listed in the responses engaged in any wrongdoing, disclosing their names to the public as being involved in any way in this investigation can have a detrimental impact on their livelihood, reputation and standing in the community.

Additionally, the Company requests protective treatment of this information on the basis that the benefit of such protection to these employees and companies outweighs the public interest inherent in disclosure of information. *See Providence J. Co. v. Kane*, 577 A.2d 661, 663 (R.I. 1990). The Company believes that the benefit of protecting the identities of the employees listed in the Confidential Attachments far exceeds and outweighs any interest in disclosure.

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<sup>1</sup> It is this very policy that likely led the Legislature 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.G.L. § 38-2-2(4)(P).

Finally, with respect to the Privileged Documents, the documents are related to the attorney-client relationship between legal counsel and their corporate client and constitute work product. Accordingly, the Privileged Documents are excepted from the APRA's definition of "public records" pursuant to R.I. Gen. Laws § 38-2-2(A)(I)(a) and (K).

### III. CONCLUSION

For the foregoing reasons, the Company respectfully requests that the PUC grant this motion for protective treatment of the of the personnel information contained in the Confidential Attachments (Attachments DIV 5-1 and DIV 5-3) and for the Privileged Documents in response to Division 5-4 and Division 6-8.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC  
COMPANY d/b/a RHODE ISLAND ENERGY**  
By its attorneys,



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Tel: (401) 784-4263  
Dated: August 17, 2022



**CERTIFICATE OF SERVICE**

I hereby certify that on August 17, 2022, I delivered a true copy of the foregoing Motion via electronic mail to the parties on the Service List for Docket No. 22-05-EE.



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Joanne M. Scanlon

The Narragansett Electric Company  
d/b/a Rhode Island Energy  
RIPUC Docket No. 22-05-EE (Formerly Docket No. 5189)  
In Re: Investigation of Misconduct by The Narragansett Electric Company  
Relating to Past Payments of Energy Efficiency Program Shareholder Incentives  
Responses to the Division's Sixth Set of Post-Decisional Data Requests  
Issued on July 27, 2022

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Division 6-1

Request:

Refer to 5189 Responses to PUC Post-Decision Set 3\_Conf, p. 134 that states “for the Rhode Island Residential Upstream Lighting Energy Efficiency Program, there were 90 manufacturers during the Covered Period with incentive payments totaling \$61,954,622.”

- a. Does the \$61,954,622 equal the total invoice payments paid over the review period of March 1, 2012 through June 30, 2021?
- b. How many invoices does that comprise?

Response:

- a. Yes. Please see the response to Data Request Division 3-1, including the section entitled “Overview of Forensic Consultant Sampling Approach.”
- b. As stated in the response to Data Request Division 3-1, subpart (c), the total number of invoices from manufacturers processed in the Residential Upstream Lighting program between January 1, 2012 and June 30, 2021 is not readily available. The invoice processor would have aggregated invoices from multiple manufacturers and sent it to The Narragansett Electric Company (“Narragansett”) as one request for payment. Upon receiving payment from Narragansett, the invoice processor would have distributed the payments to the manufacturers. The incentive processor has been asked for the number of invoices associated with the Residential Upstream Lighting program, and the response to Data Request Division 3-1, subpart (c), will be supplemented when possible.

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Division 6-2

Request:

Refer to the 5189-Post Decisional Attachment PUC 3-1 excel spreadsheet, tab "3\_Table 1 Database". The sum of all implementation expenses in column K sum to \$1.04B.

- a. Does this reflect the value of all EE programs invoice payments over the review period and how many invoices does this comprise? If the exact number of invoices is not available, please provide an approximate number.
- b. If no, what portion of invoices does this represent both in terms of number and dollar value?

Response:

- a. The term "Implementation Expenses" is a term used in Year-End Reports to refer to all costs of a particular program, including marketing expenses, administrative expenses, and other costs over and above the invoiced costs by program vendors for customer program offerings. In this context, the \$1.04 billion total of "Implementation Expenses" identified in the Year-End reports for each year and each segment (i.e., as stated in Table E-1 Column 11 for electric, and Table G-1 Column 8 for gas) would include and exceed the "value of all EE programs invoice payments over the review period."
- b. The \$1.04 billion exceeds 100 percent of the invoices by number and dollar value by the amount of marketing, administrative, and other non-customer costs reported on the Year-End Reports.

