

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

ACCESS TO PUBLIC RECORDS REGULATION

DOCKET NO. SB-2010-1

NOTICE OF RULEMAKING AND PUBLIC HEARING

Pursuant to the provisions of Sections 42-98-1 and 42-35-3 of the Rhode Island General Laws, as amended, the Energy Facility Siting Board ("Board") will conduct a public hearing on **Monday May 3, 2010 @ 10:30 AM** in Hearing Room A of the Public Utilities Commission located at 89 Jefferson Boulevard, Warwick, Rhode Island for the purpose of affording all interested persons an opportunity to submit data, views, or arguments, orally or in writing, in response to the Board's plan to adopt proposed regulation entitled "Access to Public Records Regulation." The proposed regulation is promulgated in accordance with Section 38-2-1 and 42-35 of the General Laws of Rhode Island, as amended, and sets forth the specific rules and procedures applicable to access to public records maintained by the Board.

In the development of the proposed regulation, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business, as defined in Chapter 42-35 of the Rhode Island General Laws, as amended, which may result from this regulation. No alternative approach or duplication or overlap was identified based upon available information. The regulation will apply to all persons and entities seeking access to public records maintained by the Board.

The proposed regulation is on file at the Board Coordinator's Office at 89 Jefferson Boulevard, Warwick, Rhode Island. Copies of the proposed regulation may be obtained in person, by e-mail request to nucci@puc.state.ri.us, by phone call at 780-2106, or accessed on the Board's website at www.ripuc.org/efsb/index.html.

Comments relative to any aspect of the regulation, including alternative approaches, overlap, or significant economic impact, may be offered orally, at the time of the hearing, or in writing by submitting comments prior to the hearing date to:

Nick Ucci, Coordinator
Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, Rhode Island 02888

The Board is accessible to the handicapped. Individuals requesting interpreter services for the hearing impaired must notify the Board's office by calling 780-2106 seventy-two (72) hours in advance of the hearing date.

Nick Ucci, Board Coordinator
April 2, 2010

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

Concise Explanatory Statement Pursuant to R.I.G.L. §42-35-2.3

The Energy Facility Siting Board (“Board”) has proposed this Regulation to set forth the specific rules and procedures applicable to access to public records maintained by the Board. The Board recognizes both the public’s right to access public records and the individual’s right to dignity and privacy. It is the Board’s policy to facilitate public access to all public records that may be disclosed in accordance with R.I. Gen. Laws § 38-2-1, et seq. It is also the policy of the Board to make all public records in the Board’s possession be available for public inspection and copying consistent with applicable state or federal law, unless otherwise prohibited by a court of competent jurisdiction.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

ACCESS TO PUBLIC RECORDS REGULATION

Date of Notice: April 2, 2010

Date of Public Hearing: May 3, 2010

Effective Date:

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Section 1 **Authority**

This Regulation is promulgated pursuant to R.I. Gen. Laws § 38-2-1, *et seq.* (“Access to Public Records”) and § 42-35-2(a).

Section 2 **Purposes**

The Purposes of this Regulation are:

- (1) To establish a Regulation to implement R.I. Gen. Laws § 38-2-1, *et seq.* and § 42-35-2(a) relating to access to public records maintained by the Board.
- (2) To identify and delineate categories of records exempt from disclosure; and
- (3) To provide the public and Board personnel with a Regulation which sets forth the rules and procedures applicable to access to public records maintained by the Board.

Section 3 **Policy**

The Board recognizes both the public's right to access public records and the individual's right to dignity and privacy. It is the Board's policy to facilitate public access to all public records that may be disclosed in accordance with R.I. Gen. Laws § 38-2-1, *et seq.* It is also the policy of the Board to make all public records in the Board's possession be available for public inspection and copying consistent with applicable state or federal law, unless otherwise prohibited by a court of competent jurisdiction.

Section 4 **Procedure for Requesting Public Records**

- (1) Except as provided in subsection (5) below, a written request to inspect or copy public records should be sent to the Board Coordinator who maintains the records

requested or, in the alternative, to the Board Counsel at the address listed above. Written requests may be mailed, hand delivered, e-mailed or sent via facsimile. Hand delivered requests may be made during the Board's regular business hours. It is suggested, but not required, that requests be submitted on the form provided by the Board, a copy of which is attached hereto as Exhibit A and titled "Request to Inspect and/or Copy Public Records". In order to assure that the Board is able to respond to the request as efficiently and as completely as possible, the request should identify and describe the records being requested with as much specificity as possible. A written record of all requests will be maintained by the Board Coordinator.

