

**STATE OF RHODE ISLAND**

**RHODE ISLAND PUBLIC UTILITIES COMMISSION**

In re: The Narragansett Electric Company d/b/a Rhode Island Energy’s Advanced Metering Functionality Business Case	) ) ) ) )	Docket No. 22-49-EL
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**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 certain information contained in Attachment DIV 5-1-1 and Attachment DIV 5-1-2, which the Company has filed contemporaneously with this motion as part of its response to the Division of Public Utilities and Carriers’ (the “Division”) Fifth Set of Data Requests. 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. The

Company requested, and the Commission preliminarily granted, confidential treatment of its AMF Benefit-Cost Analysis (“BCA”) Spreadsheet in Excel format (the “BCA Model”) and accompanying BCA Narrative, both submitted as Attachment H to the AMF Business Case.

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. All these documents contain the confidential information of the Company’s prospective vendor for meters and related equipment. The Company has not disclosed the name of this vendor in the AMF docket. 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.”).

One of the documents subject to the record request, identified as “the letter proposal,” is also responsive to the data request Division 5-1. The Company, therefore, has provided the letter proposal as Attachment DIV 5-1-1 and seeks confidential treatment for certain limited confidential and proprietary information it contains. Specifically, the letter proposal provided as Attachment DIV 5-1-1 is a third-party vendor’s bid to the Company to provide meters and related equipment to the Company in connection with the Company’s AMF proposal. The letter proposal contains specific pricing and quantity information regarding how the third-party vendor proposes to meet the Company’s AMF needs. It also identifies the specific Company-system parameters relevant to the vendor as it develops its proposed proprietary system design. In

addition, the Company has provided Attachment DIV 5-1-2, which is a copy of a letter from the vendor providing clarification on the information in Attachment DIV 5-1-1. Attachment DIV 5-1-2 contains the name of the prospective third-party vendor, which remains confidential because it has not yet been made public and the Company and the vendor are still in active contract negotiations.

In the interest of public disclosure and transparency, the Company is not seeking confidential treatment for the entirety of these documents; rather, the Company has reviewed the information in Attachment DIV 5-1-1 and Attachment DIV 5-1-2 and redacted only those portions necessary to protect the third-party vendor's confidential and proprietary information, consistent with the PUC's prior guidance with respect to confidentiality issues. The Company has engaged in multiple discussions with the prospective vendor regarding the submission of the documents to be provided in response to data request Division 5-1 and RR-1 and the proposed redactions. The information for which the Company seeks confidential treatment has been identified by the third-party vendor as confidential and proprietary commercial information, and the third-party vendor has requested that the Company seek protective treatment for this information. This commercial information is unique to the products and services that the third-party vendor provides to its customers. The third-party vendor has invested millions of dollars year after year for research and development to improve its solutions and energy management systems and expand the features of its current system capabilities, which effort and investment is reflected in the confidential information contained within Attachment DIV 5-1-1.

Specifically, the Company seeks confidential treatment of the following information contained in Attachment DIV 5-1-1 and Attachment DIV 5-1-2:

- **Prices.** The Company seeks confidential treatment for the unit prices and related quantities for the products discussed in Attachment DIV 5-1-1. This information is commercially and competitively sensitive to the vendor. The itemized and meter-specific pricing contained in Attachment DIV 5-1-1 is not disclosed with the same level of granularity elsewhere in the Company’s AMF Business Case. If this information were disclosed publicly, the vendor’s competitors would have the vendor’s exact meter pricing data. For this reason, the quantities are also redacted. Although the Company has disclosed aggregate meter quantities (residential and commercial) in other portions of the AMF Business Case, the AMF Business Case does not disclose the specific quantities attributable to each particular meter model. Attachment DIV 5-1-1 therefore contains a level of specificity and unique information not otherwise ascertainable from the filing. If the quantities of each specific meter were disclosed publicly, competitors could ascertain the vendor’s unit pricing information. Disclosure of this information would seriously harm the vendor’s ability to compete in this market in the future, and could impair the Company’s ability to obtain competitive pricing from its vendors in the future. Price information is contained in the “Solution Components and Pricing” and “Electric Meters with Communications Modules” sections of Attachment DIV 5-1-1.
- **Vendor name.** The prospective vendor for AMF in Rhode Island has not been disclosed publicly by the Company. Further, the Company and vendor are still in active contract negotiations. Accordingly, the Company seeks confidential