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Division 6-3

Request:

Refer to 5189-Energy Efficiency Invoices Update to PUC (Report dated 6-7-22), p. 8-9 that states, “the review identified 29 email exchanges where it was concluded that the email explicitly demonstrated that delaying invoices was implemented. This implicated 48 instances (inclusive of the instances found in Phase 1) ...” and are reflected by Exhibit A.

- a. How many of the 48 instances came from Phase 1 and how many invoices does this comprise?
- b. How many of the 48 instances came from Phase 2 and how many invoices does this comprise?
- c. Please explain what process was used to link the 29 suspect email chains to the number of instances identified in part b.

Response:

To clarify, the term “instances” refers to a potential out-of-period practice relating to a unique program/program year combination. Attachment PUC 3-4-30 provided a listing of the 48 unique program/program year combinations constituting the “instances” implicated.

- a. The scope of Phase 1 consisted of the forensic consultant’s transactional analysis of invoices related to the Rhode Island Residential Upstream Lighting program. Thus, two of the 48 delineated program/program year combinations were examined in the Phase I transactional analysis. These two instances were Residential Upstream Lighting 2017 and Residential Upstream Lighting 2018. For 2017 and 2018, this comprises 546 and 617 invoices, respectively, associated with the nine selected manufacturers by aggregate payment amount.
- b. All of the 48 instances were identified in Phase 2. For the Residential Upstream Lighting program in 2017 and 2018, this meant that the Phase 2 emails included reference to these two program/program year combinations, which were already examined in Phase 1, as well as to 46 other program/program year combinations. Thus, the 29 emails submitted as Attachment PUC 3-4-1 through Attachment PUC 3-4-29 constitute the group of emails from which the 48 instances were sourced (and for 2017 and 2018 – confirmed). Invoices were not reviewed outside of the work performed in Phase 1 for the Rhode Island Residential Upstream Lighting program.

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- c. The 29 emails are the source of information leading to identification of the 46 program/program year combinations, and to confirmation of two additional program/program year combinations already examined in Phase 1, as part of the overall review of the Rhode Island Residential Upstream Lighting program.

The 29 emails submitted as Attachment PUC 3-4-1 through Attachment PUC 3-4-29 were determined to be discussing “out-of-period” invoicing, and contain sufficient information to identify a specific program and year. The 48 programs/program years were identified based solely on the content of the 29 email message threads.

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Division 6-4

Request:

Refer to 5189-Energy Efficiency Invoices Update to PUC (Report dated 6-7-22), p. 4, footnote 12 that states, "Invoices for these selected transactions were only available back to program year 2016."

- a. Does this mean that no invoices are available for review before 2016 for the Residential Upstream Lighting program? If no, how many are available prior to 2016?
- b. Does this have implications regarding the availability of invoices for all other EE programs before 2016? If so, please explain.

Response:

- a. Correct. As explained in the response to Data Request Division 3-1, regarding the "Overview of Forensic Consultant Sampling Approach," records of underlying sales activity were not available earlier than January 1, 2016. The Narragansett Electric Company's ("Narragansett") previous incentive payment processor was contacted for records, but informed Narragansett that the records had not been retained. Thus, it was not possible to examine underlying sales activity for the years 2012 through 2015.
- b. Invoices from vendors processed in Narragansett's energy efficiency programs prior to January 1, 2016 are not readily available, but not all programs were invoice-based. Narragansett would have distributed direct payments to participating vendors in some programs and relied on the invoice processing services of the invoice processor for other programs.

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Division 6-5

Request:

Refer to the following statements from 5189-Energy Efficiency Invoices Update to PUC (Report dated 6-7-22):

- A. On p. 5 it states, "approximately 36 percent, or \$7,603,684, of the sample for the period 2016-2021 was reflected in an incorrect program year."
- B. On p. 4 it states, "This resulted in a selection of \$24,091,230 in incentives paid within the time period of March 1, 2012, to June 30, 2021".
  - a. In Statement A, please clarify what is the meaning of 36 percent of the sample for the period 2016-2021 was reflected in an incorrect program year.
  - b. Statement A. implies that the total dollar value for the sampled invoices is approximately \$21,213,444 (\$7,603,684 divided by 36 percent). Statement B. states the figure is \$24,091,230. How can these amounts be reconciled?
  - c. If there was a 36 percent error rate found in Phase I, why are the out-of-period percentages found on tab 2 of the 5189-Post Decisional Attachment PUC 3-1 (PUC 6-23-22) excel spreadsheet not equal to 36 percent?