- (2) If the description of records being requested is not sufficient to allow the Board to identify and locate the requested records, the Board will notify the person requesting such records that additional information is needed in order to properly respond to the request.
- (3) Upon receipt of a request for records, the Board Coordinator or Board Counsel will mark on the face of a written request the date the request was received. The Board will make every reasonable effort to honor the request within ten (10) business days of receipt of the written request.
- (4) If it appears that the request can not be honored within ten (10) business days of receipt, the Board will use its best efforts to notify the requester of the status of the request within ten (10) business days. For good cause, the time to respond to the request may be extended for a period not to exceed thirty (30) business days, inclusive of the original ten (10) business days.
- (5) A written request is not required to be submitted when the request is for any of the following: (i) documents prepared for or readily available to the public; (ii) rules and written statements of policy or interpretations formulated, adopted, or used by the agency; or (iii) final orders, decisions, and opinions.

Section 5 Hours of Inspections

When a request is made to inspect public records (as opposed to obtain copies), the requester will be advised when the records are available and he/she can then make an appointment to inspect those documents at the Board between the hours of 8:30 a.m. and 3:30 p.m. Monday through Friday. The time frame for the Board to respond to requests to inspect public records is the same as the time frame applicable to responding to requests for copies of public records as set forth above in Section (4) above.

Section 6 Fees

- (1) Official publications which the Board prepares in the discharge of its duties to inform the public on matters of public interest will be furnished free of charge when available.

- (2) The Board will supply one (1) copy of any of its Rules and Regulations to an individual requesting them free of charge. Rules and Regulations of the Board are on file at the Office of the Secretary of State and certified copies thereof may be obtained from that office. Rules and Regulations of the Board are also available online from the Secretary of State's website as well as the Board's website.
- (3) The Board charges a fee for copying and/or search and retrieval of requested documents consistent with applicable state law. The Board charges \$0.15 per copied page; provided however, if the response to the request consists of twenty (20) or fewer copied pages, no fee will be charged. If the response to the request consists of more than twenty (20) copied pages, there will be a charge of \$0.15 for each page. The Board will charge \$15.00 per hour for the search and retrieval time required to respond to a request, whether the request seeks copies of records or the right to inspect records; provided however, there will be no charge for the first hour of search and retrieval time. The Board will provide the requester with an estimate of the copying costs and search and retrieval costs prior to responding to the request. The Board however, will charge the actual fees for the number of copies and the actual cost for search and retrieval time if those are more or less than estimated. The Board reserves the right to require a deposit of the estimated costs if the estimated costs are \$50.00 or more.
- (4) The cost of copying and search and retrieval as provided in subsection (3) above must be paid in advance of or at the time of delivery or inspection of the requested documents.
- (5) Board personnel or, where applicable an outside copy service, will make copies of requested records. The Board does not have a copy machine available for use by the public to make copies.
- (6) The Board may utilize the form attached hereto as Exhibit B ("Response to Request to Inspect and/or Copy Public Records") to respond to a request; provided however, in some instances it may be appropriate for the Board to write a letter addressed to the requester setting forth such additional information as deemed appropriate under the circumstances.

Section 7 Supervision of Inspections

- (1) The inspection of public records must be accomplished in a manner which will provide for general supervision by authorized Board staff. This is necessary to prevent the misplacement or unauthorized removal of records or any other action which may impair the integrity of the public record.
- (2) The Board Coordinator having possession of the public record requested shall have overall responsibility for the security of the public record. However, the

individual in charge may designate a staff member(s) to coordinate the functions and responsibilities related to the copying and inspection of public records.

- (3) All personnel responsible for responding to requests for access to public records shall be made aware by their supervisors, of the provisions of this regulation and the procedures to be followed when an access to public records request is made. Board personnel having any questions regarding the procedures to be followed should direct inquiries to:
 - (a) The Board Coordinator who is responsible for the activity/function to which the public record being requested relates; or
 - (b) In the event that the public record cannot be readily categorized as falling under the responsibility of Board, the request should be directed to the Board Counsel which will serve as a resource in matters relating to the public's access to public records.

