

October 12, 2023

VIA ELECTRONIC MAIL AND HAND DELIVERY

Luly E. Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Dear Ms. Massaro:

**Re: Docket No. 23-23-NG - Rhode Island Energy Gas Cost Recovery Filing
Responses to Division Data Request – Division 5-14 Supplemental**

On behalf of The Narragansett Electric Company d/b/a Rhode Island Energy (“Rhode Island Energy” or the “Company”), I have enclosed the Company’s supplemental response to Data Request 5-14 issued by the Division of Public Utilities and Carriers in the above-referenced docket.

Attachment DIV 5-14 Supplemental to the Company’s supplemental response to Division Data Request 5-14 contains gas pricing and other commercially sensitive confidential information. Therefore, the Company has provided a redacted and confidential version of these materials and has requested confidential treatment pursuant to R.I. Gen. Laws § 38-2-2(4)(B) and Rule 810-RICR-00-00-1.3(H) of the PUC’s Rules of Practice and Procedure. The Company has also provided a confidential version of this response and attachment to the Division pursuant to a non-disclosure agreement

Robinson+Cole

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Please contact me if you have any questions. Thank you for your attention to this matter.

Very truly yours,



Steven J. Boyajian

cc: Docket 23-23-NG Service List
Leo Wold, Esq.
John Bell, Division
Al Mancini, Division

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate were 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.



Heidi J. Seddon

October 12, 2023

Date

**Docket No. 23-23-NG – Narragansett Electric Co. d/b/a Rhode Island Energy 2023 Gas
Cost Recovery Filing (GCR)
2023 Distribution Adjustment Clause (DAC)
Service List as of 8/15/2023**

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**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

THE NARRAGANSETT ELECTRIC)
COMPANY d/b/a RHODE ISLAND ENERGY) DOCKET NO. 23-23-NG
2023 DISTRIBUTION ADJUSTMENT CHARGE AND)
2023 GAS COST RECOVERY FILING)

**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 (the “Company”) hereby respectfully requests that the Public Utilities Commission (the “Commission”) grant protection from public disclosure for material submitted in response to the Rhode Island Division and Public Utilities and Carriers’ (the “Division”) Fifth Set of Data Requests. Specifically, the Company seeks protective treatment for Attachment DIV 5-14 Supplemental (the “Confidential Attachment”). The reasons for the protective treatment are set forth herein. The Company also requests that, pending entry of that finding, the Commission preliminarily grant the Company’s request for confidential treatment pursuant to 810-RICR-00-00-1.3(H)(2).

The Company seeks protective treatment for the Confidential Attachment because it contains commercially sensitive contract pricing information that the Company negotiated with its counterparty. The disclosure of this information would be detrimental to the commercial interests of the Company or the commercial interests of the Company’s counterparty.

I. LEGAL STANDARD

Rhode Island’s Access to Public Records Act (“APRA”), R.I.G.L. §38-2-1 *et. seq.*, sets forth the parameters for public access to documents in the possession of state and local government agencies. Under APRA, all documents and materials submitted in connection with the transaction of official business by an agency are deemed to be a “public record,” unless the information contained in such documents and materials falls within one of the exceptions specifically identified

in R.I.G.L. §38-2-2(4). Therefore, to the extent that information provided to the Commission falls within one of the designated exceptions to APRA, the Commission has the authority under the terms of APRA to deem such information to be confidential and to protect that information from public disclosure.

In that regard, R.I. Gen. Laws § 38-2-2(4)(B) provides that the following types of records shall not be deemed public:

Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

The Rhode Island Supreme Court has held that this confidential information exemption applies where the disclosure of information would be likely either (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001). The first prong of the test is satisfied when information is provided to the governmental agency and that information is of a kind that would customarily not be released to the public by the person from whom it was obtained. *Providence Journal*, 774 A.2d at 47.

