

STATE OF RHODE ISLAND

RHODE ISLAND PUBLIC UTILITIES COMMISSION

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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 certain information contained in Attachments PUC 6-3-1, PUC 6-3-2, PUC 6-3-3, and PUC 6-3-4. 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’s response to PUC 6-3 includes four attachments: (1) a Master Professional Services Agreement, entered into on February 28, 2022 (Attachment PUC 6-3-1); (2) a Statement of

Work related to the discovery and program strategy for metering (“Discovery & Strategy SOW”) entered into on March 16, 2022 (Attachment PUC 6-3-2); (3) a Statement of Work related to the program increment pre-planning, backlog refinement, and vendor contract support efforts (“Planning SOW”) entered into on June 13, 2022 (Attachment PUC 6-3-3); and (4) a Statement of Work related to the implementation of AMF (“Implementation SOW”) entered into on September 1, 2022 (Attachment PUC 6-3-4). For the reasons stated below, the Company seeks confidential treatment of certain information contained in the attachments to its response to PUC 6-3 as identified more specifically below.

A. Attachments to the Company’s Response to PUC 6-3

Each document attached to the Company’s response to PUC 6-3 contains confidential commercial and financial information of the Company’s third-party vendor. Rather than seeking protective treatment for the entirety of these four documents, the Company seeks confidential treatment only for certain limited confidential commercial, financial, and proprietary information they contain.

Specifically, Attachment PUC 6-3-1 is a Master Services Agreement between the vendor and the Company and contains specific pricing information regarding how the third-party vendor proposes to meet the Company’s AMF needs. It also includes negotiated terms regarding limitations of liability, indemnification, resolution of claims, and the framework for future fees, all of which are commercially sensitive. Neither the Company nor the vendor would ordinarily make these terms public, and public disclosure of this information would allow competitors to use the information to negotiate contract terms in the future, thus reducing the vendor’s ability to compete for future contracts and affecting the Company’s ability to negotiate favorable contract

terms. Attachment PUC 6-3-1 also includes sensitive commercial information relating to cybersecurity that would not typically be made public, as a matter of data privacy and security.

Likewise, Attachments PUC 6-3-2, PUC 6-3-3, and PUC 6-3-4 are statements of work (“SOWs”) that contain confidential and commercially sensitive negotiated terms relating to specific SOW deliverables and pricing.

The Company has reviewed the information in each attachment and proposes to redact 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 consulted with its third-party vendor and seeks confidential treatment of information that it deems to be confidential and proprietary commercial or financial information.

Additionally, the Company has reviewed each attachment and proposes to redact only those items that the Company considers sensitive commercial information. This commercial information is unique to the services that the third-party vendor provides to its customers. Specifically, the Company seeks confidential treatment of the following information:

- **Prices.** The Company seeks confidential treatment for the milestone values in Attachments PUC 6-3-2, PUC 6-3-3, and PUC 6-3-4. This information is commercially and competitively sensitive to the vendor and is not disclosed elsewhere in the Company’s AMF Business Case. If this information were disclosed publicly, the vendor’s competitors would have the vendor’s exact pricing data. 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 Section 7 “Pricing” in Attachment PUC 6-3-2, PUC 6-3-3, and PUC 6-3-4.

- **Service fees.** The Company seeks confidential treatment for the service fees and fee increases listed in Section 7.1 of Attachment PUC 6-3-1. These service fees and fee increases represent heavily negotiated terms and reveal the third-party vendor’s pricing for the integration services to be provided. 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. The vendor typically does not make this information public or share it with other customers.
- **Negotiated Commercial Terms.** Attachment PUC 6-3-1 also contains a number of important negotiated commercial terms, such as service fees, allocation of liability, cybersecurity and protection, and levels of service. The third-party vendor and the Company typically do not disclose this information publicly or, in the case of the vendor, share it with other customers. Doing so may affect the vendor’s ability to compete in the marketplace, and the Company’s ability to secure competitive pricing and terms, because it would reveal to competitors the terms on which the vendor is willing to conduct business. For example, Section 3.1(k) discusses the threshold at which the vendor must reimburse the Company for overcharges. In turn, Section 4.3 outlines the parameters and deadlines for the Company’s acceptance of the vendor’s deliverables. Section 7.1 provides the negotiated timing for prospective fee increases, the basis for those increases, and the indices that informs those increases. Sections 11.2 and 11.5 outline the

parties' respective indemnification obligations. Additionally, Sections 12.2 and 12.4, and Exhibit E Sections 14 and 17, explain the limitations on each party's liability arising under the Master Professional Services Agreement, including obligations related to data privacy.

- **Estimation Model.** Attachment PUC 6-3-4, the Implementation SOW, includes several spreadsheets and charts, and the document internally refers to these spreadsheets and charts as attachments. One of these attachments is an "Estimation Model," which divulges TCS's proprietary methodology for modeling estimated costs, based on a variety of different inputs. Those inputs, in turn, are located in other attachments to the Implementation SOW, and include the following commercially sensitive and confidential information: TCS's assessment of the complexity of tasks and the effort level required to accomplish them, which are both quantified using a proprietary point system; the hourly rates at which the completion of these tasks will be invoiced; the number of hours TCS estimates that each task identified within the scope of work will require; and the cost of certain products TCS is responsible for managing. These inputs, including TCS's specific determination of task complexity, form the basis for TCS's proprietary cost methodology. Revealing any one of these inputs could allow a competitor to unfairly compete with TCS in future RFPs, because the competitor could use the information to figure out TCS's other inputs, and then back into TCS's total contract value, taking away TCS's major competitive advantage. To protect these interests, the Company seeks to redact the Estimation Model Summary (Attachment PUC 6-3-4, page 118), the Detailed Design & Build

Effort Estimate (Attachment PUC 6-3-4, pages 124-127), and the Estimate Model Inputs (Attachment PUC 6-3-4, pages 130-131) in their entireties. The Company also seeks to redact certain line items in other parts of the attachments to Attachment PUC 6-3-4 (see Attachment PUC 6-3-4, pages 119-123, 128-131, and the “Effort Level” column on pages 30-99) which reveal the commercially sensitive data inputs discussed above.

