

**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 Invenenergy with sensitive forecasting of projected capacity prices that Invenenergy 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 Invenenergy'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,

/s/ Alan M. Shoer  
Alan M. Shoer (#3248)  
Richard R. Beretta (#4313)  
Nicole M. Verdi (#9370)  
Adler Pollock & Sheehan P.C.  
One Citizens Plaza  
8<sup>th</sup> Floor  
Providence, Rhode Island 02903  
(401) 274-7200 (Telephone)  
(401) 751-0604 (Facsimile)

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**

Name/Address	E-mail	Phone/FAX
<p><b>File an original and 10 copies with EFSB:</b>            Todd Bianco, Coordinator            Energy Facility Siting Board            89 Jefferson Boulevard            Warwick, RI 02888</p> <p>Margaret Curran, Chairperson            Janet Coit, Board Member            Assoc. Dir., Div. of Planning Parag Agrawal            Patti Lucarelli Esq., Board Counsel            Susan Forcier Esq., Counsel            Rayna Maguire, Asst. to the Director DEM</p>	Todd.Bianco@puc.ri.gov;	401-780-2106
	Patricia.lucarelli@puc.ri.gov;	
	Margaret.Curran@puc.ri.gov;	
	janet.coit@dem.ri.gov;	
	susan.forcier@dem.ri.gov;	
	rayna.maguire@dem.ri.gov;	
<p><b>Parties (Electronic Service Only, Unless by Request)</b></p>		
<p>Invenergy Thermal Development LLC            Alan Shoer, Esq.            Richard Beretta, Esq.            Elizabeth Noonan, Esq.            Nicole Verdi, Esq.            Adler, Pollock &amp; Sheehan            One Citizens Plaza, 8<sup>th</sup> Floor            Providence, RI 02903</p>	ashoer@apslaw.com;	401-274-7200
	rberetta@apslaw.com;	
	enoonan@apslaw.com;	
	nverdi@apslaw.com;	
<p>John Niland, Dir. Of Business Development            Tyrone Thomas, Esq., Asst. General Counsel            Invenergy Thermal Development LLC            One South Wacker Drive, Suite 1900            Chicago, IL 60600</p>	jniland@invenergylle.com;	312-224-1400
	Tthomas@invenergylle.com;	
<p>Town of Burrillville            Michael McElroy, Esq., Special Counsel            Leah Donaldson, Esq., Special Counsel            Schacht &amp; McElroy            PO Box 6721            Providence, RI 02940-6721</p>	Michael@mcelroylawoffice.com;	401-351-4100
	leah@mcelroylawoffice.com;	
<p>Oleg Nikolyszyn, Esq., Town Solicitor            155 South Main St., Suite 303            Providence, RI 02903</p>	Nikolyszyn@gmail.com;	401-474-4370
<p>Conservation Law Foundation            Jerry Elmer, Esq.            Max Greene, Esq.            55 Dorrance Street            Providence RI, 02903</p>	Jelmer@clf.org;	401-351-1102
	Mgreene@clf.org;	
<p>Ms. Bess B. Gorman, Esq.            Assistant General Counsel and Director            Legal Department, National Grid</p>	Bess.Gorman@nationalgrid.com;	781-907-1834

40 Sylvan Road Waltham, MA 02451 Mark Rielly, Esq. Senior Counsel	<a href="mailto:Mark.rielly@nationalgrid.com">Mark.rielly@nationalgrid.com</a> ;	
Office of Energy Resources Andrew Marcaccio, Esq. Nick Ucci, Chief of Staff Chris Kearns, Chief Program Development One Capitol Hill Providence, RI 02908  Ellen Cool Levitan & Associates	<a href="mailto:Andrew.Marcaccio@doa.ri.gov">Andrew.Marcaccio@doa.ri.gov</a> ;	401-222-3417
	<a href="mailto:Nicholas.Ucci@energy.ri.gov">Nicholas.Ucci@energy.ri.gov</a> ;	401-574-9100
	<a href="mailto:Christopher.Kearns@energy.ri.gov">Christopher.Kearns@energy.ri.gov</a> ;	
	<a href="mailto:egc@levitan.com">egc@levitan.com</a> ;	
Rhode Island Building and Construction Trades Council Gregory Mancini, Esq. Sinapi Law Associates, Ltd. 2374 Post Road, Suite 201 Warwick, RI 02886	<a href="mailto:gmancinilaw@gmail.com">gmancinilaw@gmail.com</a> ;	401-739-9690
Residents of Wallum Lake Road, Pascoag, RI Dennis Sherman and Kathryn Sherman Christian Capizzo, Esq. Shechtman Halperin Savage, LLP 1080 Main Street Pawtucket, RI 02869	<a href="mailto:ccapizzo@shslawfirm.com">ccapizzo@shslawfirm.com</a> ;	401-272-1400
	<a href="mailto:kags8943@gmail.com">kags8943@gmail.com</a> ;	
Residents of Wallum Lake Road, Pascoag, RI Paul Bolduc and Mary Bolduc Joseph Keough Jr., Esq. 41 Mendon Avenue Pawtucket, RI 02861  Paul and Mary Bolduc 915 Wallum Lake Road Pascoag, RI 02859	<a href="mailto:jkeoughjr@keoughsweeney.com">jkeoughjr@keoughsweeney.com</a> ;	401-724-3600
	<a href="mailto:oatyssl@verizon.net">oatyssl@verizon.net</a> ;	401-529-0367
Abutton David B. Harris Michael Sendley, Esq. 600 Putnam Pike, St. 13 Greenville, RI 02828	<a href="mailto:mSENDLEY@cox.net">mSENDLEY@cox.net</a> ;	401-349-4405
<b>Interested Persons (Electronic Service Only)</b>		
Residents of 945 Wallum Lake Road, Pascoag, RI (Walkers) Nicholas Gorham, Esq. P.O. Box 46 North Scituate, RI 02857	<a href="mailto:nickgorham@gorhamlaw.com">nickgorham@gorhamlaw.com</a> ;	401-647-1400
	<a href="mailto:edaigle4@gmail.com">edaigle4@gmail.com</a> ;	
Peter Nightingale, member Fossil Free Rhode Island 52 Nichols Road Kingston, RI 02881	<a href="mailto:divest@fossilfreeri.org">divest@fossilfreeri.org</a> ;	401-789-7649

