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Via Electronic Mail

May 7, 2012

Donna Giliberto, Esq.
Records Access Officer
New York State Department of Public Service
3 Empire State Plaza
Albany, New York 12223-1350

Re: Case 12-E-0136 – Petition of Dunkirk Power LLC and NRG Energy, Inc. for
Waiver of Generator Retirement Requirements.

Dear Ms. Giliberto:

NRG Energy, Inc., on behalf of Dunkirk Power LLC (“NRG”) hereby seeks permanent trade secret status pursuant to 16 NYCRR § 6-1.3(b)(1) for the attached documents because such documents contain confidential, commercially sensitive information.

The above-cited regulation requires that a request “clearly identify the records or portions thereof considered to be confidential.” The attached documents are labeled in accordance with 16 NYCRR 6-1.3(b)(1), namely, “CONFIDENTIAL” appears on each page of the document.

Pursuant to Section 6-1.3(b)(2) of the Commission’s Rules and Regulations and Section 87(2) of the Public Officers Law:

. . . a person submitting trade secret or confidential commercial information to the department shall clearly state the reason(s) why the information should be excepted from disclosure, as provided for in Section 87(2)(d) of the Public Officers Law. In all cases, the person must show the reasons why the information, if disclosed, would be likely to cause substantial injury to the competitive

position of the subject commercial enterprise. Factors to be considered include, but are not necessarily limited to:

- (i) the extent to which the disclosure would cause unfair economic or competitive damage;
- (ii) the extent to which the information is known by others and can involve similar activities;
- (iii) the worth or value of the information to the person and the person's competitors;
- (iv) the degree of difficulty and cost of developing the information;
- (v) the ease or difficulty associated with obtaining or duplicating the information by others without the person's consent; and
- (vi) other statute(s) or regulations specifically excepting the information from disclosure.

The attached documents contain information that is proprietary, commercially sensitive and not publicly available. Disclosure of the attached documents would cause unfair economic and competitive damage to NRG if the materials were to be disclosed because those documents describe the costs, operation and compliance strategies of the Dunkirk facility. This information satisfies the definition of a trade secret as it is used in NRG's business and it provides NRG "an opportunity to gain an advantage over competitors who do not know or use it." (See 16 NYCRR 6-1.3(a). This information would be very valuable to NRG's competitors because it could be used, *inter alia*, to determine the facility's costs of production and bidding and operating strategies. Competitors could not duplicate the information because it resides solely in the possession of NRG and competitors would have great difficulty trying to develop this information on their own. As such, the information is highly commercially sensitive and its disclosure could lead to anti-competitive outcomes that "...would cause substantial injury to the competitive position ..."of NRG . (See 6 NYCRR 6-1.3 (b)(2))

Accordingly, the documents satisfy the aforementioned criteria qualifying for trade secret protection. Courts have held that such information is confidential and should be excepted from disclosure under New York's Freedom of Information Law because disclosure of such data could

