

I. Background

In Division 23-2, the Division requested that the Company reproduce information previously provided in Attachment PUC 1-63-1 in response to PUC 1-63, which concerned certain outside counsel expenses of the Company. Division 23-2 seeks additional detail on these expenses, including a description of the case associated with each docket and “a breakdown [of] the billed amounts for each case by attorney hours billed, attorney rate, administration hours billed, administration rate, paralegal hours billed, paralegal rate.”

The Company has filed its response to Division 23-2 contemporaneously with this motion. This includes Attachment DIV 23-2, an Excel spreadsheet that includes, among other things, docket numbers and descriptions, timekeeper categories, units or hours billed, billing rates, and associated totals by year. Although the spreadsheet anonymizes individual timekeepers, certain columns—either individually or in combination—would allow one to derive or infer effective billable rates charged by law firms to the Company and its affiliates. This Motion seeks confidential treatment for that limited information. Specifically, it seeks confidential treatment for the data contained in columns labeled (e) through (p) in Attachment DIV 23-2 Confidential.

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”), Rhode Island General Laws § 38-2-1, *et seq.* APRA establishes the balance between “public access to public records” and protection “from disclosure [of] information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.” Rhode Island General 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).

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 includes 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) (internal quotation marks omitted). 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

By this Motion, the Company seeks protective treatment only for those portions of Attachment DIV 23-2 that, if disclosed publicly, would permit the inference of confidential pricing or billable rate information. Specifically, the Company requests confidential treatment for the columns reflecting billing rates, units or hours billed, and calculated totals (including annual and aggregate totals), to the extent those data points—either alone or in combination—would allow a reviewer to see, calculate, or reverse-engineer the effective rates charged by outside counsel.

The proposed confidential information contains “trade secrets and commercial or financial information” such that the information does not fall within APRA’s definition of a public record. *See* Rhode Island General Laws § 38-2-2(4)(B); *Kane*, 577 A.2d at 663. The Company does not generally make this information available to the public, other companies, or regulatory bodies in the absence of a protective order or confidentiality agreement. Disclosure would “cause substantial harm” to the competitive position of the Company and its affiliates when it seeks to retain legal services. *Convention Ctr. Auth.*, 774 A.2d at 47.

IV. Conclusion

For the foregoing reasons, the Company respectfully requests that the PUC grant its Motion for Protective Treatment of Confidential Information and grant protective treatment to the data contained in column (e) through column (p) in Attachment DIV23-2 Confidential. Specifically, the Company requests that the PUC take the following actions to preserve the confidentiality of the Confidential Information: (1) maintain the Confidential Information as confidential indefinitely; (2) not place any of the Confidential Information on the public docket; (3) disclose the Confidential Information only to the PUC, its attorneys, and staff as necessary to this matter; and (4) pending entry of a ruling on this Motion, the PUC preliminarily grant the Company’s request for confidential treatment.

WHEREFORE, The Narragansett Electric Company d/b/a Rhode Island Energy respectfully requests that the PUC grant its motion for Protective Treatment.

Respectfully submitted,

**The Narragansett Electric Company
d/b/a Rhode Island Energy**

By its Attorney

A handwritten signature in blue ink, appearing to read "Jeremy Licht".

Jeremy Licht, Esq. (#9518)
The Narragansett Electric Company
d/b/a Rhode Island Energy
280 Melrose Street
Providence, RI 02907
JLicht1@pplweb.com
401-784-4350

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