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 Commission 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 Confidential Attachment included within the Company's supplemental response to the Division Data Request 5-14 includes commercially sensitive pricing information that the Company maintains as confidential for a number of reasons. First, if the Company were to disclose the prices that it has agreed to with contract counterparties, then the Company's ability to negotiate more advantageous terms in the future would be hampered since market participants would be informed of what the Company has been willing to agree to in the past. Similarly, if the Company were to publicly disclose advantageous pricing that it had obtained, counterparties would hesitate to offer the Company advantageous terms in the future since disclosure of those terms would hamper counterparties' ability to negotiate with other customers. For these reasons, the Confidential Attachment is not of a kind that would customarily be released to the public by the Company. Therefore, the first prong of the *Providence Journal* test has been satisfied. *See Providence Journal, 774 A.2d at 47.*

III. CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Commission grant this motion for protective treatment of the Confidential Attachment DIV 5-14 Supplemental.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,

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

By its attorneys,



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Providence, RI 02903
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Dated: October 12, 2023

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2023, I delivered a true copy of the foregoing Motion via electronic mail to the parties on the Service List for Docket No. 23-23-NG.



Heidi J. Seddon

Division 5-14, Supplemental

Request:

Reference the response to Division 1-10 in the Long-Range Plan proceeding. Please supplement/update this response as applicable.

Response:

Since the Company's response to Division 1-10 in Docket No. 22-06-NG, the Company has not entered into any additional Asset Management Agreements (AMAs). The Company is still in the process of negotiating additional AMAs for the coming winter and will supplement this response as additional agreements are executed.

Supplemental Response:

The Company has entered into an AMA associated with its Columbia Gas Transmission (TCO) transportation capacity, which was discussed on pages 22-23 of the Pre-filed Joint Direct Testimony of the Gas Supply Panel in this docket. Please see Confidential Attachment Division 5-14 for a copy of the transaction confirmation.

The accompanying Attachment Division 5-14 contains confidential and commercially sensitive pricing information; therefore, the Company is providing a redacted version of Attachment Division 5-14, as well as an unredacted confidential version subject to a Motion for Protective Treatment.

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“Letter of Credit” means an irrevocable, non-transferable, standby letter of credit issued by a major U.S. commercial bank, a U.S. branch office of a foreign bank, or U.S. financial institution, in any case with a credit rating of at least “A-” by S&P and “A3” by Moody’s, in a form reasonably acceptable to the Buyer. All costs related to any Letter of Credit shall be for the account of the Seller.

“Moody’s” means Moody’s Investors Service, Inc. or its successor.

“S&P” means S&P Global Ratings, or its successor.

B. Gas Service and Capacity Release

1. **Release of Assets:** During the Term, Buyer shall release the Assets to Seller on a pre-arranged, non-biddable basis, at no cost. Buyer shall be responsible for the payment of all demand charges related to the Assets. Seller shall be responsible for all variable costs in connection with the Assets during the Term unrelated to deliveries for Buyer. Buyer and Seller each agree to take such actions and execute such documents as may be required to effectuate the release of the Assets from Buyer to Seller. All releases shall be subject to recall in accordance with the terms of this Transaction Confirmation.
2. **Gas Supply Requirements:** On any day during the period of **November 1, 2023 through April 15, 2024** (“Delivery Period”), Buyer shall have the right, but not the obligation, to call on a quantity of Gas up to the MDQ at the Delivery Point subject to the following:
 - (i) **Base-Load quantities:** At least three (3) business days prior to the 1st day of the following month of delivery for delivery in the months November through and including March, Buyer shall have the right, but not the obligation, to request Base-Load delivery of such Gas Supply at the Delivery Point up to the MDQ during this Delivery Period.
 - (ii) **Daily Call quantities:** Further, subject to Buyer having exercised its Base-Load rights, Buyer shall have a right to call on a quantity up to the remaining MDQ for the full delivery period of November 1 through and including April 15, 2024.
3. **Termination Option:** If there has occurred either two (2) consecutive Failure Days or three (3) total Failure Days during the Term, then, in addition to any other remedies available to Buyer under the Base Contract during the Term, Buyer shall have the right to terminate this Transaction Confirmation and recall the Assets under the terms of the Base Contract by declaring an Early Termination Date under Section 10.3 of the Base Contract. A “Failure Day” means a Day on which Seller fails to deliver an amount equal to or greater than 96% of the Gas Supply Requirements (as determined through Special Condition B.2.i and B.2.ii) on such Day, which failure is not excused by the Buyer’s non-performance or caused by Force Majeure; provided, however, that on any Day where Buyer exercises its right to call on Gas supply pursuant to this Transaction Confirmation and Seller fails to deliver the full volume requested by Buyer for reasons other than Force Majeure, then for each undelivered MMBtu Seller shall pay to Buyer the higher of (a) Buyer’s actual replacement cost, or (b) 150% of the Contract Price, in either case less the Contract Price.

