

September 24, 2008

VIA HAND DELIVERY & ELECTRONIC MAIL

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

**RE: Docket 3969 – Fuel Adjustment Factor Tariff Filing
Responses to Record Requests**

Dear Ms. Massaro:

Enclosed please find ten (10) copies of National Grid's¹ responses to Record Requests issued at the evidentiary hearing held on September 22, 2008 in the above-captioned proceeding.

Please be advised that the Company is seeking protective treatment of supplemental responses to Record Requests 1 and 2, as permitted by Commission Rule 1.2(g) and by R.I.G.L. § 38-2-2(4)(i)(B). The Company has also enclosed a Motion for Protective Treatment for the mentioned responses.

In compliance with Rule 1.2(g), National Grid is providing one complete unredacted copy of the supplemental confidential responses to Record Requests 1 and 2 in a sealed envelope marked **“Contains Privileged and Confidential Materials – Do Not Release.”**

If you have any questions concerning this matter, please feel free to contact me at (401) 784-7667.

Very truly yours,



Thomas R. Teehan

Enclosures

cc: Docket 3969 Service List

¹ The Narragansett Electric Company d/b/a National Grid (“the Company”).

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

Petition and Request of the Narragansett :
Electric Company d/b/a National Grid : Docket No. 3969

**THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID'S
("NATIONAL GRID") FOURTH REQUEST
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

National Grid hereby requests that the Commission treat portions of its responses to the Commission's Records Requests as confidential in accordance with PUC Rules 1.2 and 1.5. Specifically, National Grid is asking the Commission to treat its supplemental responses to Records Requests 1 and 2 as confidential and to make a finding that the responses are exempt from the mandatory disclosure requirements of the Access to Public Records Act. See R.I. Gen. Laws § 38-2-1 et. seq. National Grid also hereby requests that, pending entry of that finding, the Commission preliminary grant National Grid's request for confidential treatment pursuant to Rule 1.2(g)(2).

In support of this request, National Grid submits that the redacted responses contain highly confidential information pertaining to National Grid's litigation strategy and risk assessment. If this information were made public it could cause harm to National Grid in the pending litigation with Constellation.

In that regard, R.I. Gen. Laws § 38-2-2(4)(i)(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 disclosure of information would likely be 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 that test is satisfied when information is voluntarily provided to the governmental agency and that information is "of a kind that customarily would not be released to the public by the person from whom it was obtained." Id. at 774 A.2d at 47. Here, the responses contain highly confidential litigation strategy and settlement analysis of a type that a party would not customarily release to the public. It is protected under the first prong.

With respect to the second prong of the confidential information test, it is clear that disclosure would substantially affect National Grid's competitive position in the litigation with Constellation. Thus, the pre-filed testimony is protected under both prongs of the analysis under § 38-2-2(4)(i)(B) and the Commission should so find.

In addition, the Court has held that agencies making determinations as to the disclosure of information under APRA may apply the balancing test established under Providence Journal v. Kane, 577 A.2d 661 (R.I. 1990). Under that 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. In our case, for the reasons described above, any public interest in the redacted data responses does not outweigh National Grid's interest and the interest of its customers, in keeping the information confidential.

NARRAGANESTT ELECTRIC
COMPANY d/b/a NATIONAL GRID
By its Attorneys

A handwritten signature in black ink, appearing to read "Gerald J. Petros", is written over a horizontal line.

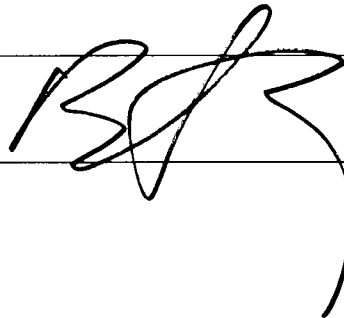
Gerald J. Petros (#2931)
Hinckley, Allen & Snyder LLP
50 Kennedy Plaza, Suite 1500
Providence, RI 02903
(401) 274-2000
(401) 277-9600 (fax)

Dated: September 24, 2008

CERTIFICATION

I hereby certify that I mailed a copy of the within Fourth Request for Confidential Treatment to counsel of record, as set forth below, on September ~~24~~ 2008.

