

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)	

**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”) respectfully requests that the Rhode Island Public Utilities Commission (“PUC”) provide confidential treatment and grant protection from public disclosure to certain confidential, competitively sensitive, and proprietary information submitted in this proceeding, as permitted by Rule 1.3(H)(3) of the PUC Rules of Practice and Procedure, 810-RICR-00-00-1-1.3(H)(3) (“Rule 1.3(H)”), and R.I. Gen. Laws § 38-2-2(4)(B). Specifically, the Company requests confidential treatment of Confidential Attachment B to the Joint Pre-Filed Supplemental Direct Testimony of Philip J. Walnock and Stephanie A. Briggs (“Confidential Attachment B”), which the Company has filed contemporaneously with this motion as part of its supplemental direct testimony. The Company also requests that, pending entry of a ruling on this motion, the PUC preliminarily grant the Company’s request for confidential treatment pursuant to Rule 1.3(H)(2).

I. BACKGROUND

On November 17, 2022, Rhode Island Energy submitted its Advanced Metering Functionality Business Case (the “AMF Business Case”) in the above-captioned docket. On April 14, 2023, the PUC held a public hearing and oral argument on the Company’s motions for confidential treatment relating to the BCA Model, BCA Narrative, and the Company’s Attachment PUC 1-13 submitted in response to the data request PUC 1-13. During the course of the hearing, the Company offered testimony regarding its confidentiality obligations to this third-party vendor and referenced three documents memorializing these obligations. The PUC made a record request for these documents, and the Chairman of the PUC indicated on the record that they would receive preliminary confidential treatment. *See* PUC RR-1 (“Please provide a copy of the vendor agreements, including the software vendor agreement, the non-disclosure agreement, and the letter proposal.”).

On May 1, 2023, the Company responded to PUC RR-1 by providing five documents: 1) a letter proposal containing proposed pricing for the meters and related equipment (Attachment RR-1-1); 2) a clarification letter relating to the letter proposal (Attachment RR-1-2); 3) a Software as a Service and Services Agreement (“SaaS Agreement”) (Attachment RR 1-3); 4) a Statement of Work document relating to the SaaS Agreement (Attachment RR 1-4); and 5) a Mutual Confidentiality Agreement (Attachment RR 1-5). Each of these documents relates to the proposed scope of work by the Company’s proposed vendor for AMF meters and related technology, Landis+Gyr (“L+G”).

On May 10, the PUC held a technical session to review the various contracts executed or conditionally executed between the Company and L+G relating to the Company’s proposal for AMF implementation in Rhode Island. During the technical session, the PUC asked a number of

questions regarding the relationship between the fees proposed to be paid to L+G for the services and equipment outlined in the agreements and the illustrative revenue requirement provided by the Company in Schedule SAB/BLJ-1 to the Joint Pre-Filed Direct Testimony of Stephanie A. Briggs and Bethany L. Johnson, and the Company's response to data request PUC 1-14.

On May 12, 2023, the PUC circulated a memorandum to the Company requiring the Company to file supplemental testimony relating to the topics discussed at the technical session. In particular, these topics include the costs associated with the Software as a Service and Services Agreement between PPL Services Corporation and L+G ("SaaS Agreement"). Specifically, with respect to the SaaS Agreement, the PUC instructed the Company to "calculate the costs to be paid to the vendor over the 20-year period by type (Production/Disaster Recovery – electric and gas) and tie those costs to how the Company is accounting for them in terms of CapEx versus OpEx." May 12, 2023 Mem. to Company, No. 4. The PUC further directed the Company to "provide an illustrative revenue requirement that clearly reflects the testimony" relating to these costs. *Id.* No. 5.

The Company filed the Joint Pre-Filed Supplemental Direct Testimony of Philip J. Walnock and Stephanie A. Briggs on June 5, 2023, to address the issues raised in the PUC's memorandum (the "Supplemental Testimony"). The Company filed Confidential Attachment B in support of the Supplemental Testimony and to respond to the issues cited above in the PUC memorandum.

A. Information Contained in Confidential Attachment B

Confidential Attachment B captures the forecasted 20-year costs by Service Order under the SaaS Agreement and provides a direct comparison of the Service Fees estimated in the BCA to the final forecasted contract prices contained in each Service Order. This includes a summary

of the costs of the head-end system with Wi-SUN, (which is identified as “Command Center with WiSun” in Service Order No. 1), the MDMS (identified as “MDMS AMR” and “MDMS AMI” by type for gas and electric in Service Order No. 2), and Grid Analytics costs (Analytics/AGA in Service Order No. 3). On the subsequent tabs, the Service Order costs are broken down further by production, disaster recovery, and lower (development) environment. The file includes the forecasted costs by each Service Order number, a summary of the costs to be paid, along with a direct comparison of the AMF on-going costs from the BCA estimates to the forecasted contract prices contained in each Service Order.

