

HB-7181
PUC
Concerns



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STATE OF RHODE ISLAND

Public Utilities Commission

Chairman Ronald T. Gerwatowski
Commissioner Abigail Anthony
Commissioner John C. Revens, Jr.

March 19, 2024

The Honorable Evan P. Shanley
Chair, House Committee on State Government
& Elections
State House
Providence, RI 02903

Re: House Bill 7181 – Access to Public Records

Dear Chair Shanley:

On behalf of the Public Utilities Commission (PUC), I am submitting the following comments on HB 7181 – Access to Public Records. While the PUC supports efforts to ensure government business is transparent to members of the public, that transparency needs to be balanced with the safety of public utility systems and with the interests of competitive businesses who interact with the state's public utilities.

The only concern the PUC wishes to raise is with one new provision which would, by the very nature of the existence of a public meeting, turn information currently deemed not to be a public record into a public record. While the PUC believes this is especially troubling for other public bodies who need to review personally sensitive information, we are focusing on the chilling effect it could have on Rhode Island's public utilities and the state's economy.

The new language is on page 7, lines 1-3 and states: "Notwithstanding the provisions of § 38-2-2(4), any documents reviewed, considered, or submitted at a public meeting of a public body shall be deemed public and shall also be made available upon request to any member of the public present at the meeting." While there is language being stricken earlier in the law that may appear similar, it is currently a narrow exception, namely applicable to work product and preliminary notes and drafts. This new language represents a fundamental shift in that any documents currently defined as "not public" become public if even reviewed or considered at a public meeting.

The PUC, as a quasi-judicial body, is required to make all of its decisions based on evidence in the record, most often through public evidentiary hearings followed by an open meeting for public deliberation. The PUC prides itself on being able to keep those hearings open, only closing hearings a handful of times over the past twenty-plus years. Part of its success in keeping those meetings open and streaming to the public is the ability to review documents submitted under the limited exceptions to the Access to Public Records Act. As part of its review processes, the PUC takes in a vast amount of information to determine whether the utility has met its burden of proof and for the PUC to prove, if appealed, that it has relied on the evidence and not acted in an arbitrary and capricious manner.

Typically, the type of information the PUC provides confidential treatment to is the following:

- (1) Critical Energy Infrastructure or Critical Utility Infrastructure information, the disclosure of which could allow bad actors more access to the utility's operations for nefarious purposes, causing harm to public safety and reliability. More recently, this has also included cybersecurity related information.
- (2) Bids from competitive energy companies who provide Last Resort Service (the energy supply that is procured by the three electric distribution companies), the disclosure of which could limit participation – and the reliability of electric supply to the State's customers at a time when state wants more people to electrify. This is because the overall retail rate is set based on bids received years to months in advance of the delivery, but all of those bids are then averaged into the rate charged to customers. The PUC cannot determine whether the rate proposed by the utility is properly calculated without reviewing the underlying costs. To be clear, these are not bids with the state and are not regulated utility bids. They represent financial information of competitive suppliers who procure energy to supply to Rhode Island's customers.
- (3) Bids from renewable energy developers who desire to participate in the State's renewable energy contracts. To be clear, the final pricing in all renewable energy contracts is public. However, the underlying assumptions and calculations are competitively sensitive financial information and should be kept public. Furthermore, the losing bids should also be kept confidential to protect the losing competitive projects. However, the PUC may need to review that information to understand whether the utility has met its burden of proof that they complied with the underlying renewable energy procurement law. If bidders believe their competitively sensitive information will become public through the statutory review process at the PUC, it will likely have a chilling effect on their participation and make it harder to meet the State's Act on Climate goals.
- (4) Certain renewable energy queue information to avoid one developer using such information from other developers to gain a competitive advantage in ratepayer subsidized programs. This information, however, may be reviewed or relied on by the PUC to determine how to best meet certain state renewable energy goals. Making such information public could interfere with the competitive market and increase costs to ratepayers who pay for these programs.

The PUC looks forward to discussing these issues further with the sponsor to address the PUC's narrow concerns. Please feel free to contact me with any questions at 401-780-2147 or cynthia.wilsonfrias@puc.ri.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cynthia G. Wilson-Frias".

Cynthia G. Wilson-Frias
Chief of Legal Services

Copy: Representative Serpa