treatment for the vendor's name, which is included throughout Attachment DIV 5-1-1 and in Attachment DIV 5-1-2.

- **Trade names for proprietary products.** The Company seeks confidential treatment for the trade names of certain products listed in Attachment DIV 5-1-1 because revealing the names of those specific products would effectively reveal the identity of the vendor. Also, the trade names listed in Attachment DIV 5-1-1 are unique to the products and services this vendor provides to its customers, including the Company. Trade names are included in the "Solution Components and Pricing" and paragraphs 1, 7, 9 and 12 of Attachment DIV 5-1-1.
- **Inputs for Development of the Proprietary Design of the System.** Because Attachment DIV 5-1-1 is a bid to the Company, it highlights certain data inputs that affected the vendor's development of the proprietary design of the proposed system for Rhode Island. Disclosing these parameters would provide the vendor's competitors with valuable information regarding the vendor's proprietary design of the system. This is the type of information that the vendor does not ordinarily make public. These inputs are included in paragraph 7 of Attachment DIV 5-1-1.
- **Commercial Terms under Negotiation.** Attachment DIV 5-1-1 is a bid to the Company, not a final agreement. The Company and vendor are actively negotiating an agreement. There are certain commercial terms contained in Attachment DIV 5-1-1 that the vendor typically does not disclose publicly or share with other customers and that may be the subject of ongoing negotiations.

These commercial terms are included in paragraphs 9 and 16 of Attachment DIV 5-1-1.

The prospective third-party vendor carefully protects this proprietary financial and commercial information related to its technology. Disclosure of the items proposed for redaction 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 to allow them to undercut their competitors' pricing. The information for which the Company seeks confidential treatment in Attachment DIV 5-1-1 is the type of information the third-party vendor's competitors could use to undercut the third-party vendor's pricing and other proprietary information. Such disclosures could, in turn, impair the Company's ability to obtain competitive pricing from its vendors in the future.

Providing confidential treatment to this sensitive and confidential information will not prevent intervenors or members of the public from understanding the contents of Attachment DIV 5-1-1 and Attachment DIV 5-1-2, nor will they prevent the public from assessing the reasonableness of the vendor's proposal. Other information disclosed elsewhere in the docket, in addition to what is publicly available in the proposed redacted public versions of Attachment DIV 5-1-1 and Attachment DIV 5-1-2 provide the necessary information to allow for public assessment of the proposal. As such, this request for confidential treatment is narrowly tailored to protect the legitimate financial and proprietary interests of the Company and its vendors.

## 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). The statute provides that 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.

The Rhode Island Supreme Court also has made clear that “documents reflecting the negotiation process” of a contract fall within the APRA exception for financial or commercial information. In *Providence Journal Co. v. Convention Center Authority*, the court held that these negotiating documents include offers:

Here, the Journal specifically sought “documents regarding negotiations that led to the booking of the event,” – documents we deem to fall squarely within the exemption for confidential commercial or financial information contained in APRA. As noted, information provided to the Authority during the give and take of negotiations, including offers, responses and counteroffers, with respect to both the golf tournament and the banquet, including, but not limited to a prospective customer’s budget, insurance needs, attendance projections and funding considerations constitutes confidential commercial or financial information provided for the purpose of negotiating an agreement. Regardless of which side produced the particular document, the information was developed during the negotiation process and is of the sort that would not customarily be disclosed to the public either by Mobil Oil, Inc., or the coordinators of the Verrazano Day banquet.