Sister Mary Pendergast, RSM 99 Fillmore Street Pawtucket, RI 02860	<a href="mailto:mpendergast@mercyne.org">mpendergast@mercyne.org</a> ;	401-724-2237
Patricia J. Fontes, member Occupy Providence 57 Lawton Foster Road South Hopkinton, RI 02833	<a href="mailto:Patfontes167@gmail.com">Patfontes167@gmail.com</a> ;	401-516-7678
Burrillville Land Trust Marc Gertsacov, Esq. Law Offices of Ronald C. Markoff 144 Medway Street Providence, RI 02906	<a href="mailto:marc@ronmarkoff.com">marc@ronmarkoff.com</a> ;	401-272-9330
Paul Roselli, President Burrillville Land Trust PO Box 506 Harrisville, RI 02830	<a href="mailto:proseli@cox.net">proseli@cox.net</a> ;	401-447-1560
Rhode Island Progressive Democrats of America Andrew Aleman, Esq. 168 Elmgrove Avenue Providence, RI 02906	<a href="mailto:andrew@andrewaleman.com">andrew@andrewaleman.com</a> ;	401-429-6779
Fighting Against Natural Gas and Burrillville Against Spectra Expansion Jillian Dubois, Esq. The Law Office of Jillian Dubois 91 Friendship Street, 4 <sup>th</sup> Floor Providence, RI 02903	<a href="mailto:jillian.dubois.esq@gmail.com">jillian.dubois.esq@gmail.com</a> ;	401-274-4591
Burrillville Town Council c/o Louise Phaneuf, Town Clerk 105 Harrisville Main Street Harrisville, RI 02830	<a href="mailto:lphaneuf@burrillville.org">lphaneuf@burrillville.org</a> ;	401-568-4300
Thomas J. Kravitz, Town Planner Christine Langlois, Deputy Planner Town of Burrillville 144 Harrisville Main Street Harrisville, RI 02830	<a href="mailto:tkravitz@burrillville.org">tkravitz@burrillville.org</a> ; <a href="mailto:clanglois@burrillville.org">clanglois@burrillville.org</a> ; <a href="mailto:jraymond@burrillville.org">jraymond@burrillville.org</a> ;	401-568-4300
Joseph Raymond, Building Official		
Michael C. Wood, Town Manager Town of Burrillville 105 Harrisville Main Street Harrisville, RI 02830	<a href="mailto:mcwood@burrillville.org">mcwood@burrillville.org</a> ;	401-568-4300 ext. 115
Mr. Leo Wold, Esq. Department of Attorney General 150 South Main Street Providence, RI 02903	<a href="mailto:LWold@riag.ri.gov">LWold@riag.ri.gov</a> ;	401-274-4400



