

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

**IN RE: THE NARRAGANSETT ELECTRIC
COMPANY D/B/A NATIONAL GRID AND
CLEAR RIVER ENERGY LLC'S JOINT
APPLICATION TO CONSTRUCT THE
BURRILLVILLE INTERCONNECTION
PROJECT IN BURRILLVILLE, RHODE ISLAND**

DOCKET SB-2017-01

**MOTION OF CLEAR RIVER ENERGY LLC FOR
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes Clear River Energy LLC (“CRE”) and hereby requests that the Energy Facility Siting Board (“EFSB” or “the Board”) grant protection from public disclosure certain confidential information submitted as an attachment to CRE’s response to the Town of Burrillville’s 7th Set of Data Requests, No. 7-1. The confidential information that is the subject of this Motion is commercial and business sensitive financial information that if disclosed would cause “substantial harm to the competitive position” of CRE and a third-party that entered into an agreement with CRE. Accordingly, CRE requests protective treatment of this information in this proceeding in accordance with R.I. Gen. Laws § 38-2-2(4)(B).

I. LEGAL STANDARD

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

Moreover, the Rhode Island Supreme Court has held that the agencies applying the balancing test established in *Kane*, 577 A.2d 661 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. *See 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); *Kane*, 577 A.2d 661.

II. BASIS FOR CONFIDENTIALITY REQUEST

In order to fully respond to the Town's 7th Set of Data Requests, CRE confidentially attached a redacted Option Agreement dated May 1, 2018 ("the Agreement"). The Agreement contains commercially sensitive business and financial information regarding the terms of this Agreement. Specifically, the Agreement includes commercially sensitive price and business agreement terms. Disclosure of the commercially sensitive terms within the Agreement would cause "substantial harm to the competitive position" of CRE and the party that entered into the Agreement with CRE. This information is not generally available to the public and commercially sensitive. This information should, therefore, be protected under the trade secret and commercial information exception, as authorized by R.I. Gen. Laws § 38-2-2(4).¹

For the reasons stated above, the information attached to the data request response should be exempt from the definition of a public record under APRA as ". . . commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature." *See* R.I. Gen. Laws § 38-2-2(4)(B). The EFSB should determine that the information provided is confidential and provide protective treatment for this information by granting this Motion for a Protective Order, pursuant to R.I. Gen. Laws § 38-2-2. CRE respectfully requests that the information identified herein (i) be kept confidential indefinitely, (ii) not be placed in the public docket, and (iii) be disclosed only to the EFSB, attorneys and expert consultants as necessary to this proceeding and in accordance with the protections ordered and in accordance with the form of non-disclosure agreements.

¹ The Board previously protected a similar agreement. *See* Docket SB-2015-01, Order No. 131 (effective Feb. 26, 2018) (protecting, among other information, a land purchase option agreement between Invenergy Thermal Development LLC and Algonquin Gas Transmission, LLC because it contained commercially sensitive market price information).

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

Respectfully submitted,
CLEAR RIVER ENERGY LLC
By its attorneys,

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Dated: June 4, 2018

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2018, I delivered a true copy of the foregoing Motion via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer