

# Schacht & McElroy

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December 19, 2019

Luly E. Massaro, Clerk  
Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02889

Re: Block Island Power Company – Block Island Utility District – Procurement Plan  
Docket No. 4690

Dear Luly:

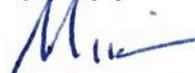
As you know, this office represents Block Island Utility District d/b/a Block Island Power Company (BIPCo).

Pursuant to Rule 1.3, enclosed for filing are an original and nine confidential copies of BIPCo's Request for Protective Treatment of Confidential Information.

Also enclosed is a version with Exhibit A redacted for release to the public.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc:tmg  
cc: Service List

**Docket No. 4690 – Block Island Power Co. – Procurement Plan & Tariff  
Service List as of 3/21/2019**

<b>Name/Address</b>	<b>Email</b>	<b>Phone</b>
Michael McElroy, Esq. for BIPCo. Schacht & McElroy PO Box 6721 Providence RI 02940-6721	<a href="mailto:Michael@McElroyLawOffice.com">Michael@McElroyLawOffice.com</a> ;	401-351-4100
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David Bebyn, Consultant for BIPCo	<a href="mailto:dbebyn@beconsulting.biz">dbebyn@beconsulting.biz</a> ;	
Jeffery Wright, President Block Island Power Co. Howell Conant, COO Nancy Dodge Tim Hebert Sara McGinnes Everett Shorey	<a href="mailto:jwright@bipco.net">jwright@bipco.net</a> ;	401-466-5851
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<b>File an original &amp; nine (9) copies w/:</b> Luly E. Massaro, Commission Clerk Cynthia Wilson Frias, Counsel Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	<a href="mailto:Luly.massaro@puc.ri.gov">Luly.massaro@puc.ri.gov</a> ;	401-780-2107
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	<a href="mailto:Alan.nault@puc.ri.gov">Alan.nault@puc.ri.gov</a> ;	
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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: BLOCK ISLAND UTILITY DISTRICT d/b/a : DOCKET No. 4690  
BLOCK ISLAND POWER COMPANY :

**BLOCK ISLAND POWER COMPANY'S REQUEST FOR  
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Block Island Power Company ("BIPCo") hereby requests that the Rhode Island Public Utilities Commission ("Commission") provide confidential treatment and grant protection from public disclosure of certain confidential, sensitive, and proprietary information (i.e., a Load Following Transaction Confirmation dated December 17, 2019), as permitted by Commission Rule 1.3(H) and R.I.G.L. § 38-2-2(4)(B). (See Exhibit A).

BIPCo also hereby requests that, pending entry of the finding, the Commission preliminarily grant BIPCo's request for confidential treatment pursuant to Rule 1.3(H).

**I. BACKGROUND**

On April 24, 2017, BIPCo entered into a Master Power Purchase and Sale Agreement with Shell Energy North America (US), LP ("Shell Agreement") for the purchase of wholesale power.

The Commission granted BIPCo's Motion for Protective Treatment regarding the Shell Agreement.

On February 9, 2018, BIPCo entered into Amendment No. 1 to the Shell Agreement, and on February 20, 2018, BIPCo entered into a Load Following Transaction Confirmation with Shell Energy North America (US) LP. The Commission granted BIPCo's Motion for Protective Treatment regarding these Agreements.

On December 17, 2019, BIPCo entered into another Load Following Transaction Confirmation with Shell Energy for the period May 1, 2020 to October 31, 2021. BIPCo seeks protective treatment for this Confirmation, which became a part of the Shell Agreement upon execution.

Paragraph 10.11 of the Shell Agreement provides in part:

“ . . . neither Party shall disclose the terms or conditions of a Transaction . . . to a third party (other than the employees, lenders, counsel, accountants, insurers or advisors of a Party or its Affiliates to whom disclosure is reasonably required . . . except in order to comply with any applicable law . . . ) . . . or in connection with any court or regulatory proceeding . . . or request by a regulatory authority; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the non-disclosure obligations set forth in this Section 10.11 . . . Each party will cause its Representatives to comply with the non-disclosure obligations set forth in this Section 10.11.