C. Contract Price:

The Contract Price for Gas purchased and delivered pursuant to Special Condition B.2(ii) (i.e., called on through the exercise of a daily call) shall be equal to *Platts Gas Daily Daily Price Survey* (\$MMBtu) Midpoint for TCo Pool, plus the imputed variables and fuel to deliver the Gas Supply Requirements to the Delivery Point.

The Contract Price for Gas purchased and delivered pursuant to Special Condition B.2(i) (i.e., called on through the exercise of a Base-Load option) shall be equal to *Platts Inside FERC* for TCo Pool, plus the imputed variables and fuel to deliver the Gas Supply Requirements to the Delivery Point.

Notwithstanding the foregoing, if in *Buyer’s sole discretion* operational issues affecting the Assets may preclude Seller from delivering Gas to the Delivery Point at the Base-Load or Daily Call Price stated in this Special Condition C, then Buyer may direct Seller at the Daily Call Nominations deadline specified in Special Condition D to deliver a certain percentage of the MDQ at a fair market price for the Delivery Point. The parties will both use commercially reasonable efforts to negotiate a fair market price for the Delivery Point in such circumstances, and if such price is agreed upon by the parties, Seller’s failure to deliver any such re-priced quantity will not be excused by the operational issues affecting the Assets. If Buyer makes such request for alternative pricing and Seller fails to deliver Gas at the alternative pricing requested by Buyer or Buyer and Seller are unable to agree to a fair market price for such deliveries, then Buyer may temporarily recall the Assets up to the certain percentage of the MDQ affected by the operational issues for the duration of the operational issues so identified. Upon the end of the operational issues affecting the Assets, Buyer shall promptly re-release the Assets to Seller.

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D. Nominations

For Daily Call quantities at the Delivery Point purchased pursuant to Special Condition B.2, Buyer shall make all nominations for delivery of Daily Call quantities purchased prior to 10:00 AM, Eastern Prevailing Time on the Business Day prior to the Gas Day on which delivery of Gas is requested. Friday nomination shall be for Saturday through Monday (ratably). Holidays are as determined by the Intercontinental Exchange ("ICE") and shall be treated the same as weekends (*i.e.*, nominated ratably on the Business Day prior to the Holiday).

Subject to these Gas Supply Requirements, Seller shall have the right to optimize the assigned capacity for its own account. Seller shall communicate to Buyer any upstream changes to supplies called on pursuant to this Section no later than 1:00 PM Eastern Prevailing Time on the Day prior to the Day of Gas flow. To the extent that Seller does not provide any upstream changes to supplies called on pursuant to this Section by 1:00 PM Eastern Prevailing Time on the Day prior to the Day of Gas flow, Buyer may nominate, and Seller must supply such amounts called on and nominated by Buyer from the Assets assigned to Seller by Buyer. For any Day in which notice is provided of upstream changes that do not constitute Force Majeure after 1:00 PM Eastern Prevailing Time, and Buyer is unable or unwilling to accommodate such change, in Buyer's discretion, or such change otherwise results in scheduling errors or cuts, such Day shall be considered a Failure Day.

