



State of Rhode Island and Providence Plantations

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*Patrick C. Lynch, Attorney General*

February 17, 2010

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

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2011 FEB 18 PM 12:19  
PUBLIC UTILITIES COMMISSION

Re: Review of Proposed Town of New Shoreham  
Project, Pursuant to R.I.G.L. § 39-26.1-7  
Docket No. 4111

Dear Ms. Massaro:

Enclosed please find an original and nine (9) copies of the Division's Motion for Protective Treatment of Confidential Information. The Division is seeking protective treatment of a confidential attachment identified in the Division's response to Deepwater Wind Block Island, LLC's First Set of Data Requests, DWW 1-1 pursuant to Commission Rules of Practice and Procedure 1.2 (g) and by RIGL §38-2-2(4)(i)(B).

I am providing together with this motion one (1) copy of a confidential attachment in response to DWW 1-1 for the sole purpose of the Commission making an in camera inspection of the documents therein in aid of disposition of the Division's motion.

Please be advised that I have contemporaneously transmitted a confidential copy of the aforementioned attachment to Deepwater Wind Block Island, LLC pending disposition of the Division's Motion.

Thank you for your attention to this matter and if you should have any questions kindly contact me at your convenience.

Very truly yours,

Jon G. Hagopian  
Special Assistant Attorney General

Enclosures

cc: Service List

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE PUBLIC UTILITIES COMMISSION

IN RE: REVIEW OF PROPOSED ) DOCKET NO. 4119  
TOWN OF NEW SHOREHAM PROJECT)  
PURSUANT TO R.I.G.L. § 39-26.1-7 )

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DIVISION'S MOTION FOR PROTECTIVE TREATMENT  
OF CONFIDENTIAL INFORMATION

I. INTRODUCTION

Now comes the Rhode Island Division of Public Utilities and Carriers (the "Division") and hereby requests that the Rhode Island Public Utilities Commission (the "Commission") provide confidential treatment of certain information sought by Deepwater Wind Block Island, LLC ("Deepwater"), and in addition grant the Division protection from public disclosure of certain confidential, proprietary and competitively sensitive information of the Division's expert witness. The Division seeks this request pursuant to Commission Rule 1.2(g), 1.18 (e) and RIGL §38-2-2 (4)(i)(B). The Division also seeks in accordance with past practices of the Commission and Rule 1.2 (g)(2) that the Commission grant confidential treatment of the information requested by Deepwater on a preliminary basis.

II. FACTS

On or about February 5, 2010, the Division was served with Deepwater Wind Block Island, LLC's ("Deepwater") First set of Data Requests. Data Request 1-1 interposed by Deepwater sought inter alia that the Division's expert Richard S. Hahn ("Hahn") produce all work papers, including, but not limited to, his cash flow analysis, capital costs, and any other assumptions, which collectively support the opinions and the

conclusions reached in the testimony of this witness. The Division's expert Hahn utilized certain proprietary models and formulae in preparation of his testimony which if disclosed publically would place Mr. Hahn and LaCapra Associates at a competitive disadvantage in their industry. The information that is claimed confidential consists of three documents containing analytical models.

### **III. APPLICABLE LAW**

Rule 1.2 (g) of the Commission's Rules of Practice and Procedure provides in pertinent part that access to a public record shall be granted pursuant to the Access to Public Records act ("APRA"), RIGL §38-2-1, *et seq.* APRA clearly provides, 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 set forth in the documents and materials falls within one of the enumerated exceptions identified in RIGL §38-2-2(4). If in fact information is deemed to be of a nature that meets an exception to the public records act, the Commission has the power under the APRA to protect such information from public disclosure.

R.I.G.L. §38-2-2(4)(i)(B) provides that the following records are not deemed to be public:

Trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature.

Indeed the Rhode Island Supreme Court in Providence Journal Company v. Convention Center Authority, 774 A.2d 40, 48 (R.I. 2001) adopted the definition set forth in federal case law which defined confidential information as "any financial or commercial information whose disclosure would be likely either" "(1) to impair the

governments ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.’ See, National Parks and Conservation Association v. Morton, 498 F.2d 756, 770 (D.C.Cir. 1974). The Court in Providence Journal 774 A.2d at 47, further adopted the test enunciated in Critical Mass Energy Project v. Nuclear Regulatory Commission, 975 F.2d 871, 879 (D.C.Cir. 1992) which provides that “financial or commercial information provided to the government on a voluntary basis is confidential if it is of a kind that would customarily not be released to public by the person from whom it was obtained”.

Similarly the Rhode Island Supreme Court in Providence Journal v. Cane, 577 A.2d 661, (RI 1990) held that an agency called upon to dispose of a request to compel disclosure of information pursuant APRA has the discretion to apply a balancing test and may protect information from public disclosure if the benefit of such protection outweighs the public interest inherent in disclosure. This test however is triggered only in situations where the records or information sought have been first determined to be public.

#### **IV. DISCUSSION**

The Division asserts that the techniques, formulas analytical models utilized by its expert in preparation of his testimony are proprietary in nature. This information is not of the type that is customarily available to the public and is provided to the commission strictly for the purpose of aiding it in its fact-finding mission. There is a strong likelihood that if the information and analytical models which are proprietary are disclosed to the

public that the information will be used by the competitors in Mr. Hahn's industry for intellectual and financial gain. Finally, it would not be the custom or practice of Mr Hahn to release the underlying work papers analytical models or other proprietary processes at issue here to the public.

#### V. CONCLUSION

For the foregoing reasons the Division respectfully request that the analytical models set-forth in the three documents of Mr. Hahn prepared in support of his testimony be protected from public disclosure.

#### **RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS**



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**DATED: February 12<sup>th</sup>, 2010**