Response:

- a. In relation to the Residential Upstream Lighting program, the practice of "out-of-period" invoicing was defined as any occasion in which the rebate payment date did not occur in the same program year as the sales activity reflected on the invoice regardless of whether the underlying impetus for the "out-of-period" invoicing was improperly influenced or a regularly occurring accounting circumstance. For example, if an invoice indicated that sales activity occurred in December 2016, but the rebate payment did not occur until February 2017, it was counted as "out-of-period" invoicing. Defined this way, the analysis concluded that approximately 36 percent of the value of the transactions sampled were determined to be "out-of-period" invoicing.
- b. There are a couple of items for consideration. First, the figure of \$21,213,444 is "implied" by division, as noted in the question above – this figure has not been previously calculated or presented in the filings. Notably, the "36%" is rounded -- the precise figure associated with the referenced "36%" is \$21,252,443, or \$7,603,683.74 divided by 35.77792864%.

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With respect to the referenced total of \$24,091,230, this reflects the total payments selected for review. The underlying sales data analyzed by the forensic consultant slightly differed, equaling \$24,087,456 of payments.

The difference between the more precise computation of the 36% (\$21,252,443) and total payments (\$24,087,456) is \$2,835,013. This differential represents the invoice documentation that could not be reviewed because it was not available from the Invoice Processor (i.e., invoicing by the nine selected manufacturers in the Residential Upstream Lighting program between March 1, 2012 and December 31, 2015). The response to Data Request Division 3-1 provides additional information on the availability of these invoices.

- c. The difference between the 36% error rate derived in Phase I and the percentages set forth in Tab 2 of the 5189-Post Decisional Attachment PUC 3-1 (PUC 6-23-22) is the result of the “normalization” process outlined in response to Data Request Division 3-1, subpart (d).



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Division 6-6

Request:

Refer to 5189-Responses to PUC Post-Decision Set 3\_Conf, p. 5 that shows the Total Program Spend, per InDemand as \$45,854,804 and Attachment PUC 3-10-2 on p. 134 that states "the total incentives paid during the Covered period... is \$44,869,412." Please explain the inconsistency between the stated two values.

Response:

Please refer to the table included in the response to Data Request Division 3-1.

The amount of \$45,854,804 is the combined total of rebate payments made to 90 manufacturers listed in Attachment DIV 3-1(b) between January 1, 2016 and June 30, 2021, within the Rhode Island Residential Upstream Lighting program.

The amount of \$44,869,412 is the amount of rebate payments made to the nine selected manufacturers between March 1, 2012 and June 30, 2021 within the Rhode Island Residential Upstream Lighting program.

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Division 6-7

Request:

Refer to the following statements from 5189-Energy Efficiency Invoices Update to PUC (Report dated 6-7-22) page 4:

- A. "As explained in the Company's response to PUC 5-4, the Company engaged outside professionals to undertake a comprehensive review of out-of-period invoices within Residential Upstream Lighting"
- B. "The data obtained and analyzed consisted of InDemand incentive payments (rebates) for Residential Upstream Lighting.

Does the use of the term incentive payments in Statement B. have the same meaning as invoices in Statement A. If no, what is the difference?

Response:

No, the term "incentive payments" and "invoices" do not have the same meaning, but the terms are related.

As explained in the response to Data Request Division 3-1, subpart (e), the Invoice Processor would have aggregated invoices from multiple manufacturers and sent those invoices in as a single request for payment. Upon receiving the payment, the Invoice Processor would have distributed the payments to the individual manufacturers.

This means that the sentence in Statement A, above, indicates that the "outside professionals" reviewed out-of-period invoices from individual manufacturers. Conversely, the sentence in Statement B, above, indicates that the data obtained and analyzed from InDemand were payments made in relation to aggregated invoices from a group of manufacturers.

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Division 6-8

Request:

Please provide all presentations on the Energy Efficiency program invoices and incentives made to the Board of Directors or to Senior Management.