E. Asset Management Fee

Subject to the Gas Supply Requirements and delivery obligations set forth above, Seller shall have the right to optimize the Assets for its own benefit. In exchange for such right, during the Term, Seller shall make a payment to Buyer of [REDACTED], payable in equal monthly installments of [REDACTED]. This payment shall be subject to netting under Section 7.7 of the Base Contract and shall be reflected as a credit to Buyer in Seller's invoice for the applicable Month.

F. Credit Provisions

Independent Amount. In the event Seller or Seller's Credit Support Provider (if applicable) (i) has a Credit Rating below BBB- from S&P and/or Baa3 from Moody's, or (ii) does not have a Credit Rating assigned by S&P or Moody's, Seller shall provide Buyer with an Independent Amount in the form reasonably acceptable to Buyer of either (a) a guaranty from a Credit Support Provider that has a Credit Rating of at least BBB- by S&P and/or Baa3 by Moody's, (b) cash, or (c) a Letter of Credit, in either case, the Independent Amount shall be equal to 10% of the potential mark to market exposure for the transactions hereunder calculated as a function of price volatilities as well as the notional volume; provided, however, that the potential mark to market exposure shall be zero (\$0) when Seller's price is set at the Gas Daily Index. The Independent Amount shall be calculated by Buyer. The Independent Amount for Buyer means zero (\$0).

Collateral Requirement. The "Collateral Requirement" for Seller means the Exposure (as defined below), minus the sum of (i) the amount of Cash previously transferred by Seller to Buyer, (ii) the amount of Cash held by Buyer as posted collateral as the result of drawing under any Letter of Credit maintained by Seller for the benefit of Buyer, and (iii) the undrawn value of each such Letter of Credit; provided, however, that the Collateral Requirement for Seller will be deemed to be zero (\$0) if (i) Seller or its Credit Support Provider has a Credit Rating of at least BBB- from S&P and/or Baa3 from Moody's, (ii) no Event of Default with respect to Seller or its Credit Support Provider (if applicable) has occurred and is continuing, and (iii) the guaranty provided by Seller's Credit Support Provider is in full force and effect (if applicable). Seller may provide the Collateral Requirement in the form reasonably acceptable by Buyer of either (a) a guaranty from a Credit Support Provider that has a Credit Rating of at least BBB- by S&P and/or Baa3 by Moody's, (b) cash, or (c) a Letter of Credit. The Collateral Requirement shall be calculated by Buyer. The "Collateral Requirement" for Buyer means zero (\$0), provided, however, that this will not preclude Seller from being able to request Adequate Assurance of Performance to the extent it has grounds to do so under Section 10.1 of the Base Contract.

Exposure. "Exposure" shall be calculated as the sum of:

- (i) all amounts that have been invoiced, but not yet paid for the transactions under this Transaction Confirmation; plus
- (ii) all amounts that have been accrued, but not yet invoiced for the transactions under this Transaction Confirmation; plus
- (iii) the mark to market amount for each Day remaining in the Term for each transaction under this Transaction Confirmation; reduced by
- (iv) the Independent Amount, if any, previously provided by the Seller to the Buyer.

G. Asset Management Arrangement

The Parties agree that the transactions hereunder constitute an AMA, as defined by FERC in Order No. 712 (as modified and clarified) and in accordance with FERC's rules and regulations, and that Seller is acting as Asset Manager as defined in 18 CFR 284.8(h)(3). If it is determined that this transaction does not constitute an AMA, the parties agree to modify the transaction as required while maintaining, to the extent possible, the economics of the transaction consistent with applicable law. Further, to the extent that any portion of this Transaction Confirmation is in conflict with, or in violation of Order 712, then such provision(s) shall

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be null and void and the parties shall negotiate in good faith to revise this Transaction Confirmation in a manner such that the Transaction Confirmation is in compliance with Order 712 and in a manner that preserves the original intent of the parties.