Section 8 Severability

If any provision of this Regulation or the application thereof to any individual or circumstances is held invalid, such invalidity shall not affect the provisions or application of the remaining portions of the regulation which can be given effect. The provisions of these rules and regulations are declared to be severable.

EXHIBIT A

**REQUEST TO INSPECT AND/OR COPY PUBLIC RECORDS
OF THE ENERGY FACILITY SITING BOARD
PURSUANT TO R.I. Gen. Laws § 38-2-1 et seq.**

Complete this form, sign and return to:

**Rhode Island Energy Facility Siting Board
89 Jefferson Boulevard, Warwick, Rhode Island 02888
telephone number: (401) 941-4500
facsimile number: (401) 941-1691**

NAME OF REQUESTER: _____

ADDRESS OF REQUESTER: _____

TELEPHONE NO. OF REQUESTER: _____

EMAIL: _____ FAX. NO.: _____

TITLE AND/OR DESCRIPTION OF DOCUMENT(S) REQUESTED TO BE
INSPECTED _____ OR COPIED _____:

Please be as specific and descriptive as possible to assure that the Board will be able to
respond to your request as efficiently and as completely as possible.

FORMAT REQUESTED:

PAPER: _____ FAX: _____ EMAIL (if available) _____

NAME AND TITLE OF PERSON WITHIN THE BOARD HAVING POSSESSION OF
DOCUMENT(S), IF KNOWN:

Copies of any document(s) are fifteen (\$.15) cents per page (or the actual reproduction cost of
paper larger than 8 ½" x 14"), plus an hourly charge of fifteen (\$15.00) dollars per hour for search
retrieval. There is no charge if the total number of pages is twenty (20) pages or fewer. There is
no charge for the first hour of search and retrieval.

Materials requested ARE _____ ARE NOT _____ sought for the purpose of pending
litigation involving the Board or the State of Rhode Island.

Date

Signature of Person Making Request

EXHIBIT B

**RESPONSE TO REQUEST TO INSPECT AND/OR COPY
PUBLIC RECORDS OF THE ENERGY FACILITY SITING BOARD
PURSUANT TO R.I. Gen. Laws § 38-2-1 et seq.**

Dear _____:

On _____ the Board received your Request to Inspect and/or Copy Public Records Pursuant to R.I. Gen. Laws § 38-2-1 et seq. A copy of your request is attached.

A. RESPONSE TO REQUEST:

- GRANTED
- DENIED/DENIED IN PART because the following record(s) which were requested are exempt from disclosure pursuant to the following provisions of law: _____
- NO SUCH DOCUMENT(S) EXIST IN THE BOARD'S RECORDS

B. PROCEDURE TO INSPECT/OBTAIN COPIES OF PUBLIC RECORDS BEING RELEASED PURSUANT TO SECTION A ABOVE:

- A copy of the requested records will be mailed to you (or you may call to make an appointment to pick up the records during the Board's normal business hours) upon the Board's receipt of payment of \$ _____ representing the copying costs i.e. \$ _____ and/or search and retrieval fees i.e. \$ _____ pursuant to R.I. Gen. Laws § 38-2-4. Please forward payment to the address listed below.
- A copy of the requested records is enclosed. (Because the number of copied pages was twenty (20) or fewer pages and there were no search and/or retrieval fees there was no fees associated with the Board's response to your request.)
- The requested records are available for inspection at the _____ Board between the hours of 8:30 a.m. and 3:30 p.m. Monday through Friday, at the address specified below. Please call to arrange an appointment. The search and retrieval costs associated with the request to inspect is \$ _____. That amount is payable at the time of the appointment to inspect the records.
- Not Applicable.

C. If your request, or any part thereof, is denied, you have the right to appeal to the Board Counsel. If your appeal is denied, you have the right to appeal to the Attorney General or the Superior Court.

DATED: _____ SIGNATURE: _____

Checks should be made out to: "General Treasurer, State of Rhode Island"
Mail or Hand deliver Checks to: Rhode Island Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, Rhode Island 02888