

**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 the testimony of Ryan Hardy of PA Consulting Inc, and in the Exhibits RH-2 and RH-3 attached to Invenergy’s expert testimony of Ryan Hardy, PA Consulting Group, Inc. (“PA”). The reasons for the need to protect this information are summarized below.

The PA documents and testimony that are the subject of this Motion that require protective treatment from disclosure to the public are: (1) an April 22, 2016 Memorandum (“Exhibit RH-2”) and supporting materials that describes PA’s methodology for projecting capacity prices for future Forward Capacity Auction, with price projections and cash flow projections for the Clear River Energy Center Project (“CREC Project”); and (2) a second April 22, 2016 Memorandum (“Exhibit RH-3”) and supporting materials used in the confidential version of testimony of Mr. Hardy that describes PA’s analysis, market assumptions and modeling methodology, as well as PA’s projections of the operations and energy margins of the proposed CREC Project. Invenergy requests protective treatment of these PA documents in this proceeding in accordance with R.I. Gen. Laws § 38-2-2(4)(B). The Board has previously granted protective treatment of similar PA documents. *See* EFSB Order No. 82.

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

Exhibit RH-2. This document describes PA's methodology for projecting capacity prices for future Forward Capacity Auction with price projections and cash flow projections for the Clear River Energy Center ("CREC") Project. PA utilized information available from previous forward capacity auctions and then, utilizing proprietary modeling and methodologies, provided Invenergy with sensitive forecasting of projected capacity prices that Invenergy relied on in the competitive bidding processes with the ISO/NE. This information is highly sensitive and, if disclosed to the public and/or competitors would harm Invenergy's competitive position in the wholesale electricity market.

Exhibit RH-3. This document describes PA's confidential analysis, market assumptions and modeling methodology, as well as PA's projections of the operations and energy margins of the proposed CREC Project. PA utilized data to create forecasting models with regard to market structure, fuels, fuel sourcing, projections of pricing, market performance, and asset

performance—all supported by detailed modeling and data assumptions. This information is also highly sensitive commercial forecasting information, and, if disclosed to the public and/or competitors, would harm Invenergy’s competitive position in the wholesale electricity market.

Invenergy and PA treat the data and information in these PA memoranda and the testimony as confidential and commercially sensitive information. This information is not generally available to the public, to other companies, nor is this information typically filed with the EFSB or other state agencies. Providing the details of PA’s price forecasting and market projection analysis 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). The detailed market data and modeling details referenced in these memoranda and in the supporting documents should therefore be protected under the trade secret and commercial information exception, as authorized at R.I. Gen. Laws § 38-2-2(4). *Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001).

In sum, other businesses and entities should not be allowed to access or utilize PA’s internal proprietary market and pricing formulas, projections and methodology that were prepared for the use of only Invenergy in order to develop the CREC Project in response to the ISO-NE forward capacity market auction process. This type of information is always treated as confidential by Invenergy, PA, and the industry as a whole.

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 redacted data and supporting materials provided in regards to these two PA memoranda 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 the full PA documents identified herein and supporting data and information used in the confidential version of testimony of Mr. Hardy (i) be kept confidential indefinitely, (ii) not be placed in the public docket, and (iii) be disclosed only to the EFSB, its 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: July 20, 2016

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2016, 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 07/15/2016

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