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April 11, 2019

Ms. Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

**Re: *Docket 4929 - The Narragansett Electric Company
d/b/a National Grid Review Of Power Purchase Agreement
Pursuant To R.I. Gen. Laws §39-31-1 to 9***

Dear Ms. Massaro:

Enclosed please find an original and nine copies of:

- DWW Rev I, LLC's Motion For Protective Treatment of Confidential Information.
- DWW Rev I, LLC's Redacted Response to the Rhode Island Public Utilities Commission's Third Set of Data Requests.

Also, enclosed please find one copy of:

- DWW Rev I, LLC's unredacted response to the Commission's Third Set of Data Requests (Comm. 3-1) in a sealed envelope marked "Contains Privileged Information – Do Not Release." This sealed and unredacted response is the subject of DWW Rev I, LLC's Motion For Protective Treatment of Confidential Information.

Please note that an electronic copy of DWW Rev I, LLC's Motion For Protective Treatment of Confidential Information and the redacted data response have been provided to the service list.

Thank you for your attention to this matter.

Sincerely,



Joseph A. Keough, Jr.

JAK/kf

cc: Docket 4929 Service List (*via electronic mail*)

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION**

IN RE: THE NARRAGANSETT ELECTRIC COMPANY :
d/b/a NATIONAL GRID REVIEW OF POWER : **DOCKET NO. 4929**
PURCHASE AGREEMENT PURSUANT TO :
R.I. GEN. LAWS §39-31-1 TO 9 :

**DWW REV I, LLC’S MOTION FOR PROTECTIVE TREATMENT OF
CONFIDENTIAL INFORMATION**

I. INTRODUCTION

Now comes DWW Rev I, LLC (“DWW”) and hereby requests that the Rhode Island Public Utilities Commission (“Commission”) provide confidential treatment and grant protection from public disclosure of certain confidential, business, trade and financial information that is proprietary and competitively sensitive. DWW makes this request pursuant to the Commission’s Rules of Practice and Procedure (“Rule 1.3.H”) and R.I. Gen. Laws §§ 38-2-1, et. seq. DWW also requests that the Commission preliminarily grant its request for confidential and protective treatment pursuant to Commission Rule 1.3.H.2.

II. FACTS

On February 7, 2019, the Narragansett Electric Company d/b/a National Grid (“National Grid”) filed a proposed twenty-year Power Purchase Agreement (“PPA”) entered into between National Grid and DWW for review and approval by the Commission under the Rhode Island Affordable Clean Energy Security Act, R.I. Gen. Laws §§ 39-31-1, et. seq. The proposed PPA provides for National Grid’s purchase of approximately 400 megawatts of energy and associated renewable energy certificates from DWW’s Revolution Wind Farm offshore wind energy facility, which is to be located on the Outer Continental Shelf in a Bureau of Ocean Energy Management lease area off the coast of Rhode Island.

On April 11, 2019, DWW is filing a response to the Commission's Third Set of Data Requests (issued on April 1, 2019). Comm. 3-1 requests the following:

"Please provide DWW's estimate for the following:

- a. costs of the Delivery Facility including financing costs, all associated system upgrades, operations and maintenance (O&M) costs, decommissioning costs, sitting and permitting costs, other legal and regulatory costs, administrative costs not captured in O&M costs, and any other costs associated with the construction and operation of the Delivery Facility;
- b. costs of the Facility including financing costs, all associated operations and maintenance (O&M) costs, decommissioning costs, sitting and permitting costs, other legal and regulatory costs, administrative costs not captured in O&M costs, and any other costs associated with the construction and operation of the Delivery Facility, excluding sunk costs such as the costs associated with the RFP and the current proceeding."

This response calls for DWW to provide confidential, business, trade and financial information that is proprietary and competitively sensitive. As such, with respect to Comm. 3-1, and pursuant to Rule 1.3.H.3, DWW will provide the Commission with an unredacted response to Comm. 3-1 marked "Contains Privileged Information – Do Not Release." All public responses to this request will contain a redacted version of the response to Comm. 3-1.

III. LEGAL STANDARD

Commission Rule 1.3.H provides that access to a public record shall be granted in accordance with the Access to Public Records Act ("APRA"), R.I. Gen. Laws §§ 38-2-1, et seq. Under the 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 set forth in the documents and materials falls within one of the enumerated exceptions identified in R.I. Gen. Laws § 38-2-2(4). As such, the Commission has the authority under the APRA to protect such information from public disclosure and deem it confidential provided it falls within

one of the specific exceptions to the APRA. A review of R.I. Gen. Law § 38-2-2(4)(B) indicates that the following records are not deemed to be public:

“Trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature.”

