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August 2, 2010

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

**Re: Docket No. 4185**

Dear Ms. Massaro:

Enclosed please find an original and 12 copies of the following documents:

1. DEEPWATER WIND BLOCK ISLAND, LLC'S OBJECTION TO THE RHODE ISLAND ATTORNEY GENERAL, PATRICK C. LYNCH'S MOTION FOR PROTECTIVE ORDER, and DEEPWATER WIND BLOCK ISLAND, LLC'S MOTION TO STRIKE OBJECTIONS AND COMPEL RESPONSES TO DATA REQUESTS

Please note that electronic copies of these documents have been provided to the Service List.

Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf  
Enclosures  
cc: Service List (via electronic mail)

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

<b>IN RE: REVIEW OF AMENDED POWER</b>	<b>:</b>	<b>DOCKET NO. 4185</b>
<b>PURCHASE AGREEMENT BETWEEN</b>	<b>:</b>	
<b>NARRAGANSETT ELECTRIC COMPANY</b>	<b>:</b>	
<b>D/B/A NATIONAL GRID</b>	<b>:</b>	
<b>AND DEEPWATER WIND BLOCK ISLAND, LLC,</b>	<b>:</b>	
<b>PURSUANT TO R.I. GEN. LAWS § 39-26.1-7</b>	<b>:</b>	

**DEEPWATER WIND BLOCK ISLAND, LLC’S OBJECTION TO THE RHODE  
ISLAND ATTORNEY GENERAL, PATRICK C. LYNCH’S MOTION FOR  
PROTECTIVE ORDER**

**and**

**DEEPWATER WIND BLOCK ISLAND, LLC’S MOTION TO STRIKE  
OBJECTIONS AND COMPEL RESPONSES TO DATA REQUESTS**

**I. INTRODUCTION**

The Attorney General, Patrick C. Lynch (“Attorney General”), has filed a motion with the Rhode Island Public Utilities Commission (“Commission”) requesting confidential treatment of answers to data requests issued by Deepwater Wind Block Island, LLC (“Deepwater Wind”). Deepwater Wind objects to this request. Further, Deepwater Wind requests that the Commission strike the Attorney General’s objections to Deepwater Wind’s Data Requests 1 and 2 and compel answers to these requests.

**II. FACTS**

On July 20, 2010, the Attorney General filed the direct testimony of William P. Short

III. It is assumed that Mr. Short is being offered as an “expert” of some type in this Docket.<sup>1</sup>

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<sup>1</sup> Mr. Short’s testimony provided opinions on a number of topics. Thus, it is difficult to discern the particular area of expertise for which his testimony is offered. For instance, Mr. Short provided testimony on economic benefits (see Short direct, pp. 12-17). Yet according to his response to Deepwater Wind data

In his direct testimony, Mr. Short was asked to describe his “qualification and experience.” In response, Mr. Short testified that:

“Since leaving Ridgewood in 2008, I established a consulting practice. Given my knowledge of and experience with the New England power and REC markets, all of my clients’ operations are located in New England. I represent the owners or developers of wind, biomass, solar, co-generation and hydro-electric projects. I qualify, manage and sell for these clients some or all of their REC production. I also represent load serving entities in Connecticut, Massachusetts, Maine, New Hampshire and Rhode Island. I regularly manage and purchase for these clients all of their REC requirements.”<sup>2</sup>

In direct response to this testimony, Deepwater Wind issued two data requests.

These requests and Mr. Short’s responses are as follows:

**1-1. On page 3 of Mr. Short’s direct testimony, he states that he “represents the owners or developers of wind, biomass, solar and hydro-electric projects,” and that he qualifies, manages and sells for “these clients” all of their REC production. In reference to this testimony, please provide the name and address of each of his clients who are owners or developers of wind, biomass, solar and hydro-electric projects for which he qualifies, manages and sells REC production.**

Objection to data request 1-1 as all client information is sensitive business data and, further, is not relevant or material and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Mr. Short is willing to submit this information to the Commission under seal and with such protective orders as the Commission may reasonably direct.

