

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

Petition of Narragansett Electric Company)	
d/b/a National Grid for Approval of)	
Proposed Long-Term Contracts for)	Docket No. 4764
Renewable Resources Pursuant to)	
R.I. Gen. Laws § 39-26.1 et seq.)	

**THE JOINT PETITION OF THE DIVISION OF PUBLIC UTILITIES AND
CARRIERS AND OFFICE OF ENERGY RESOURCES FOR PROTECTIVE
TREATMENT OF CONFIDENTIAL INFORMATION**

The Division of Public Utilities and Carriers (Division) and The Office of Energy Resources (OER) hereby request that the Rhode Island Public Utilities Commission (PUC) provide confidential treatment and grant protection from public disclosure of certain confidential, competitively sensitive, and proprietary information submitted in this proceeding, as permitted by PUC Rule 1.2(g) and R.I.G.L. § 38-2-2(4)(B). The Division and OER also request that, pending entry of findings pursuant to these provisions, the PUC preliminarily grant the Division and OER's request for confidential treatment pursuant to Rule 1.2 (g)(2).

I. BACKGROUND

On November 1, 2017, National Grid filed with the PUC its request for approval eight 20-year Power Purchase Agreements entered into by National Grid for the purchase of energy and environmental attributes from eligible renewable energy generation facilities (the PPAs), pursuant to the New England Clean Energy Request Proposals (RFP) issued on November 12,

2015. The Division and OER are jointly submitting a memorandum (Memorandum) in lieu of testimony and supporting exhibits including the Division and OER's analysis of all proposals submitted in response to the RFP, including propriety modeling information and analysis provided by the Division and OER's third-party consultants. The Division and OER are filing proprietary modeling and analysis regarding the PPAs as Attachments EGC-1 and EGC-2 (the "Confidential Information").

National Grid's affiliates Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid, together with the other Massachusetts soliciting parties, NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy, and Fitchburg Gas and Electric Company, d/b/a Unitil, have each filed a similar request for protective treatment of the Confidential Information with their respective petitions for approval of the PPAs with the Massachusetts Department of Public Utilities. The Connecticut Light & Power Company and The United Illuminating Company have similarly requested, and been granted, protective treatment of the PPAs and proprietary bid evaluation materials.

In this proceeding, the Division and OER seek protective treatment for similar information to ensure consistency across the jurisdictions of each soliciting state, and to ensure continued protection of the Confidential Information. As the PUC is aware, designation of information as confidential requires, in part, that such information not be available

elsewhere in the public record. In the event that any one of the three jurisdictions reviewing the PPAs and related bid evaluation materials denies protective treatment, the information can no longer be protected in any other proceeding. To prevent the release of confidential information that has been granted protective treatment in Connecticut, and has, upon information and belief, to date been restricted in Massachusetts, the PUC should grant similar protective treatment here.

II. LEGAL STANDARD

The PUC's Rule 1.2(g) 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 APRA, all documents and materials submitted in connection with the transaction of official business by an agency is 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(4). Therefore, to the extent that information provided to the PUC falls within one of the designated exceptions to the public records law, 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 types of 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.

The exception “protects persons who submit financial or commercial data to government agencies from the competitive disadvantages which would result from its publication.” *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 873 (D. D.C. Cir. 1992); see also *Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001) (adopting *Critical Mass*). The Rhode Island Supreme Court has held that this confidential information exemption applies where disclosure of information would likely to either: (1) impair the Government’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Providence Journal*, 774 A.2d at 47 (emphasis added).

The second prong of the *Providence Journal* test has been interpreted to not require “a sophisticated economic analysis of the likely effects of disclosure.” *New Hampshire Right to Life v. US Dep’t of Health and Human Services*, 778 F. 3d 43, 50 (1st Cir 2015 (quoting *Pub. Citizen Health Research Grp.*, 704 F. 2d 1280, 1291 (1983))). The party opposing disclosure must establish “actual competition and a likelihood of substantial competitive injury” to bring the information under the confidential exemption. *Id.* In determining whether information is confidential the court should not limit its assessment of bidding information in a singular ad-hoc manner, but rather should acknowledge the likelihood of additional bids in the future. *Id.* At 51. As discussed further below, the Confidential Information here should be protected because it is commercial or financial information that, if disclosed, would be

likely to cause substantial harm to the competitive position of the persons from whom the information was obtained.

