

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD

In re Revolution Wind, LLC
(Revolution Wind Project)

Docket No.

**MOTION OF REVOLUTION WIND, LLC FOR
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Revolution Wind, LLC (“Revolution Wind”) hereby requests that the Energy Facility Siting Board (the “Board”) grant protection from public disclosure to certain confidential information submitted in support of Revolution Wind’s Application for License To Construct and Alter Major Energy Facilities dated December 30, 2020 (the “Application”). Specifically, Revolution Wind seeks an order from the Board to protect certain confidential cost information contained within Appendix C of the Environmental Report to the Application (“Appendix C”) and certain Critical Energy Infrastructure Information (“CEII”) contained in Appendix A of the Environmental Report to the Application, specifically the ICF Grading and Drainage Plan, ICF Layout and Utilities, Onshore Substation Grading and Drainage Plan, and Onshore Substation Layout and Utilities Plan (together, the “Appendix A CEII”). Revolution Wind requests protective treatment of this information, and seeks a determination that this information is not a public record, in accordance with R.I. Gen. Laws §§ 38-2-2(4)(B) and (4)(F).

I. LEGAL STANDARD

The Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*, (“APRA”) establishes the proper 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.” 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). The statute provides that such records “shall not be deemed public.” *Id.* Further, APRA also excludes “[s]cientific and technological secrets . . . the disclosure of which would endanger the public welfare and safety” from the definition of “public records.” *Id.* § 38-2-2(4)(F).

The Federal Energy Regulatory Commission (“FERC”) has adopted the following definition of CEII:

“[S]pecific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

- (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
- (ii) Could be useful to a person in planning an attack on critical infrastructure;
- (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and
- (iv) Does not simply give the general location of the critical infrastructure.

18 CFR § 388.113(c)(2). “Critical infrastructure” is “existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.” *Id.* § 388.113(c)(4). FERC routinely has exempted CEII from disclosure under 5 U.S.C. § 552. *See* 5 U.S.C. § 552(b)(7); *see also* Regulations Implementing FAST Act Section 61003—Critical Elec. Infrastructure Security & Amending Critical Energy Infrastructure Information Availability of Certain N. Am. Elec. Reliability Corp. Databases to the Commission, 157 FERC P 61123, 2016 WL 6821056, at *3, n.8 (F.E.R.C. 2016) (“Critical Electric Infrastructure Information is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552, pursuant to section 215A(d)(1)(A) of the Federal Power Act.”). This Board also has exempted CEII from disclosure under APRA as “scientific and technological secrets . . .

the disclosure of which would endanger the public welfare and security.” *See, e.g.*, Order No. 90, Dkt. No. SB-2016-01, *In re The Narragansett Electric Co. d/b/a/ National Grid – Aquidneck Island Reliability Project* (EFSB (Mar. 24, 2016)).

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 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).

II. BASIS FOR CONFIDENTIALITY

Appendix C includes project cost information relating to the construction, operation, and maintenance of the proposed facilities. Revolution Wind seeks confidential treatment of this information due to the competitive nature of offshore wind solicitations and the competitive bidding processes involved. The information contained in Appendix C is highly sensitive. Revolution Wind would suffer harm to its competitive position in the market if the information in Appendix C were disclosed to the public or its competitors.

Revolution Wind treats the data and information in Appendix C as confidential and commercially sensitive. Revolution Wind does not generally make it available to the public, other companies, or regulatory bodies in the absence of a protective order or confidentiality agreement. Disclosing publicly the information in Appendix C as part of the Board’s Application review process would “cause substantial harm” to Revolution Wind’s “competitive position.” *See Convention Ctr. Auth.*, 774 A.2d at 47.

Similarly the Appendix A CEII includes CEII relating to electric transmission infrastructure and the safe and reliable operation of the electric system. Public disclosure of this information could

facilitate the ability of individuals to damage utility infrastructure and the regional electric transmission system. Revolution Wind treats this information as confidential and discloses it only to external audiences with a need to know pursuant to confidentiality agreements. The FERC regulations and the Board's past practice evidence the highly sensitive nature of the CEII and necessity of excluding it from the definition of "public records" as "scientific and technological secrets . . . the disclosure of which would endanger the public welfare and security."

Appendix C constitutes "commercial or financial information" to which the APRA public disclosure requirements do not apply. *See* Gen. Laws § 38-2-2(4)(B); *Kane*, 577 A.2d at 663. Further, the Appendix A CEII constitutes "scientific and technological secrets . . . the disclosure of which would endanger the public welfare and security" likewise exempt from the APRA public disclosure requirements. *See* § 38-2-2(4)(F). Revolution Wind therefore respectfully requests that the Board grant protective treatment to Appendix C and the Appendix A CEII and take the following actions to preserve its confidentiality: (1) maintain Appendix C and the Appendix A CEII as confidential indefinitely; (2) not place Appendix C and the Appendix A CEII on the public docket; and (3) disclose Appendix C and the Appendix A CEII only to the Board, its attorneys, and staff as necessary to review Revolution Wind's Application.

WHEREFORE, Revolution Wind respectfully requests that the Board grant its Motion for Protective Treatment.

Respectfully submitted,

Revolution Wind, LLC,
By its attorneys,



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