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Record Request 1

Request:

Please explain why National Grid did not make FAF protest payments to Constellation as it did to TransCanada.

Non-Confidential Response:

As outlined in National Grid's June 30, 2008 FAF Tariff filing, incorporated herein by reference:

“Over the term of the [WSOSAs], Constellation invoiced for fuel adjustment factor payments and the Company made fuel adjustment factor payments for the period from 2000 through 2004. After 2004, however, Constellation stopped invoicing the Company for any fuel adjustment factor payments and did not invoice for any fuel adjustment factor payments for over three years thereafter. Over the same period, Constellation never claimed an entitlement to fuel adjustment factor payments and never claimed that the Company had any obligation to make another FAF Tariff filing with the Commission for application after 2004. Constellation maintained this silence knowing that TransCanada sued the Company claiming entitlement to a fuel adjustment factor in other power purchase agreements. It was not until April 14, 2008, when the complaint was filed, that Constellation first asserted a right to FAF payments.”

(National Grid's June 30, 2008 FAF Tariff filing letter, at 2.).

Constellation thus filed its FAF complaint on the same date that it first provided written notice to National Grid that Constellation believed an FAF claim existed. Only two-and-one-half-weeks elapsed between Judge Saylor's March 26, 2008 summary judgment order in TransCanada and Constellation's commencement of the FAF action on April 14, 2008. Any informal oral communications which might have occurred in this brief period took place while the FCM litigation was actively ongoing and, as it turned out, while Constellation was simultaneously preparing its FAF litigation. All of National Grid's decisions regarding Constellation were necessarily and appropriately informed at least in part by this litigation environment.

By contrast, TransCanada notified National Grid of its FAF dispute by providing written notification on March 1, 2005. At the time of that notice, as I testified at the September 22, 2008 hearing in this docket, the TransCanada PPA was priced below market and the protest payments were necessary to reduce the risk that TransCanada might attempt to terminate the PPA, requiring National Grid to procure replacement power at higher market prices.

The Company is also providing a Confidential Supplement Response to this record request.

Record Request 2

Request:

Please explain how National Grid justifies the fuel adjustment mechanism it filed in the underlying petition in this docket, in light of the specific language of the WSOSAs involved.

Non-Confidential Response:

The WSOSAs involved in this docket were executed by Constellation and the EUA companies. As outlined in National Grid's June 30, 2008 filing, incorporated herein by reference, the WSOSAs to which the originally filed FAF Tariff would have applied contained provisions regarding an FAF but did not contain mechanisms for calculating the FAF: "In May of 1998, the Commission approved Standard Offer Service tariffs for application to the then EUA companies. Copies of those tariffs are included in Attachment 5 to this filing. The 1998 tariffs, which were approved and on file with the Commission months before Constellation entered into the WSOSAs in December of 1998, contained fuel adjustment factor triggers that began in 2000 and ended after 2004." (See National Grid's June 30, 2008 filing letter, at 2.). These tariff provisions expired with National Grid's acquisition of the EUA companies. National Grid's tariffs were (and are) structured differently and contained no comparable counterparts. Based on Judge Saylor's March 2008 summary judgment order in the TransCanada FAF litigation, National Grid undertook the June 30, 2008 FAF Tariff filing in this docket as a just a reasonable means to comply with that order while simultaneously preserving its rights to defend its litigation position as necessary.

The Company is also providing a Confidential Supplement Response to this record request.

Record Request 3

Request:

Please identify which supplier is the counterparty to the 30 percent contract referenced in the second sentence of the block quotation on page 8 of the August 26, 2004 Report and Order of the Commission in Docket No. 3571.

Response:

FPL Energy Power Marketing, Inc. is the referenced counterparty. A standard offer power supply contract between The Narragansett Electric Company and FPL Energy Power Marketing, Inc was executed on April 25, 2003.