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Also admitted in Massachusetts

August 31, 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 Energy Efficiency Program Shareholder Incentives
Responses to Division Data Requests – Set 5 (Batch 2)**

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 second batch of responses to the Division of Public Utilities and Carriers’ Fifth Set of Post-Decisional Data Requests in the above-referenced matter. This transmittal contains the Company’s response to data request Division 5-7.¹ Attachment DIV 5-7 to the Company’s response to Division 5-7 contains confidential personnel information in Excel form. The Company is therefore submitting the attachment subject to the accompanying motion for protective treatment.

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. (w/confidential version)

¹ Pursuant to the Commission’s request, the Company will provide bound versions of its complete set of responses to Division Set 5 once the set is complete.

**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 record that is the subject of this Motion and requires protective treatment is an Excel file containing a list of employee names, job titles and tenures, which would permit identification of the named employees if only their names were redacted, contained in Company Attachment DIV 5-7 (the “Confidential Attachment”) to the Company’s Response to the Division of Public Utilities and Carriers (“Division”) Fifth Set of Post-Decisional Data Requests, Division 5-7, issued on July 27, 2022. The Company requests protective treatment of the Confidential Attachment in accordance with 810-RICR-00-00-1.3(H) and R.I. Gen. Laws § 38-2-2-(4)(A)(I)(b).

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*, 577 A.2d at 663 (“Any balancing of interests arises only after a record has first been determined to be a public record.”).

II. BASIS FOR CONFIDENTIALITY

The employee and employment information in the Confidential Attachment, which is the subject of this Motion, are exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2. Specifically, the names of certain Company employees contained in the Confidential Attachment are “[p]ersonnel and other personal individually identifiable records,” and disclosing their names, “would constitute a clearly unwarranted invasion of personal privacy.” *See* 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 into alleged wrongdoing warrant any disclosure of Company employee names an invasion of person privacy.¹ To the extent that the Confidential Attachment identifies the job titles and tenures in certain positions of the listed employees, disclosure of that information would allow identification of the employees themselves.

Alternatively, if the Commission disagrees and determines that the employee names and employment history is public information, 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).

III. CONCLUSION

For the foregoing reasons, the Company respectfully requests that the PUC grant this motion for protective treatment of the employee names and employment histories contained in the Confidential Attachment DIV 5-7.

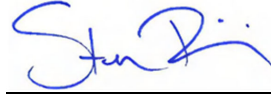
[SIGNATURES ON NEXT PAGE]

¹ 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).

Respectfully submitted,

RHODE ISLAND ENERGY

By its attorneys,



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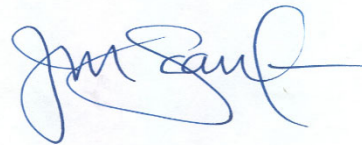


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Dated: August 24, 2022

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 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.



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 Fifth Set of Post-Decisional Data Requests
Issued on July 27, 2022

Division 5-7

Request:

The Purpose and Scope section of the US Accounting Policy identify EE Accounting, EE Reporting, Program Managers, Marketing, and Program Execution as having joint responsibility for ensuring that all unrecorded liabilities for EE program charges for work completed or services provided are accrued at the end of the month.

- a) Were any employees from EE Accounting, EE Reporting, Marketing, and Program Execution copied on any of the emails previously produced during discovery?
- b) If the answer to (a) is yes, please identify the employees by department and title and identify the specific emails they received.

Response:

- a) Yes, employees from the areas of Energy Efficiency ("EE") Accounting, EE Reporting, Program Managers, Marketing, and Program Execution who were assigned to Rhode Island, or to the best knowledge and information of National Grid USA and The Narragansett Electric Company ("Narragansett"), may have performed work relating to Rhode Island, were copied on emails previously produced during discovery. The emails previously produced during discovery are comprised of email chains. Therefore, this response includes employees from the specifically identified areas who may have been copied on a root email (i.e., the earliest dated email in an email chain) that was later forwarded to a subset of other employees.
- b) Please see Attachment DIV 5-7 (Confidential). As explained in the response to subpart (a), above, the employees listed in Attachment DIV 5-7 (Confidential) include only those employees from the specific areas of EE Accounting, EE Reporting, Program Managers, Marketing, and Program Execution who were assigned to Rhode Island or, to the best knowledge and information of National Grid USA and Narragansett, may have performed work relating to Rhode Island.

The Narragansett Electric Company
d/b/a Rhode Island Energy
RIPUC Docket No. 22-05-EE (Formerly Docket No. 5189)
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Attachment DIV 5-7

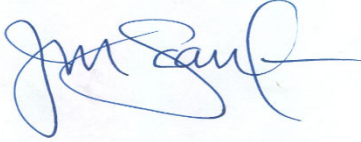
REDACTED

Please see the Confidential Excel file of Attachment DIV 5-7

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 31, 2022
Date

Docket No. 22-05-EE – PUC Investigation of Utility Misconduct or Fraud by The Narragansett Electric Co. Service list updated 8/26/2022

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