

**STATE OF RHODE ISLAND
PUBLIC UTILITIES COMMISSION**

IN RE: THE RHODE ISLAND DISTRIBUTED :
GENERATION BOARD’S RECOMMENDATIONS :
FOR THE 2024-2026 RENEWABLE ENERGY : DOCKET 23-44-REG
GROWTH PROGRAM YEAR :

**MOTION OF THE DISTRIBUTED GENERATION BOARD
AND OFFICE OF ENERGY RESOURCES FOR
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

The Distributed Generation Board and Office of Energy Resources (“OER”) respectfully request that the Rhode Island Public Utilities Commission (“PUC”) provide confidential treatment and grant protection from public disclosure to certain confidential, competitively sensitive, and proprietary information submitted in this proceeding, as permitted by Rule 1.3(H) of the PUC Rules of Practice and Procedure, 810-RICR-00-00-1-1.3(H)(3) (“Rule 1.3(H)”), and R.I. Gen. Laws § 38-2-2(4)(B). Specifically, OER requests confidential treatment of limited portions of the pre-filed direct testimony of OER witnesses Jim Kennerly and Tobin Armstrong; more specifically, SEA Tables 8 – 10, all of which OER has filed contemporaneously with this motion as part of its filing in this proceeding. OER also requests that, pending entry of a ruling on this motion, the PUC preliminarily grant OER’s request for confidential treatment pursuant to Rule 1.3(H)(2) of the PUC Rules of Practice and Procedure.

I. BACKGROUND

On December 20, 2023, OER submitted a filing in accordance with its duties outlined in R.I. Gen. Laws § 39-26.6-1 *et. seq.* (the “Filing”). Included within its Filing is the pre-filed direct testimony of OER’s two witnesses: Jim Kennerly and Tobin Armstrong of Sustainable Energy Advantage (“SEA”). As a part of that testimony, SEA embedded several tables to succinctly summarize certain portions of its testimony. Certain portions SEA Tables 8 – 10 contain confidential, competitively sensitive, and/or proprietary information that is exempt from

disclosure under APRA. To the extent possible, OER has protected the confidential information with limited and targeted redactions.

II. LEGAL STANDARD

Rule 1.3(H) provides that access to public records shall be granted in accordance with the Access to Public Records Act (“APRA”), R.I. Gen. Laws §38-2-1, *et. seq.* APRA sets forth a balancing test between “public access to public records” and protection “from the disclosure [of] information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.” R.I. Gen. Laws §38-2-1. Per APRA, “all records maintained or kept on file by any public body” are “public records” to which the public has a right of inspection unless a statutory exception applies. *Id.* §38-2-3. The definition of “public record” under APRA specifically excludes “trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature.” *Id.* §38-2-2(4)(B). Under the statute, such records “shall not be deemed public.” *Id.*

The Rhode Island Supreme Court has held that when documents fall within a specific APRA exemption, they “are not considered to be public records,” and “the act does not apply to them.” *Providence Journal Co. v. Kane*, 577 A.2d 661, 663 (R.I. 1990). Further, the court has held that “financial or commercial information” under APRA include information “whose disclosure would be 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 Co. v. Convention Ctr. Auth.*, 774 A.2d 40, 47 (R.I. 2001). The first prong of the test is satisfied when information is provided voluntarily to the governmental agency, and that information is of a kind that would not customarily be released to the public by the person from whom it was obtained. *Id.* At 47.

III. BASIS FOR CONFIDENTIALITY

The figures contained within SEA Tables 8 – 10 contain “trade secrets and commercial or financial information” such that the information does not fall within APRA’s definition of a public record. *See* Gen. Laws §38-2-2(4)(B); *Kane*, 577 A.2d at 663. Specifically, the confidential information includes a proprietary compilation of market information prepared by OER’s consultant, SEA.

In SEA Tables 8 – 10, OER compiles data that would provide renewable energy developers with a precise summary of the Company’s interconnection queues. Disclosure of this proprietary information may have the unintended effect of chilling the competitive bidding process in 2024 and stymying the renewable energy growth program as a whole. The proposed protections of confidential information in this filing are narrow and fall within APRA’s exemption for “trade secrets and commercial or financial information.” R.I. Gen. Laws § 38-2-2(4)(B).

Accordingly, OER respectfully requests that the PUC grant protective treatment to the identified portions of the Filing and take the following actions to preserve the confidentiality of those documents: (1) maintain the identified portions of SEA Tables 8 – 10 as confidential indefinitely; (2) not place unredacted versions of the Filing on the public facing docket; and (3) disclose the unredacted versions of the Filing to the PUC, its attorneys, and staff as necessary to review this docket.

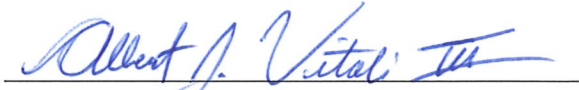
IV. CONCLUSION

For the foregoing reasons, OER respectfully requests that the PUC grant its Motion for Protective Treatment of Confidential Information.

Respectfully submitted,

**DISTRIBUTED GENERATION BOARD
& OFFICE OF ENERGY RESOURCES**

By its attorney,



Albert J. Vitali III, Esq.

Dated: December 20, 2023