



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION
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Chairperson Margaret E. Curran
Commissioner Herbert F. DeSimone, Jr.
Commissioner Marion S. Gold

MEMORANDUM

To: Docket No. 4627 Service List
From: Cynthia G. Wilson-Frias, Deputy Chief of Legal Services
Date: August 5, 2016
Re: Confidentiality and Motion to Compel in Docket No. 4627

The Public Utilities Commission (PUC) made a preliminary ruling on confidentiality, finding that it would only apply its single standard for confidentiality, but would allow the parties to continue using the two-prong standard adopted by the Massachusetts Department of Public Utilities in order to allow the parties to enter into confidentiality agreements. NextEra Energy Resources, LLC (NextEra) and National Grid have been unable to reach agreement on a confidentiality agreement with regard to the materials marked "highly sensitive." Therefore, NextEra has filed a Motion to Compel. The deadline for objections is on Thursday, August 11, 2016. The fourth item in this memorandum assumes National Grid will be filing an objection.

Additionally, Chairperson Curran has reviewed a portion of the initial filing specifically to compare the redacted information to the unredacted. While some of the redacted materials are completely understandable, it appears that a broad brush may have been applied in some instances while in others, it is not intuitively clear how the information redacted falls within the exception of the Access to Public Records Act. Additionally, it appears that most, if not all information may have been marked highly sensitive in this matter so far, denying in house legal counsel for NextEra access to any of the confidential information.

The burden of proof of confidentiality is on the requestor and the PUC expects the level of redaction to be the minimum required to protect ratepayers. The PUC will not simply accept that the Massachusetts DPU rulings should be binding on parties in Rhode Island. It appears from the level of redaction in this case that the Rhode Island standard of confidentiality may be applied differently from the Massachusetts standard.

Therefore, Chairperson Curran intends to conduct a hearing on both the Motion to Compel and on the information already submitted in order to ensure there is a consistent standard being applied for redacted materials. If necessary, she is prepared to conduct the hearing in closed session, but any rulings and objections thereto will be made in public session.

National Grid should be prepared to address the following with a witness, if necessary:

- (1) Whether the materials in the initial filing were over-redacted. Some examples include information in the Brennan/Allocca testimony on pages 25, 26-28, 31, and 37-38; TJB/JEA-1 pages 8, 9-10, 22, 50-52, 53-55, 56-58, and Attachment F.
- (2) Why certain materials on pages 18, 22, 24, 26 of the Brennan/Allocca testimony and in GJW-1 and GJW-2 should be confidential.
- (3) Why any information related to ratepayer impact should be confidential (i.e., costs, benefits, cost/benefit ratio, inputs into the proposed tariff).

On page 3 of National Grid's initial motion for protective treatment, National Grid began to explain that certain parties should not receive certain types of information because it would put National Grid at a competitive disadvantage. It should complete this argument in any objection it files and be prepared to explain it at the hearing. NextEra's attorney should be prepared to make a showing of how in-house counsel's access to the information will not harm ratepayers by putting National Grid at a competitive disadvantage should the proposed contract be approved. This should include any protections or protocols that NextEra would put into place

- (4) Why Nextera's in house legal counsel should not have access to all confidential information if they can provide evidence that there are appropriate protections or protocols in place such that they can effectively communicate with their witness in this matter without involving their business folks.

In terms of item number 2, National Grid is invited to take another look at all of its redacted materials in the initial filings and any discovery issued in this docket (not the materials submitted in response to PUC-1-1) to determine if it believes it has redacted the minimum required to protect ratepayers and file supplemental pages prior to the hearing, if necessary.

The PUC is tentatively scheduling this hearing for Tuesday, August 16, 2016 at 1:00 p.m., subject to the availability of counsel.