

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

**In re: Invenergy Thermal Development LLC           :                   SB-2015-06**  
**Application to Construct the Clear River           :**  
**Energy Center in Burrillville, R.I.                 :**

**MOTION OF INVENERGY THERMAL DEVELOPMENT LLC FOR  
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby requests that the Energy Facility Siting Board (“EFSB” or “the Board”) grant protection from public disclosure certain confidential information submitted in response to the Rhode Island Department of Administration, Division of Planning’s (“Division of Planning’s”) March 21, 2017 and March 29, 2017 Data Requests.

The confidential information that is the subject of this Motion and requires protective treatment from disclosure to the public is a spreadsheet titled “Clear River Economic Impact Data Inputs” that is being provided as a confidential attachment to the Division of Planning’s March 21, 2017 and March 29, 2017 Data Requests. Invenergy requests protective treatment of these documents in this proceeding in accordance with R.I. Gen. Laws § 38-2-2(4)(B).

**I.     LEGAL STANDARD**

Rhode Island’s Access to Public Records Act (“APRA”), R.I. Gen. Laws § 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. Gen. Laws § 38-2-2. Therefore, to the extent that information provided to the Board falls within one of the designated exceptions to APRA, the Board 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 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.

When interpreting APRA, the Rhode Island Supreme 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 Board 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. Further, where the release of information or data to a competitor will “cause substantial harm to the competitive position of the person from whom the information was obtained[.]” the Board should grant a request to protect the information from public disclosure. *Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001).

Moreover, the Rhode Island Supreme Court has held that the agencies applying the balancing test established in *Providence Journal v. Kane*, 577 A.2d 661 (R.I.1990) may grant protection of the information even if the requested document does not fall within one of the twenty-five (25) enumerated exceptions in APRA, where the requested document may be subject to redaction upon an appropriate balancing test weighing the public interests in disclosure against the privacy interests of the affected individual. *See Direct Action for Rights and Equality v.*

*Gannon (DARE I)*, 713 A.2d 218 (R.I. 1998) (*see also* *DARE (II)*, 819 A.2d 651 (R.I. 2003)); *Providence Journal Company v. Kane*, 577 A.2d 661 (R.I. 1990).

## **II. BASIS FOR CONFIDENTIALITY REQUEST**

In order to respond to the Division of Planning's March 21, 2017 and March 29, 2017 data requests, Invenergy's consultants, PA Consulting Group, Inc. ("PA") prepared a detailed spreadsheet containing detailed economic and cost inputs as calculated based on a series of confidential PA's market assumptions, financial analysis and economic inputs provided by Invenergy. This information is not generally available to the public. Providing the details of Invenergy's cost data, PA's market assumptions and financial analysis data in a public filing would cause Invenergy "substantial harm to the competitive position" of the Company. *See Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001). PA's inputs to this spreadsheet should therefore be protected under the trade secret and commercial information exception, as authorized at R.I. Gen. Laws § 38-2-2(4). *See id.* This type of data is also similar to the information that the Board has previously protected as confidential information. *See* Order No. 82 (March 10, 2016), Order No. 99 (October 3, 2016), Order No. 101 (October 5, 2016) and Order No. 109 (March 28, 2017). Finally, Invenergy's financial models and the firm quotes Invenergy has received from other companies are highly confidential.

For the reasons stated above, this information should be exempt from the definition of a public record under APRA as ". . . commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature." R.I. Gen. Laws § 38-2-2(4)(B). The EFSB should determine that the information provided is confidential and provide protective treatment for this information by granting this Motion for a Protective Order, pursuant to R.I. Gen. Laws § 38-2-2. Invenergy respectfully requests that these documents identified

herein (i) be kept confidential indefinitely, (ii) not be placed in the public docket, and (iii) be disclosed only to the EFSB, attorneys and expert consultants as necessary to this proceeding and in accordance with the protections ordered.

**WHEREFORE**, the Invenergy respectfully requests that the Board grant this Motion for Protective Treatment as stated herein.

Respectfully submitted,  
Invenergy Thermal Development LLC  
By its attorneys,

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Dated: April 17, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on April 17, 2017, I delivered a true copy of the foregoing Motion via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer

**SB-2015-06 Invenergy CREC Service List as of 04/17/2017**

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