Response:

National Grid USA has identified six records that are responsive to this request. All of the responsive documents were prepared by legal counsel for National Grid USA and are protected by the attorney-client privilege and work product doctrine:

- One record was a draft report, previously identified as Attachment Jan RR 5-2-A in response to Record Request 5 in Docket No. 5189, and only a redacted version was provided to the Commission.
- Please see Attachment DIV 6-8-1 (Confidential) for the final version of the report identified as Attachment Jan RR 5-2-A, above.
- Please see Attachment DIV 6-8-2 (Confidential) and Attachment DIV 6-8-3 (Confidential) for a memorandum and slide deck, respectively, that are responsive to this request.
- Please see Attachment DIV 6-8-4 (Confidential) and Attachment DIV 6-8-5 (Confidential) for two slide decks that are responsive to this request.

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Division 6-10

Request:

Refer to the Company's Attachment PUC 3-3, pg. 1 which states that the Phase I investigation identified an out of period percentage of 18.79% in the sample for 2021. However, in the 5189-Post Decisional Attachment PUC 3-1 (PUC 6-23-22) Excel spreadsheet, this percentage is not reflected in tab 2 for Method 1. Please explain the why 18.79% was not used in the model for 2021.

Response:

The Phase 1 investigation focused on the years 2016 through 2021. At the time that 2021 was reviewed, it was only a partial year, i.e., June 30. As a result, a full 12-months of 2021 payments were not yet available. The normalized "out-of-period" percentage derived for the 2021 partial year (six months ending June 30) was 18.79%, as shown in Attachment PUC Post-Decisional 3-3.

The expectation of the Company was that any "out-of-period" activity occurring in 2021 would taper off through the remainder of the year, as a result of the Company's more in-depth understanding of the practice and the implementation of training and controls that was underway as the 2021 forensic analysis was occurring. Therefore, the assumption was that additional testing through the end of 2021 would result in a *lower* "out-of-period" percentage than 18.79 percent, which could therefore skew the out-of-period percentage to the downside as compared to prior years.

As shown on page 9 of the June 7, 2022, "Review of Invoices Within the Energy Efficiency Program" report, the normalized "out-of-period" percentages for 2016 through 2021 yielded an average of 16.58 percent, with a peak percentage of 23.94 percent. Therefore, rather than rely on a partial year percentage that would not be comparable to other years examined (or a full annual period that would also be anomalous to other years), a determination was made to use the average and peak values to specify the out-of-period percentage for 2021 in Attachment PUC 3-1.

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Division 6-11

Request:

Refer to the 5189-Post Decisional Attachment PUC 3-1 (PUC 6-23-22) excel spreadsheet, tab "3\_Table 1 Database" column F titled "Program". Is this term "Program" used in the spreadsheet the same as the term "Program" used in the text of the 5189-Energy Efficiency Invoices Update to PUC (PUC 6-7-22) document?

- a. If yes, why is there no reference to "Residential Upstream Lighting" listed in the spreadsheet?
- b. If no, explain how to reconcile the two terms.

Response:

- a. Yes, the "Program" in Attachment PUC 3-1 refers to the Residential Upstream Lighting program. Technically, the Residential Upstream Lighting Program is a component of the larger "Energy Star® Lighting" program.
- b. Not applicable. Please see the response to subpart (a), above.

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Division 6-12

Request:

Refer to the 5189-Post Decisional Attachment PUC 3-1 (PUC 6-23-22) excel spreadsheet, tab "3\_Table 1 Database" column O and tab "4\_Adjustments to Table 1s" column K. Why are the total values from tab 3, column O where the value in column P is "yes" not equal to the total values from tab 4, column K?

Response:

Column O from Tab "3\_Table 1 Database" identifies "Potential Out of Period Dollars" within a particular program/program year (before deciding whether an adjustment is warranted). This is the estimated amount of an adjustment back to the prior period, if there are email messages that suggest "out-of-period" invoicing and specifically name the program and year.

Column P from Tab "3\_Table 1 Database" identifies the 48 unique program/program year combinations where email messages suggested "out-of-period" invoicing and specifically named the program and year. These are marked "yes."

Column K from Tab "4\_Adjustments to Table 1s" contains different values than Column O from Tab "3\_Table 1 Database" because Column K from Tab "4\_Adjustments to Table 1s" identifies amounts to be reduced from future program/program year combinations and returned to the 48 program/program year combinations listed with "yes" in Column P from Tab "3\_Table 1 Database."