Public Utilities Commission Cynthia Wilson Frias, Esq., Dep. Chief of Legal Alan Nault, Rate Analyst	<a href="mailto:Cynthia.Wilsonfrias@puc.ri.gov">Cynthia.Wilsonfrias@puc.ri.gov</a> ; <a href="mailto:Alan.nault@puc.ri.gov">Alan.nault@puc.ri.gov</a> ;	401-941-4500
Division of Public Utilities and Carriers John J. Spirito, Esq., Chief of Legal Steve Scialabba, Chief Accountant Tom Kogut, Chief of Information	<a href="mailto:john.spirito@dpuc.ri.gov">john.spirito@dpuc.ri.gov</a> ; <a href="mailto:steve.scialabba@dpuc.ri.gov">steve.scialabba@dpuc.ri.gov</a> ; <a href="mailto:thomas.kogut@dpuc.ri.gov">thomas.kogut@dpuc.ri.gov</a> ;	401-941-4500
Matthew Jerzyk, Deputy Legal Counsel Office of the Speaker of the House State House, Room 302 Providence RI, 02903	<a href="mailto:mjerzyk@rilin.state.ri.us">mjerzyk@rilin.state.ri.us</a> ;	401-222-2466
Hon. Cale Keable, Esq., Representative of Burrillville and Glocester	<a href="mailto:Cale.keable@gmail.com">Cale.keable@gmail.com</a> ;	401-222-2258
Nick Katkevich	<a href="mailto:nkatkevich@gmail.com">nkatkevich@gmail.com</a> ;	
Ambar Espinoza	<a href="mailto:aespinoza@ripr.org">aespinoza@ripr.org</a> ;	
Joseph Bucci, Acting Administrator Highway and Bridge Maintenance Operations RI Department of Transportation	<a href="mailto:joseph.bucci@dot.ri.gov">joseph.bucci@dot.ri.gov</a> ;	
Jared Rhodes, Chief Statewide Planning Program	<a href="mailto:jared.rhodes@doa.ri.gov">jared.rhodes@doa.ri.gov</a> ;	
Jennifer Sternick Chief of Legal Services RI Department of Administration	<a href="mailto:Jennifer.sternick@doa.ri.gov">Jennifer.sternick@doa.ri.gov</a> ;	
Doug Gablinske, Executive Director TEC-RI	<a href="mailto:doug@tecri.org">doug@tecri.org</a> ;	
Tim Faulkner ecoRI News 111 Hope Street Providence, RI 02906	<a href="mailto:tim@ecori.org">tim@ecori.org</a> ;	401-330-6276
Robert Tormey Conanicut Energy, LLC	<a href="mailto:rjtormey@conanicutenergy.com">rjtormey@conanicutenergy.com</a> ;	617-306-1601
Sally Mendzela	<a href="mailto:salgalpal@hotmail.com">salgalpal@hotmail.com</a> ;	
Keep Burrillville Beautiful Paul LeFebvre	<a href="mailto:paul@acumenriskgroup.com">paul@acumenriskgroup.com</a> ;	401-714-4493
Mark Baumer	<a href="mailto:everydayyeah@gmail.com">everydayyeah@gmail.com</a> ;	
Nisha Swinton Food & Water Watch New England	<a href="mailto:nswinton@fwwatch.org">nswinton@fwwatch.org</a> ;	
Kaitlin Kelliher	<a href="mailto:Kaitlin.kelliher@yahoo.com">Kaitlin.kelliher@yahoo.com</a> ;	
Joe Piconi, Jr.	<a href="mailto:jiggzy@hotmail.com">jiggzy@hotmail.com</a> ;	
Hon. Aaron Regunberg Representative of Providence, District 4	<a href="mailto:Aaron.regunberg@gmail.com">Aaron.regunberg@gmail.com</a> ;	

Paul Ernest	<a href="mailto:paulwernest@gmail.com">paulwernest@gmail.com</a> ;	
Skip Carlson	<a href="mailto:scarlson@metrocast.net">scarlson@metrocast.net</a> ;	
Kathryn Scaramella	<a href="mailto:kscaramella@outlook.com">kscaramella@outlook.com</a> ;	
Diana Razzano	<a href="mailto:Dlrazzano13@verizon.net">Dlrazzano13@verizon.net</a> ;	
David Goldstein	<a href="mailto:tmdgroup@yahoo.com">tmdgroup@yahoo.com</a> ;	
Douglas Jobling	<a href="mailto:djobling@cox.net">djobling@cox.net</a> ;	
Claudia Gorman	<a href="mailto:corkyhg@gmail.com">corkyhg@gmail.com</a> ;	
Curt Nordgaard	<a href="mailto:Curt.nordgaard@gmail.com">Curt.nordgaard@gmail.com</a> ;	
Collee Joubert	<a href="mailto:Colleenj1@cox.net">Colleenj1@cox.net</a> ;	
Matt Smith Food & Water Watch	<a href="mailto:msmith@fwwatch.org">msmith@fwwatch.org</a> ;	
Christina Hoefsmit, Esq. Senior Legal Counsel RI Department of Environmental Management	<a href="mailto:Christina.hoefsmit@dem.ri.gov">Christina.hoefsmit@dem.ri.gov</a> ;	
Steven Ahlquist, RIFuture	<a href="mailto:atomicsteve@gmail.com">atomicsteve@gmail.com</a> ;	