*Id.* at 47.

### **III. BASIS FOR CONFIDENTIALITY**

Attachment DIV 5-1-1, the letter proposal, 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. The Rhode Island Supreme Court has recognized that offers like the letter proposal present particular sensitivities that bring them within the APRA exception. The letter proposal itself reflects this sensitivity.

The letter proposal contains the following confidentiality requirement:

This proposal contains confidential and trade secret information of [vendor] . . . Except as otherwise specified in a non-disclosure agreement regarding [vendor]’s confidential information, [vendor] authorizes use and disclosure of the content of this proposal only as necessary for the evaluation of [vendor]’s proposal, or as required by law.”



As demonstrated by this confidentiality requirement, the vendor typically does not make the information contained in the letter proposal public.

Attachment DIV 5-1-1 identifies and describes certain of the vendor's unit prices, proprietary functionalities and systems, system design inputs, and commercial terms under negotiation, all of which are protectable "trade secrets and commercial or financial information" exempted from APRA.

First, the vendor's meter model quantities and unit pricing fall squarely within the APRA exemption. The letter proposal contains the vendor's actual unit pricing, which has not been disclosed elsewhere in the AMF Business Case. It also contains exact quantity information for each specific meter model. Public disclosure of this line-item detailed information would allow the vendor's competitors to easily undercut the vendor's pricing information. Accordingly, this information is financial information exempt from APRA.

Second, redaction of the vendor's name as commercial or financial information exempt from APRA is appropriate given the ongoing negotiations. The Rhode Island Supreme Court has recognized the particular sensitivity of negotiating documents preceding a final agreement. *Providence Journal Co.*, 774 at 47. Because the Company does not have a final agreement with the vendor and has not made the name of the vendor public in this docket, disclosing the vendor's identity in a pre-negotiation bid document in connection with a data request response would run contrary to court precedent. This is not to say that the vendor's identity will never be disclosed in this proceeding, but until the Company has a final agreement in place, the vendor's identity constitutes commercial or financial information exempt from APRA. For this reason, the PUC should maintain confidential treatment not only of the vendor's name, but also the names of any of the vendor's trademarked products that are associated with the vendor.

Third, the specific inputs used by the vendor to develop its proprietary system design for Rhode Island also constitute trade secrets and commercial or financial information. If disclosed, these inputs would highlight to the vendor's competitors the specific parameters the vendor considered important in developing the proprietary system. These competitors, who are sophisticated industry entities, can glean valuable information regarding the proprietary system based on the inputs. Accordingly, these inputs fall within the APRA exemption and are not subject to public disclosure.

Finally, the commercial terms under negotiation fall within the APRA exemption because they too constitute information reflecting the negotiation process. *Id.* The PUC therefore should permit confidential treatment of these terms.

These proposed protections are narrow. The Company has not sought confidential treatment for the entirety of the letter proposal but instead only those portions of the letter proposal that the vendor has identified as containing its proprietary and commercial information. The proposed redactions fall squarely within APRA's exemption for "trade secrets and commercial or financial information." Gen. Laws § 38-2-2(4)(B).

Accordingly, Rhode Island Energy respectfully requests that the PUC grant protective treatment to Attachment DIV 5-1-1 and Attachment DIV 5-1-2 and take the following actions to preserve its confidentiality: (1) maintain the identified portions of Attachment DIV 5-1-1 and Attachment DIV 5-1-2 as confidential indefinitely; (2) not place an un-redacted version of Attachment DIV 5-1-1 and Attachment DIV 5-1-2 on the public docket; and (3) disclose the un-redacted version of Attachment DIV 5-1-1 and Attachment DIV 5-1-2 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: April 27, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on April 27, 2023, I sent a copy of the foregoing to the service list by electronic mail.

*/s/ Adam M. Ramos*