

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 certain information contained in Supplemental Attachment RR-1-6, which the Company has filed contemporaneously with this motion as part of its supplemental response to the PUC’s Record 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. 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").

In the course of preparing its prefiled supplemental testimony, the Company identified a Network Installation Services Proposal Letter from L+G that sets forth proposed pricing for certain network installation components in connection with the Company's proposed AMF implementation (the "Network Installation Services Proposal Letter") (Confidential Attachment RR-1-6 Supplemental). The Company considers the Network Installation Services Proposal Letter responsive to the intent of RR-1.

The Network Installation Services Proposal Letter contains certain confidential, competitively sensitive, and proprietary information. For the reasons stated below, the Company is seeking confidential treatment only for certain parts of Confidential Attachment RR-1-6 Supplemental.

A. Attachment RR-1-6 Supplemental

The Company seeks confidential treatment only for certain limited confidential commercial, financial, and proprietary information in the Network Installation Services Proposal Letter, Confidential Attachment RR-1-6 Supplemental. Specifically, this document contains pricing and quantity information regarding how L&G proposes to meet the Company's network installation and servicing needs.

The Company has reviewed this attachment 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 discussions with the vendor regarding the submission of this attachment 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 or financial information, and the third-party vendor has requested that the Company seek protective treatment for this information.

Specifically, the Company seeks confidential treatment of the following information:

- **Prices.** The Company seeks confidential treatment for the unit prices and related quantities for the products discussed in Confidential Attachment RR-1-6 Supplemental. This information is commercially and competitively sensitive to the vendor. The itemized pricing data 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. If the quantities of each specific product 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" section of Confidential Attachment RR-1-6 Supplemental. And, item number 21 of the Network Installation Services Proposal Letter is a reference to the date on which L+G's materials pricing was created, which could allow competitors to look at historical information in order to back into the unit prices L+G provided to the Company.

- **Network Maintenance Support fees.** The Company seeks confidential treatment for the amounts listed under the sub-headings "Network Services Support" and "Clarifications" of Confidential Attachment RR-1-6 Supplemental. These amounts represent heavily negotiated service fees and reveal the third-party vendor's pricing for the network installation and maintenance 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 and Terms under Negotiation.** Confidential Attachment RR-1-6 Supplemental contains certain negotiated commercial terms, such as timeframes for performance, which neither the third-party vendor nor the Company typically disclose to the public, or share 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, the deadlines for L+G's performance under the proposal stated in item number 32, are negotiated terms that are not typically subject to public disclosure.

L+G carefully protects the proprietary financial and commercial information contained in Confidential Attachment RR-1-6 Supplemental. Disclosure of the items proposed for redaction likely would cause substantial competitive harm and significantly impair L+G'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 services to allow them to undercut their competitors' pricing or other terms of service. The information for which the Company seeks confidential treatment in Confidential Attachment RR-1-6 Supplemental 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 version of Confidential Attachment RR-1-6 Supplemental 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.

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

Confidential Attachment RR-1-6 Supplemental 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 certain provisions like those within documents like

Confidential Attachment RR-1-6 Supplemental presents particular sensitivities that bring them within the APRA exception. The attachment itself reflects this sensitivity and includes a footer on each page stating “Landis+Gyr Proprietary & Confidential Information.”

Additionally, the parties have entered a Mutual Confidentiality Agreement (previously provided as Attachment RR-1-5), the “purpose” of which is to “protect the confidential nature of Confidential Information” that “each Party and its Representatives may disclose to or is otherwise discovered or obtained by the other Party and its Representatives in connection with discussions, negotiations or dealings related to a potential business transaction.” As demonstrated by this agreement and the confidentiality designations, the vendor and the Company typically do not make the information contained in Confidential Attachment RR-1-6 Supplemental public. This attachment describes certain of the vendor’s unit prices, service fees, services, and commercial terms under negotiation or subject to prior commercial negotiations, all of which are protectable “trade secrets and commercial or financial information” exempted from APRA.

First, the vendor’s service fees and unit pricing fall squarely within the APRA exemption. Confidential Attachment RR-1-6 Supplemental contains the vendor’s actual fee structures and unit pricing, which have not been disclosed elsewhere in the AMF Business Case. It also contains service requirements, such as negotiated deadlines for completion. 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.

These proposed protections are narrow. The Company has not sought confidential treatment for the entirety of Confidential Attachment RR-1-6 Supplemental, but instead seeks to protect from public disclosure only those portions that the prospective vendor has identified and the Company has agreed 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 Confidential Attachment RR-1-6 Supplemental and take the following actions to preserve the confidentiality of those documents: (1) maintain the identified portions of Confidential Attachment RR-1-6 Supplemental as confidential indefinitely; (2) not place an un-redacted version of Confidential Attachment RR-1-6 Supplemental on the public docket; and (3) disclose the un-redacted version of Confidential Attachment RR-1-6 Supplemental 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