Prepared by: William P. Short III  
July 30, 2010

**1-2. On page 3 of Mr. Short’s direct testimony, he states that he represents “load serving entities in Connecticut, Massachusetts, Maine, New Hampshire and Rhode Island” and that he regularly manages and purchases all the REC requirements for “these clients.” In reference to this testimony, please provide the name and address of each of his clients who are load serving entities for which he purchases all their REC requirements.**

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request 1-21, he has not performed any economic development, economic benefit and or economic benefit impact studies in the last five years.

<sup>2</sup> See William Short III, Direct Testimony, p.3

Objection to data request 1-2 as all client information is sensitive business data and, further, is not relevant or material and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving these objections, Mr. Short is willing to submit this information to the Commission under seal and with such protective orders as the Commission may reasonably direct.

Prepared by: William P. Short III  
July 30, 2010

The information sought should be disclosed as it is relevant, material and reasonably calculated to lead to the discovery of admissible evidence.

### **III. ARGUMENT**

The Attorney General's Motion For Protective Order cites no legal standard to support its argument that the information sought is "sensitive and confidential." Nevertheless, it is assumed that the Attorney General has made its request pursuant to Commission Rule 1.2(g), which states that "[a]ny claim of privilege shall be governed by the policy underlying the Access to Public Records Act, with the burden of proof resting on the party claiming the privilege."

Under the Access to Public Records Act (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 set forth in the documents and materials falls within one of the enumerated exceptions identified in RIGL §38-2-2(4). As such, the Commission has the authority under the APRA to protect such information from public disclosure and deem it to be confidential provided it falls within one of the specific exceptions to the APRA. A review of RIGL §38-2-2(4)(i)(B) indicates 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."

In the instant case, the Attorney General has not set forth *any* basis for its claim that the information sought is privileged or confidential. And on this basis alone, the Attorney General's request for confidential treatment should be denied.

Moreover, Mr. Short touted his representation of "owners or developers of wind, biomass, solar, co-generation and hydro-electric projects," and "load serving entities in Connecticut, Massachusetts, Maine, New Hampshire and Rhode Island." Mr. Short's testimony in this regard was made in an effort to bolster his credentials. He should not be allowed to affirmatively claim expertise and then seek to shelter the basis of his purported expertise behind a claim of confidentiality, which denies the parties to this case the opportunity to make a determination as to whether to challenge his credentials as an expert.<sup>3</sup>

Furthermore, the identity of Mr. Short's clients impacts the credibility and relevancy of his testimony. For example, the requested information could establish bias on his part. He has clearly stated that he represents the "owners or developers of wind...projects." This could include competitors of Deepwater Wind. If this were the case, then it is relevant and appropriate for Deepwater Wind (and other parties) to examine whether that representation has biased Mr. Short's opinions.

## **V. CONCLUSION**

For the reasons set forth herein, Deepwater Wind Block Island, LLC requests that this Commission deny the Motion For Protective Order filed by The Attorney General, Patrick C. Lynch, and that the Commission strike the objections to Deepwater Wind

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<sup>3</sup> In the alternative, Deepwater Wind has no objection to a stipulation by the Attorney General that Mr. Short's testimony is not expert testimony, but merely offered as a fact witness.

Block Island LLC's Data Requests 1 and 2 issued to the Attorney General and compel answers to these requests.

DEEPWATER WIND BLOCK ISLAND, LLC

By its attorney,

  
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### **CERTIFICATION**

I hereby certify that on August 1, 2010, a copy of the following documents were sent to all parties set forth on the attached Service List by electronic mail and on August 2, 2010, copies were sent to Luly Massaro, Commission Clerk, by hand delivery:

1. DEEPWATER WIND BLOCK ISLAND, LLC'S OBJECTION TO THE RHODE ISLAND ATTORNEY GENERAL, PATRICK C. LYNCH'S MOTION FOR PROTECTIVE ORDER

and

DEEPWATER WIND BLOCK ISLAND, LLC'S MOTION TO STRIKE OBJECTIONS AND COMPEL RESPONSES TO DATA REQUESTS

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