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September 1, 2005

## VIA HAND DELIVERY

Luly Massaro, Commission Clerk  
Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

RE: Docket No. 3696, Annual Gas Cost Recovery Filing

Dear Ms. Massaro:

Enclosed please find an original and nine (9) copies of the testimony of Peter Czekanski and Gary Beland in support of the above referenced filing. Please note, these proposed rates reflect the customer class-specific factors necessary for New England Gas Company ("Company") to collect sufficient revenues to recover projected gas costs for the period November 1, 2005 through October 31, 2006.

Accompanying the pre-filed testimony, the Company has also filed a Motion for Protective Treatment, as permitted by the Rhode Island Department of Public Utilities ("Commission") Rule 1.2(g) and by R.I.G.L. § 38-2-2(4)(i)(B). The Company seeks protection from public disclosure the portfolio-management fee established in the ConocoPhillips Company contract, which is confidential, commercially sensitive and proprietary. Accordingly, the Company requests that the Commission protect the price terms and related calculations set forth in Exhibit GLB-11. To that end, the Company has provided the Commission with the confidential materials for its review, and has served redacted copies to the parties.

Thank you for your attention to this filing.

Sincerely,

Cheryl M. Kimball  
(R.I. Bar # 6458)

Enclosure  
cc: Service List

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**RHODE ISLAND PUBLIC UTILITIES COMMISSION**

_____	)	
New England Gas Company	)	
Gas Cost Recovery	)	Docket 3696
	)	
_____	)	

**MOTION OF NEW ENGLAND GAS COMPANY  
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes New England Gas Company (“Company”) and hereby requests that the Rhode Island Department of Public Utilities (“Commission”) grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted in this proceeding, as permitted by Commission Rule 1.2(g) and by R.I.G.L. § 38-2-2(4)(i)(B).

**I. BACKGROUND**

On Thursday, September 1, 2005, the Company filed testimony with the Commission and the Division of Public Utilities and Carriers (“Division”) in the above-referenced proceeding concerning the Company’s gas cost recovery filing. With that testimony, the Company filed Exhibit GLB-11 outlining the payment arrangement between the Company and ConocoPhillips Company (“ConocoPhillips”). Under this arrangement, ConocoPhillips provides two services to the Company, which are: (1) the management of the Company’s upstream interstate gas supply, transportation and underground storage assets; and (2) the provision of the city-gate gas supply requirements to serve the Company’s firm sales customers. ConocoPhillips will provide these services

for the period commencing November 1, 2003, and ending October 31, 2005. Although this arrangement is set to expire, the price terms included in the arrangement are still pertinent and competitively sensitive data due to the Company's ongoing efforts to negotiate a new contract for service. As part of Exhibit GLB-11, the Company referenced the fee that is paid by ConocoPhillips for the right to manage the upstream capacity resources held by the Company. For the reasons stated below, the Company requests that the fee amount be protected from public disclosure. The Company has filed redacted copies of Exhibit GLB-11, deleting references to the amount of the fee that will be paid by ConocoPhillips to the Company in accordance with the contract.

## **II. LEGAL STANDARD**

The Commission's Rule 1.2(g) provides that access to public records shall be granted in accordance with the Access to Public Records Act ("APRA"), R.I.G.L. §38-2-1, *et seq.* Under APRA, all documents and materials submitted in connection with the transaction of official business by an agency is 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 the public records law, 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.G.L. §38-2-2(4)(i)(B) provides that the following 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 the determination as to whether this exemption applies requires the application of a two-pronged test set forth in Providence Journal Company v. Convention Center Authority, 774 A.2d 40 (R.I.2001). The first prong of the test assesses whether the information was provided voluntarily to the governmental agency. Providence Journal, 774 A.2d at 47. If the answer to the first question is affirmative, then the question becomes whether the information is “of a kind that would customarily not be released to the public by the person from whom it was obtained.” Id.

In addition, the Court has held that the agencies making determinations as to the disclosure of information under APRA may apply the balancing test established by the Court in Providence Journal v. Kane, 577 A.2d 661 (R.I.1990). Under this balancing test, 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.

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

The Companies seek protection from public disclosure the management fee found in the ConocoPhillips contract, which is confidential, commercially sensitive and proprietary, as described below. ConocoPhillips is an active participant in the gas marketplace and requires confidential treatment of the price term set forth in the asset-management contract in order to protect its competitive position, bargaining latitude and negotiating leverage in the marketplace.

Consistent with the Commission's rules and precedent, the key element of the Companies' request for confidentiality is the price as reflected in the portfolio-management fee to be paid by ConocoPhillips to the Company pursuant to the contract terms. Public disclosure of this price term would be commercially harmful to ConocoPhillips because other customers and potential customers could use this information to seek similar terms. Also, if the fee is disclosed, competitors of ConocoPhillips would have important, competitively sensitive information regarding its willingness to pay a certain fee or contract charges, which would give those competitors an unfair competitive advantage. Moreover, disclosure of the fee, or any computations that are based on the fee, would potentially impede the Company's ability to obtain a similar or better fee from other potential portfolio managers in the future to the detriment of customers.

In short, pricing and related financial terms bid by ConocoPhillips must remain confidential to preserve the Company's future negotiating leverage and their ability to function effectively in a competitive gas-supply marketplace. Disclosure of these contract terms may dissuade wholesale gas marketers, who must protect their competitive position in the national market, from offering these services in Rhode Island. Moreover, a lack of confidentiality may discourage such potential portfolio managers from making concessions or agreeing to specific provisions more favorable to the buyer because public knowledge of such information would decrease the managers' bargaining leverage in other negotiations.

**V. CONCLUSION**

The portfolio-management fee agreed to by ConocoPhillips under the terms of the portfolio-management contract is confidential, commercially sensitive and proprietary. Disclosure on the public record of such pricing information would be detrimental to the public interest in that it would negatively affect the parties' future bargaining position and have a negative impact on the marketplace by dissuading potential portfolio managers from providing these services in Rhode Island. Accordingly, the Company requests that the Commission protect the price terms and related calculations set forth in Exhibit GLB-11.

**WHEREFORE**, the Company respectfully requests that the Commission grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

**NEW ENGLAND GAS COMPANY**

By its attorney,

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Dated: September 1, 2005