- **Confidential Security Information.** Attachment PUC 6-3-1 contains information implicating the Company’s and the vendor’s cybersecurity risks and prevention measures, which are sensitive commercial terms. The Company would not typically disclose this information publicly, and disclosure of this information may expose the Company, its customers, and/or the vendor to cybersecurity risks by making public their risk-mitigation measures and processes. These sensitive security terms are located in Exhibit E, Section 15.

The third-party vendor carefully protects the proprietary financial and commercial information related to its services contained in Attachments PUC 6-3-1 through PUC 6-3-4. Disclosure of the items proposed for redaction likely would cause substantial competitive harm and impair the third-party vendor’s ability to compete successfully in the metering and smart grid energy sector. The information for which the Company seeks confidential treatment 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 these

documents, nor will they prevent the public from assessing the reasonableness of the vendor's proposal and, ultimately, the Company's AMF Business Case. Other information disclosed elsewhere in the docket, in addition to what is publicly available in the proposed redacted public versions of Attachments PUC 6-3-1 through PUC 6-3-4, as well as the Company's written response to PUC 6-3, provides 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). 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

Attachments PUC 6-3-1 through PUC 6-3-4 contain “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 certain provisions like those within these Attachments present particular sensitivities that bring them within the APRA exception. Attachment PUC 6-3-1, which is the predicate document for all the other attachments submitted in the Company’s Response to PUC 6-3, reflects this sensitivity and contains a robust confidentiality provision in Article IX, titled “Confidential Information.” As demonstrated by this agreement and the confidentiality requirements, the vendor and the Company typically do not make public the information contained in Attachments PUC 6-3-1 through PUC 6-3-4.

Additionally, these attachments describe certain of the vendor’s services, fees, and commercial terms subject to prior commercial negotiations, all of which are protectable “trade secrets and commercial or financial information” exempted from APRA. For example, the vendor’s service fees and other pricing terms fall squarely within the APRA exemption covering “commercial or financial information”. Attachments PUC 6-3-2 and PUC 6-3-3 contain the vendor’s actual fee structures and pricing, which have not been disclosed elsewhere in the AMF

Business Case. Public disclosure of this line-item detailed information would allow the vendor's competitors to easily undercut the vendor's pricing information. Likewise, Attachment PUC 6-3-4 includes proprietary methods and modeling for TCS's estimates, as well as very detailed analysis and synthesis of the work required to accomplish the tasks identified within the scope of work. Examples of this information include the following: TCS's assessment of the complexity of tasks and the effort level required to accomplish them, which are both quantified using a proprietary point system; the hourly rates at which the completion of these tasks will be invoiced; the number of hours TCS estimates that each task identified within the scope of work will require; and the cost of certain products TCS is responsible for managing. Revealing any one of these inputs, the Estimation Model, or the Detailed Design & Build Effort Estimate, could allow a competitor to unfairly compete with TCS because the competitor could use the information to figure out TCS's other inputs, and then back into TCS's total contract value, taking away TCS's major competitive advantage. TCS does not ordinarily make any of this information public, and every page of the attachments to Attachment PUC 6-3-4 includes text in the header stating, "Confidential, For Client Use Only." Accordingly, this information is commercially sensitive, confidential, and financial information exempt from APRA.

Likewise, the negotiated commercial terms relating to indemnification, fee increases, and limitations on liability all fall within the APRA exemption because they too constitute information reflecting the negotiation process. *Providence Journal Co.*, 774 at 47. The PUC therefore should permit confidential treatment of these terms.

Finally, the provisions implicating cybersecurity risks and measures fall within the APRA exemption because they reflect sensitive commercial information that the Company and the vendor would not normally make public. Public disclosure of these cybersecurity-related

provisions could expose the Company, its customers, and the vendor to increased cybersecurity risks, including data breaches and other risks, by revealing non-public information about the Company's and the vendor's cybersecurity risk mitigation measures, responses, and assessments. The PUC therefore should permit confidential treatment of these provisions.

These proposed protections are narrow. The Company has not sought confidential treatment for the entirety of any Attachment, but instead seeks to protect from public disclosure only those portions of these attachments that the vendor and Company have identified and agree contain 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 the identified portions of Attachments PUC 6-3-1 through PUC 6-3-4 and take the following actions to preserve the confidentiality of those documents: (1) maintain the identified portions of Attachments PUC 6-3-1 through PUC 6-3-4 as confidential indefinitely; (2) not place un-redacted versions of Attachments PUC 6-3-1 through PUC 6-3-4 on the public docket; and (3) disclose the un-redacted versions of Attachments PUC 6-3-1 through PUC 6-3-4 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: May 30, 2023

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2023, I sent a copy of the foregoing to the service list by electronic mail.

/s/ Adam M. Ramos