III. BASIS FOR CONFIDENTIALITY

The information contained in the un-redacted versions of the Confidential Information contains confidential and proprietary bidder information, including pricing information and bid-evaluation information. Specifically, the Confidential Information contains references to proprietary reports provided to the Division and OER by consultants for evaluation of the bids including supporting calculations.

Release of the Confidential Information would compromise the ability of the Division and OER to monitor future purchase-power contracts because those exhibits contain proprietary and confidential information about relevant market forecast and quantitative and qualitative evaluations of bids. The exhibits were used by the Division and OER in the evaluation of bids received and are considered proprietary by the consultants that produced them. More importantly, however, these projections must be protected from public disclosure because the Division and OER have used this information to evaluate bids associated with the RFP process described herein, and may continue to use this forecast or similar forecasts, to evaluate future bids for renewable generation services. If other parties gain access to the details set forth in the Confidential Information, the Division and OER's ability to monitor these processes to obtain the best deals possible on behalf of Rhode Island rate payers would be in peril. Accordingly, the Division and OER request protection

from disclosure on the public record here of the information set forth in the un-redacted exhibits that are the subject matter of the aforesaid Motion.

IV. CONCLUSION

Accordingly, the Division and OER request that the PUC grant protective treatment above-listed Confidential Information.

WHEREFORE, the Division and OER respectfully request that the PUC grant its Petition for Protective Treatment as stated herein.

State of Rhode Island
Division of Public Utilities and
Carriers

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Dated: January 19, 2018

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January, 2018, that I transmitted an electronic copy of the within Petition to the attached service list and to Luly Massaro, Commission Clerk via electronic mail and regular mail.



Service List updated 12/27/17

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Exhibit EGC-1

Summary of Quantitative Results for Clean Energy RFP - CT, MA, RI

Project	Type	Term	SPD	State	Net MW	Net Avg Annual (MWh)	Net Avg Annual RECS	Avg Capacity Factor	Participation %			Total Present Value Benefit or Cost (2016 \$000)			Present Value Benefit or Cost (2016 \$000)			Direct B/C Ratio		
									CT	MA	RI	Energy	REC	Total	Energy	REC	Total		PV Direct Cost	PV Direct Benefit
Cassadaga	Wind	20		NY	126.0				42.5%	42.5%	15.0%									
Chinook Solar	Solar	20		NH	30.0				50.0%	42.5%	7.5%									
Farmington Solar	Solar	20		ME	49.0				50.0%	42.5%	7.5%									
Hope-Schuhate	Solar	20		RI	20.0				0.0%	50.0%	50.0%									
Quinebaug Solar	Solar	20		CT	49.0				50.0%	42.5%	7.5%									
Samford Airport Solar	Solar	20		ME	49.0				50.0%	42.5%	7.5%									
Woods Hill Solar	Solar	20		CT	20.0				50.0%	42.5%	7.5%									
Total																				

Notes: Chinook solar capacity reduced from 48.99 MW to 30.00 MW following selection.

Antrix Wind proposal withdrawn

Enfield Solar proposal withdrawn

At the request of the developer, the Hope-Schuhate solar proposal was split into two equally sized PPAs. The single project as bid and as evaluated is shown in this table.

As described on page 36-37 of Ms. DiDomenico's testimony, not all of the energy generated from Cassadaga may be deliverable to New England. The potential reduction in energy delivery is not reflected in this table.

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Exhibit EGC-2

Summary of Quantitative Results for Clean Energy RFP - CT, MA, RI

Project	Present Value Benefit or Cost (2016 \$000)		
	Rhode Island Share Summary		
	PV Direct Remuneration	PV Direct Benefit	PV Net Direct Benefit incl.
	MWh/yr	PPA Cost	
Cassadaga			
Chinook Solar			
Farmington Solar			
Hope-Scituate Solar			
Quinebaug Solar			
Sanford Airport Solar			
Woods Hill Solar			
Total			