The Rhode Island Supreme Court interpreted the APRA to define as confidential “any financial or commercial information whose disclosure would likely ... cause substantial harm to the competitive position of the person from whom the information was obtained.” *Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001). In making this determination, the Supreme Court set forth a two-prong test. The first prong assesses whether the information was provided voluntarily to a governmental agency. *Id.* at 47. If the answer to this first question is in the affirmative, then the next question becomes whether the information “is of a kind that would customarily not be released to the public by the person from whom it was obtained.” *Id.*

Furthermore, the Supreme Court has held that agencies making determinations as to the disclosure of information under the APRA may apply the balancing test established in *Providence Journal v. Cane*, 577 A.2d 661, (RI 1990). Under this test, the Commission may protect information from public disclosure if the benefit of such protection outweighs the public interest inherent in disclosure.

IV. BASIS FOR CONFIDENTIALITY

A. Response to Comm. 3-1

DWW is providing the Commission with a confidential and unredacted response to Comm. 3-1. However, this response should be protected from public disclosure for the following reasons:

1. Disclosure is likely to cause substantial injury to DWW’s competitive positions.

2. DWW treats this information as proprietary and uses its best efforts to protect this information from public disclosure, and only shares the information internally with those employees who have a need to know the information.
3. This information is valuable and is used by DWW for competitive bidding, internal planning and business purposes.
4. Public disclosure of this information would be extremely detrimental and could be used in an anti-competitive fashion by the competitors of DWW and would cause DWW to suffer unfair economic and competitive damage by providing competitors and potential suppliers information regarding the Revolution Wind Farm and DWW's strategies for the pricing and procurement of similar projects.
5. Public disclosure of the information could provide insight into the cost structure for this and future projects, which is information that DWW and its competitors do not typically possess regarding each other.

V. CONCLUSION

For the reasons set forth herein, DWW REV I, LLC hereby respectfully requests that the Commission grant the relief sought herein and grant protective and confidential treatment to the information produced in response to the Commission's data request, Comm. 3-1.

DWW REV I, LLC
By its attorney,



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CERTIFICATION

I hereby certify that on April 11, 2019, I sent a copy of the within to all parties set forth on the attached Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and regular mail.

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
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IN RE: THE NARRAGANSETT ELECTRIC COMPANY :
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PURCHASE AGREEMENT PURSUANT TO :
R.I. GEN. LAWS §39-31-1 TO 9 :

**DWW REV I, LLC'S SUPPLEMENTAL RESPONSE TO THE RHODE ISLAND
PUBLIC UTILITIES COMMISSION'S THIRD SET OF DATA REQUESTS
(DATED APRIL 1, 2019)**

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Comm. 3-1: Please provide DWW's estimate for the following:

- a. costs of the Delivery Facility including financing costs, all associated system upgrades, operations and maintenance (O&M) costs, decommissioning costs, sitting and permitting costs, other legal and regulatory costs, administrative costs not captured in O&M costs, and any other costs associated with the construction and operation of the Delivery Facility;
- b. costs of the Facility including financing costs, all associated operations and maintenance (O&M) costs, decommissioning costs, sitting and permitting costs, other legal and regulatory costs, administrative costs not captured in O&M costs, and any other costs associated with the construction and operation of the Delivery Facility, excluding sunk costs such as the costs associated with the RFP and the current proceeding.

Response:

- a. As set forth in DWW's response to Comm. 1-5, it has not developed a detailed itemized estimate of the total costs of the Delivery Facilities. [REDACTED]

[REDACTED]

[REDACTED]

DWW notes that the actual cost of the Delivery Facility will have no impact on the PPA price. DWW also notes that it solely bears the risk of a cost overrun, and that any costs above the estimate set forth above will also not impact the PPA price.

- b. DWW has not developed a detailed itemized estimate of the total cost of the Facilities. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As we noted in the response to Commission DR 1-5, a formal budgetary estimate will be developed by the procurement function based on vendor quotes once a final decision respecting the location of the interconnection point has been made and the Facility and the Delivery Facility have been designed.

DWW notes that the actual cost of the Facility will have no impact on the PPA price. DWW also notes that it solely bears the risk of a cost overrun, and that any costs above the estimate set forth above will not impact the PPA price.

Prepared by or under the direction of Brook Knodel and Chris van Beek

CERTIFICATION

I hereby certify that on April 11, 2019, I sent a copy of the within to all parties set forth on the attached Service List by electronic mail and copies to Luly Massaro, Commission Clerk, by electronic mail and hand deliver.

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DOCKET NO. 4929
 Response from DWW Rev I, LLC
 to the Rhode Island Public Utilities Commission's
 Data Requests (Set 3)
 (Issued April 1, 2019)

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