With respect to information provided in connection with a Transaction, the non-disclosure obligations set forth in this Section 10.11 shall survive for a period of one (1) year following the expiration or termination of such Transaction.”

## **II. LEGAL STANDARD**

The Commission’s Rule 1.3 provides that access to public records shall be granted in accordance with the Access to Public Records Act (“APRA”), R.I.G.L. § 38-2-1 *et seq.* Under the APRA, all documents and materials submitted in connection with the transaction of official business by an agency are deemed to be “public records,” unless the information contained in such documents and materials falls within one or more of the exceptions specifically identified in R.I.G.L. § 38-2-2(4). Therefore, to the extent that information falls within one or more of the designated exceptions to the public records law, the Commission has the authority under its Rules and the terms of the 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 types of records shall not be deemed public:

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

### **III. BASIS FOR CONFIDENTIALITY**

This Agreement is the result of a competitive bidding process. Exemption (B) applies because the Rhode Island Supreme Court has held that where disclosure of information would be likely to cause substantial harm to the competitive position of the person from whom the information was obtained, the information is protected confidential information. *Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (RI 2001).

The first prong of the confidential information test is satisfied when information is voluntarily provided to a government agency and that information is of a kind that would customarily not be released to the public by the person from whom it was obtained. *Providence Journal*, 774 A.2d at 47.

In addition, the Court has held that agencies making determinations as to the disclosure of information under the APRA may apply the balancing test established in *Providence Journal v. Kane*, 577 A.2d 661 (RI 1990). Under that balancing test, the Commission 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.

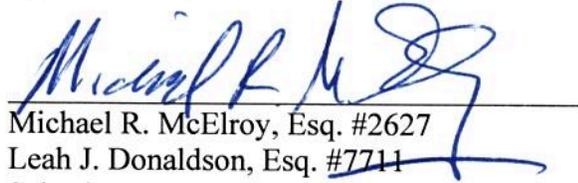
Public disclosure of the Shell Agreement, including the Load Following Transaction Confirmation dated December 17, 2019, is not necessary to an evaluation by the Commission of the issues in this docket. Disclosure could have an adverse affect on the future competitive bidding process and would violate Section 10.11 of the Agreement.

#### IV. CONCLUSION

Accordingly, BIPCo respectfully requests that the Commission grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,  
BLOCK ISLAND POWER COMPANY  
By its attorney

Dated: December 19, 2019



Michael R. McElroy, Esq. #2627

Leah J. Donaldson, Esq. #7711

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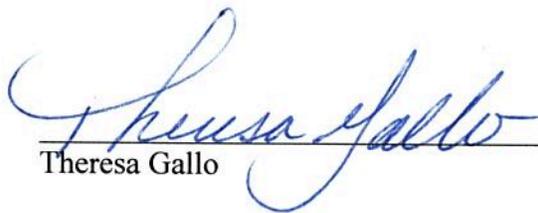
Fax: (401) 421-5696

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[Leah@McElroyLawOffice.com](mailto:Leah@McElroyLawOffice.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of December, 2019, I sent a copy of the foregoing to the attached service list.

  
\_\_\_\_\_  
Theresa Gallo

*BIUD/4690 Procurement Plan/Request for Protective Treatment-3*

**EXHIBIT A**

**(REDACTED)**

## LOAD FOLLOWING TRANSACTION CONFIRMATION

This Transaction Confirmation (this "Confirmation") is by and between SHELL ENERGY NORTH AMERICA (US), LP ("Shell Energy" or "Seller") and the BLOCK ISLAND POWER COMPANY ("BIPCO" or "Buyer") (each a "Party" and collectively, the "Parties"). This Confirmation confirms the terms and conditions of this purchase and sale of Load Following Energy (the "Transaction") entered into between the Parties on the Trade Date specified below. The terms of this Transaction are as follows:

**Seller: Shell Energy North America (US), LP**

**Buyer: Block Island Power Company**

By: John W Pillion

By: Jeffery M Wright

Name: John W. Pillion

Name: JEFFERY M. WRIGHT

Title: Confirmations Team Lead

Title: PRESIDENT