

August 18, 2016

**Via Federal Express/Electronic Mail**

Todd Anthony Bianco, EFSB Coordinator  
RI Energy Facilities Siting Board  
89 Jefferson Blvd.  
Warwick, RI 02888

***Re: Invenergy Docket No. SB-2015-06***

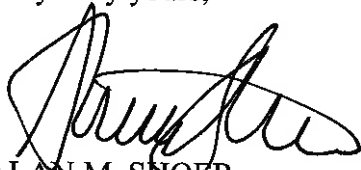
Dear Mr. Bianco:

On behalf of Invenergy Thermal Development LLC (“Invenergy”), enclosed please find an original and 10 copies of Invenergy’s Response to the Office of Energy Resources’ Second Set of Data Requests and accompanying CD that includes the confidential attachments, in connection with the above docket.

Also, please find a Motion for a Protective Treatment of the confidential attachments.

Please let me know if you have any questions.

Very truly yours,



ALAN M. SHOER  
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Enclosures

cc: Service List

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

**In re: Invenergy Thermal Development LLC            :                    SB-2015-06**  
**Application to Construct the Clear River            :**  
**Energy Center in Burrillville, R.I.                 :**

**MOTION OF INVENERGY THERMAL DEVELOPMENT LLC FOR  
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby requests that the Energy Facility Siting Board (“EFSB” or “the Board”) grant protection from public disclosure certain confidential information submitted as attachments to Invenergy’s Responses to the Office of Energy Resources’ (“OER”) Second Set of Data Requests.

The documents that are the subject of this Motion that require protective treatment from disclosure to the public are three excel files: (1) “Clear River – Market Assumption and Results – With Clear River”; (2) “Clear River – Market Assumptions and Results – Without Clear River”; and (3) “Clear River – Emissions Generation and Heat Input Results.” Invenergy requests protective treatment of these documents in this proceeding in accordance with R.I. Gen. Laws § 38-2-2(4)(B). The Board has previously granted protective treatment of similar PA documents. See EFSB Order No. 82.

**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 which 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 *Providence Journal v. Kane*, 577 A.2d 661 (R.I.1990) 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)); *Providence Journal Company v. Kane*, 577 A.2d 661 (R.I. 1990).

## II. BASIS FOR CONFIDENTIALITY REQUEST

In order to respond to the OER's data requests, Invenergy's consultants, PA Consulting Inc. ("PA") prepared this data. This information is not generally available to the public. Providing the details of PA's market assumptions, financial analysis and emissions data in a public filing would cause Invenergy "substantial harm to the competitive position" of the Company. *See Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001). The detailed market data and modeling details referenced in these documents should therefore be protected under the trade secret and commercial information exception, as authorized at R.I. Gen. Laws § 38-2-2(4). *Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001).

For the reasons stated above, this information should be exempt from the definition of a public record under APRA as ". . . commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature." R.I. Gen. Laws § 38-2-2(4)(B). The EFSB should determine that the data provided in regards to these spreadsheets 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. Invenergy respectfully requests that these documents 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.

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

Respectfully submitted,  
Invenergy Thermal Development LLC  
By its attorneys,

/s/ Alan M. Shoer

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Dated: August 18, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2016, I delivered a true copy of the foregoing Motion via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer





show that there is a net CO2 reduction with CREC, even with the CREC emissions included. This is a conservative approach given that CREC would likely only be displacing other fossil generation, which has a higher lb/MWh emission rate than the overall system wide average. My testimony includes the expected CO2 reductions on the system that reflects CREC's displacement of higher CO2-emitting resources, but we wanted to provide this example as well to reinforce the importance of a consumption-based approach to emission reductions.

RESPONDENT: Ryan Hardy, PA Consulting, Inc.

DATE: August 18, 2016



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

**IN RE:            INVENERGY THERMAL DEVELOPMENT LLC            :  
                      APPLICATION TO CONSTRUCT AND                :  
                      OPERATE THE CLEAR RIVER ENERGY                :            SB-2015-06  
                      CENTER, BURRILLVILLE, RHODE ISLAND                :**

**INVENERGY THERMAL DEVELOPMENT LLC'S RESPONSES TO  
THE OFFICE OF ENERGY RESOURCES' SECOND SET OF DATA REQUESTS**

OER 2-2:                            Were the Renewable Energy Standards (“RES”), Renewable Portfolio Standards (“RPS”), and similar clean energy targets applicable to each state within the model footprint reflected in the resource buildout of the AURORAxmp model? Please explain how the quantity and type of wind, solar, and other renewable resources added over the forecast period was determined within ISO-NE, NYISO, and the rest of the model footprint.

RESPONSE 2-2:                    Yes. The analysis includes a representation of the Renewable Portfolio Standards/Renewable Energy Standards for each state within the modeled footprint. The specific renewable resource additions reflect PA’s view of resource additions in the regions including consideration of individual state requirements, projected cost and output for renewable options, existing resource mix, announced resources, interconnection requests, regional studies and other factors.

RESPONDENT:                    Ryan Hardy, PA Consulting, Inc.

DATE:                                August 18, 2016







INVENERGY THERMAL DEVELOPMENT LLC  
By its Attorneys,

/s/ Alan M. Shoer

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Fax: 401-751-0604

Dated: August 18, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on August 18, 2016, I delivered a true copy of the foregoing responses to Office of Energy Resources' Second Set of Data Requests via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer

# **ATTACHMENTS**

**CONFIDENTIAL**

**SB-2015-06 Invenergy CREC Service List as of 07/15/2016**

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