Confidential Attachment B incorporates specific pricing and cost information from the SaaS Agreement. As the Company has explained in prior motions for confidential treatment, the SaaS Agreement (provided to the PUC as Confidential Attachment RR-1-3) contains confidential commercial and financial information of the Company’s third-party vendor. The SaaS Agreement contains the agreement between the Company and L+G for L+G to provide certain software services in connection with the Company’s AMF proposal. It contains specific pricing and service-level information regarding the proposal for these services. Further, it identifies certain specific Company-system parameters relevant to L+G as it developed its proposed proprietary software service.

These service fees represent heavily negotiated terms and reveal L+G’s pricing for the software services to be provided to the Company under the SaaS Agreement. Public disclosure of these service fees would provide information to the vendor’s competitors regarding its pricing structures and would undermine the vendor’s competitiveness in the market. L+G typically does not make this information public or share it with other customers. Disclosure of this pricing information likely would cause substantial competitive harm and significantly impair the third-

party vendor's ability to compete successfully in the metering and smart grid energy sector. It is common in this sector for competitors to monitor utility commission dockets for the disclosures that will aid them in understanding their competitors' systems and enhancing their modeling of competitors' products and services to allow them to undercut their competitors' pricing or other terms of service. The pricing information in the SaaS Agreement is the type of information the L+G's competitors could use to undercut its pricing. Such disclosures could, in turn, impair the Company's ability to obtain competitive pricing from its vendors in the future.

Confidential Attachment B incorporates the confidential pricing and cost information from the SaaS Agreement and provides specific detail on how this pricing and cost information translates into the ongoing annual fees proposed to be paid to L+G. Because of the complexity of Confidential Attachment B and the interrelatedness of the excel file's sheets, it is not feasible for the Company to redact portions of the spreadsheet. The confidential pricing information from the SaaS Agreement is integral to understanding Confidential Attachment B and cannot reasonably be separated from the non-confidential portions in a manner that would still render it understandable to the public.

II. LEGAL STANDARD

Rule 1.3(H) provides that access to public records shall be granted in accordance with the Access to Public Records Act ("APRA"), R.I. Gen. Laws § 38-2-1, *et seq.* APRA establishes the balance between "public access to public records" and protection "from disclosure [of] information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy." Gen. Laws § 38-2-1. Per APRA, "all records maintained or kept on file by any public body" are "public records" to which the public has a right of inspection unless a statutory exception applies. *Id.* § 38-2-3. The definition

of “public record” under APRA specifically excludes “trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature.” *Id.* § 38-2-2(4)(B). Under the statute, such records “shall not be deemed public.” *Id.*

The Rhode Island Supreme Court has held that when documents fall within a specific APRA exemption, they “are not considered to be public records,” and “the act does not apply to them.” *Providence Journal Co. v. Kane*, 577 A.2d 661, 663 (R.I. 1990). Further, the court has held that “financial or commercial information” under APRA includes information “whose disclosure would be likely to either (1) impair the Government’s ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.” *Providence Journal Co. v. Convention Ctr. Auth.*, 774 A.2d 40, 47 (R.I. 2001) (internal quotation marks omitted). The first prong of the test is satisfied when information is provided voluntarily to the governmental agency, and that information is of a kind that would not customarily be released to the public by the person from whom it was obtained. *Id.* at 47.

III. BASIS FOR CONFIDENTIALITY

Confidential Attachment B contains “trade secrets and commercial or financial information” such that the information does not fall within APRA’s definition of a public record. *See* Gen. Laws § 38-2-2(4)(B); *Kane*, 577 A.2d at 663.

L+G’s service fees and pricing information fall squarely within the APRA exemption. Confidential Attachment B incorporates the vendor’s actual fee structures and unit pricing, which the Company has taken great lengths not to have disclosed elsewhere in the AMF Business Case. Public disclosure of this line-item detailed information would allow L+G’s competitors to easily undercut the vendor’s pricing information. As the Company has explained,

L+G typically does not make this detailed pricing information available publicly, and the Company likewise keeps this information of its vendors confidential. Accordingly, this information is financial information exempt from APRA.

In this instance, maintaining the entirety of Confidential Attachment B as confidential is appropriate. The confidential pricing information it contains cannot be neatly or easily separated from the non-confidential information. Rather, the confidential pricing information forms the basis of the calculations contained throughout Confidential Attachment B. Even if the Company could reasonably redact the confidential information, doing so likely would render Confidential Attachment B largely unusable to the public. Accordingly, Confidential Attachment B falls squarely within APRA's exemption for "trade secrets and commercial or financial information." Gen. Laws § 38-2-2(4)(B).

Therefore, Rhode Island Energy respectfully requests that the PUC grant protective treatment to Confidential Attachment B and take the following actions to preserve its confidentiality: (1) maintain Confidential Attachment B as confidential indefinitely; (2) not place Confidential Attachment B on the public docket; and (3) disclose Confidential Attachment B only to the PUC, its attorneys, and staff as necessary to review this docket.

IV. CONCLUSION

For the foregoing reasons, Rhode Island Energy respectfully requests that the PUC grant its Motion for Protective Treatment of Confidential Information.

Respectfully submitted,

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

By its attorney,



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Dated: June 5, 2023

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2023, I sent a copy of the foregoing to the service list by electronic mail.

/s/ Adam M. Ramos