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Division 6-13

Request:

Please refer to the 5189-Energy Efficiency Invoices Update to PUC (Report dated 6-7-22) document, p. 9 that discusses the yearly out-of-period percentages calculated during Phase 1 review and that are also shown in the Excel workbook provided as 5189-Post Decisional Attachment PUC 3-1 (PUC-23-22), tab "2\_Out of Period %s".

- a. Please provide the derivation of the out-of-period percentages.
- b. Do these percentages reflect the results of both the Phase 1 and Phase II investigations? If no, why not?
- c. Please explain why 2017 is stated to have an out-of-period percentage of 13% in the Energy Efficiency Invoices Update document but is shown as 8.11% in tab "2\_Out of Period %s" of the PUC 3-1 excel workbook Attachment [cells C22 and I22].

Response:

- a. The derivation of the out-of-period percentages, with an example, was provided in response to Data Request Division 3-1.
- b. The out-of-period percentages were developed in Phase 1, as a result of the detailed payment and invoice review performed in that phase. Phase 2 identified the 48 program/program year combinations implicated as potentially experiencing the out-of-period practice. The raw percentages derived in Phase 1 were then normalized and applied to the program/program year combinations identified in Phase 2 through the email review.
- c. This question refers to the following statement from page 9 of the June 7, 2022, "Review of Invoices Within the Energy Efficiency Program" report ("Report"):

*For the programs that fell within the years (2016-2020) where actual yearly out-of-period percentages were calculated in Phase 1, the actual as-calculated percentage for that year was applied (ranging from 13 percent in 2017 to 23.94 percent in 2018).*

The question asks to reconcile this statement to the value of 8.11 percent stated in Tab "2\_Out of Period %s" from the workbook in Attachment PUC 3-1 [cells C22 and I22].

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Please note that the value of 8.11 percent from the workbook in Attachment PUC 3-1 is the correct value to use. The text on page 9 of the Report should have described the model as ranging from 8.11 percent in 2017 to 23.94 percent in 2018.



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Division 6-14

Request:

In comparing Rhode Island Residential Upstream Lighting Energy Efficiency Program invoices and incentive payments for the period March 1, 2012, to June 30, 2021 with those for all Energy Efficiency Programs during that same time frame:

- a. What is the total number of invoices and associated dollar value for the Rhode Island Residential Upstream Lighting Energy Efficiency Program?
- b. What is the total number of invoices and associated dollar value for other all Energy Efficiency Programs in Rhode Island?

Response:

- a. The total dollar value of manufacturer invoices pertaining to the Residential Upstream Lighting program from March 1, 2012, to June 30, 2021, is \$61,954,622. As stated in the response to Data Request Division 3-1, subpart (e), the number of invoices for this program during this period is not readily available. However, with regard to the nine manufacturers selected for review in 2017 and 2018, as stated in the response to Data Request Division 6-3, subpart (a), a total 1,163 invoices were studied.
- b. The total number of invoices and associated dollar value for all other energy efficiency programs administered by The Narragansett Electric Company between March 1, 2012 and June 30, 2021 is not readily available. Narragansett used the services of an Invoice Processor for some programs. As indicated in response to Data Request Division 6-1 discussing the Residential Upstream Lighting program, Invoice Processors would have aggregated invoices from multiple manufacturers and sent Narragansett one request for payment. Upon receiving payment from Narragansett, the Invoice Processor would have distributed the payments to the individual manufacturers.

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Division 6-15

Request:

On page 8 of the 5189-Energy Efficiency Invoices Update to PUC (Report dated 6-7-22) it states “this examination bore out the statement made in an interview that savings targets and budget performance were not a direct predictor of performance incentive”. Please explain what is meant by this statement.

Response:

The performance mechanism in effect within the energy efficiency program during the years evaluated in the report was complex, with several variables (e.g., target savings, achieved savings, target adjustments, aggregated sector budgets, actual spending and earnings thresholds and caps) that interact with each other and determine the earned performance incentive in any sector, in any year. As a result, there is no direct, consistent relationship between savings, spend and performance incentive in any given sector and year. Please refer to the response to Data Request Division 2-12 for a more detailed discussion.

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Division 6-16

Request:

Refer to 5189-Responses to PUC Post-Decision Set 3 CONF, p. 134.

- a. Did one or more of these top 9 manufacturers also participate in other Energy Efficiency Programs during the covered period? If so, please provide a table similar to the table on p. 134 for the participating manufacturers by impacted program.

Response:

No, none of the nine selected manufacturers participated in other energy efficiency programs during the covered period.