

April 8, 2016

Via Electronic Mail and Hand Delivery

Ms. Luly Massaro
Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Re: Invenergy Thermal Development LLC's Application to Construct and Operate the Clear River Energy Center, Public Utilities Commission Advisory Opinion – Docket: 4609

Dear Ms. Massaro:

On behalf of Invenergy, please find enclosed an original and nine (9) copies of Invenergy's responses to the Division of Public Utilities Commission's First Set of Data Requests. The confidential/protected information requested is being filed in a sealed envelope marked "Confidential." These documents are subject to the March 10, 2016 Protective Order issued by the Energy Facilities Siting Board, and a separate Motion for Protective Treatment, to the extent it is necessary, is attached.

Electronic copies of the responses have been provided to the service list.

If you have any questions, please do not hesitate to contact me at (401) 274-7200.

Very truly yours,


ALAN M. SHOER
ashoer@apslaw.com

Enclosures

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

In re: Invenergy Thermal Development LLC : Docket No. 4609
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” or the “Company”) and hereby requests that the Public Utilities Commission (“PUC”) grant protection from public disclosure certain confidential information submitted in response to the requests of the Division of Public Utilities and Carriers (“DPUC”) in this proceeding. Specifically, Invenergy seeks to protect certain confidential information prepared by PA Consulting Group, Inc. (“PA”) that was filed with the Energy Facilities Siting Board (“EFSB”) on November 9, 2015 and deemed confidential by Order of the EFSB on January 12, 2016 (written Order on March 10, 2016).¹ The reasons for the need to protect this information are summarized below and described in the EFSB Order wherein the EFSB concluded that “the memoranda shall be kept confidential indefinitely, not placed in the public docket, and be disclosed only to the Board, its attorneys, and staff as necessary to review Invenergy’s application.” (EFSB Order of March 10, 2016 at pg 2). Invenergy seeks to protect this same data and work product developed by PA that is requested by the DPUC for use in this proceeding.

The PA documents that are the subject of this Motion that require protective treatment from disclosure to the public a July 29, 2015 Memorandum and supporting materials that describes PA’s methodology for projecting capacity prices for the upcoming 2019/20 Forward Capacity Auction, with price projections and cash flow projections for the Clear River Energy

¹ A copy of the January 12, 2016 Order (written Order issued March 10, 2016) of the EFSB is attached to this Motion.

Center (“CREC”) Project and the June 19, 2015 Memorandum and supporting materials 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. Invenenergy requests protective treatment of certain information and data in these PA documents in this proceeding in accordance with R.I.G.L. §38-2-2(4)(B).

I. LEGAL STANDARD

Rhode Island’s Access to Public Records Act (APRA), R.I.G.L. §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.G.L. §38-2-2. Therefore, to the extent that information provided to the PUC falls within one of the designated exceptions to APRA, the PUC 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.G.L. §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 PUC 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.” *Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I.2001), the PUC should grant a request to protect the information from public disclosure.

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. *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).²

II. BASIS FOR CONFIDENTIALITY REQUEST

The July 29, 2015 Memorandum from PA. This document describes PA’s methodology for projecting capacity prices for the 2019/20 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 will be relying on in competitive bidding processes with the ISO/NE. This information is highly sensitive and, if disclosed to the public and/or competitors would harm

² Invenergy has provided the PUC with redacted documents for the PUC’s use in the public files in its response to the DPUC data request.

Invenergy's competitive position in the wholesale electricity market. This document was deemed confidential by Order of the EFSB on January 12, 2016 (written Order on March 10, 2016).

The June 19, 2015 Memorandum from PA to Invenergy. 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. This document was deemed confidential by Order of the EFSB on January 12, 2016 (written Order on March 10, 2016).

Invenergy and PA treat the data and information in these PA memoranda and spreadsheet 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 PUC 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 as it seeks to compete in a competitive market bidding process for wholesale generation of electricity. 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.G.L. §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, and as explained in the EFSB Order of March 10, 2016, 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.G.L. §38-2-2(4)(B). The PUC 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.G.L. §38-2-2. Invenergy respectfully requests that the full PA documents identified herein (i) be kept confidential indefinitely, (ii) not be placed in the public docket, and (iii) be disclosed only to the PUC, the DPUC, its attorneys and expert consultants as necessary to this proceeding and in accordance with the protections ordered by the EFSB in its March 10, 2016 written Order.

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

Respectfully submitted,
Invenergy Thermal Development LLC
By its attorneys,



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Dated: April 8, 2016

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

IN RE: INVENERGY THERMAL DEVELOPMENT LLC :
APPLICATION TO CONSTRUCT AND :
OPERATE THE CLEAR RIVER ENERGY : **SB-2015-06**
CENTER, BURRILLVILLE, RHODE ISLAND :
MOTION FOR PROTECTIVE TREATMENT :

ORDER

This matter came before the Energy Facility Siting Board on a Motion for Protective Treatment filed by Invenergy Thermal Development LLC (Invenergy). Invenergy requests that certain memoranda prepared by its consultant, PA Consulting Group, Inc. (PA), be kept confidential indefinitely, not be placed in the public docket, and be disclosed only to the Board, its attorneys and staff as necessary to review Invenergy’s Application. Specifically, the memoranda identified by Invenergy are: 1) a July 29, 2015 Memorandum that describes the methodology for projecting capacity prices for the upcoming 2019/20 Forward Capacity Auction, with price projections and cash flow projections for the Clear River Energy Center Project and 2) a June 19, 2015 Memorandum that describes the analysis, market assumptions, and modeling methodology, as well as projections of the operations and energy margins of the proposed Project.

In support of its motion, Invenergy asserts that the information it seeks to protect is highly sensitive and, if disclosed to the public and/or its competitors, would harm Invenergy’s competitive position in the wholesale electricity market. Furthermore, release of the details of PA’s price forecasting and market projection analysis would cause substantial harm to Invenergy’s competitive position. As such, the detailed market data and modeling contained in the two memoranda would fall within the trade secret and commercial information exception of R.I. Gen.

Laws §38-2-2(4). Invenergy also asserts that this information is treated confidentially throughout the industry. No party or other interested person in this matter objected to the motion.

The arguments made by Invenergy support its motion, the Board finds that the two memoranda should be provided protective treatment. Those memoranda shall be kept confidential indefinitely, not be placed in the public docket, and be disclosed only to the Board, its attorneys, and staff as necessary to review Invenergy's Application.

Accordingly, it is hereby

(82) ORDERED:

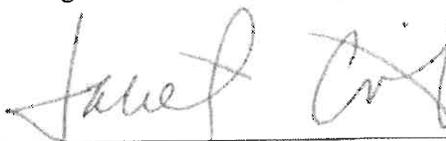
Invenergy Thermal Development, LLC Motion for Protective Treatment of the July 29, 2015 and the June 19, 2015 memoranda is granted.

EFFECTIVE AT WARWICK, RHODE ISLAND, JANUARY 12, 2016. WRITTEN ORDER
ISSUED MARCH 10, 2016.

ENERGY FACILITY SITING BOARD



Margaret E. Curran, Chairperson



Janet Coit, Member