H. Changes in Law

If the FERC, CFTC or other applicable regulatory body shall implement any change in law, rule, regulation, tariff or practice that is binding on Seller or Buyer and materially and adversely affects such party's ability to perform its obligations hereunder, either party may provide Notice of such event to the other party and the parties shall negotiate in good faith an amendment to this Agreement or take other appropriate action the effect of which is to restore each party, as closely as possible, to its same position as prior to such change. If, within sixty (60) Days after the implementation of such change, the parties are unable to agree on such amendment or such other appropriate action, each party will continue to perform its obligations hereunder to the maximum extent possible under the applicable law, rule, regulation, tariff or practice, taking all reasonable steps to mitigate the effect of such change on each other.

I. Base Contract.

This Transaction Confirmation is entered into pursuant to and is governed by the terms and conditions of the Base Contract and shall form a single integrated agreement with the Base Contract. Notwithstanding that the capacity release of the Assets is not itself a transaction for the purchase, sale, or exchange of Gas, the provisions of the Base Contract (including, but not limited to, provisions relating to limitation of liability, indemnity, confidentiality, billing, netting of payments, set-off, notice, assignment, dispute resolution, governing law, interpretation, and other miscellaneous provisions found in Section 14 of the Base Contract) are, except to the extent of any inconsistency or conflict with the provisions of this Transaction Confirmation, incorporated herein by reference and will apply to govern the rights and obligations of the parties in respect of the release, *mutatis mutandis*. For avoidance of any doubt, all amounts payable under this Transaction Confirmation may be netted against any other amounts due (or past due) and owing under the Base Contract. In the event of any conflict or inconsistency between the provisions of the Base Contract and the provisions of this Transaction Confirmation, the provisions of this Transaction Confirmation shall prevail and be applied to the extent of the conflict or inconsistency. All capitalized terms that are used in this Transaction Confirmation but not defined herein shall have the meanings given to such terms in the Base Contract.

J. No Agency/Fiduciary Relationship, Joint Venture or Partnership.

Each of Seller and Buyer hereby acknowledges and agrees that the other party is not acting, under this Transaction Confirmation, as an agent, fiduciary, or financial investment or commodity trading advisor to it and that this Transaction Confirmation shall not create any joint venture, partnership, or other fiduciary relationship between them.

K. Entire Agreement.

This Transaction Confirmation and the Base Contract, together, constitute the entire agreement between the parties regarding the asset management arrangement with respect to the Assets during the Term, and supersedes and replaces any prior and contemporaneous communications, understandings, and agreements between Seller and Buyer related to such subject matter, whether written or verbal, express or implied. No modification, amendment, supplementation, or alteration of the terms and provisions of this Transaction Confirmation shall be or become effective except by written amendment executed by the duly authorized representatives of both parties to this Transaction Confirmation.

L. Trade Option

For the purpose of 17 CFR 32.3, each party represents that it is a producer, processor or commercial user of, or a merchant handling the commodity or commodities which are the subject of any commodity option transactions entered into hereunder, or the products or by-products thereof, and is offering (or being offered, as the case may be) or entering into such transactions solely for purposes related to its business as such. The parties confirm their intention that any such commodity option transactions be physically settled, such that if exercised, they result in the sale of an exempt commodity for either immediate or deferred shipment or delivery.

M. Early Termination

The parties agree that the economic consideration with respect to the Assets assigned under this Transaction Confirmation is as provided hereunder and as reflected in the Contract Price for the Gas to be delivered hereunder, and therefore if an Early Termination Date is declared under the Base Contract, then the market value of the Assets released to Seller for the remainder of the Term (but for the Early Termination), determined by the Non-Defaulting Party in a commercially reasonable manner, net of the remaining (unpaid) amount of the Asset Management Fee that would have been paid by Seller to Buyer, each discounted to present value as of the Early Termination Date, shall be included in the calculation of Early Termination Damages under Section 10.3.1 of the Base Contract.

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<p>Seller: Emera Energy Services, Inc.</p> <p>By: <u>A. Michael Burnell</u> Name: A. Michael Burnell Title: President Date: September 20, 2023</p>	<p>Buyer: The Narragansett Electric Company</p> <p>By: <u>Michele V. Leone</u> kac Name: Michele V. Leone Title: Vice President - Gas Date: 09/28/2023</p>
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