



December 4, 2015

Re: 12-M-0476, 14-02555, and 14-02554

To the parties addressed:

On February 25, 2014 the NYS Public Service Commission (PSC) issued the Retail Markets Order which provided for the disclosure of ESCO-utility bill and price comparison information.<sup>1</sup> ESCOs were directed to file certain historic pricing information for dissemination to the public consisting of quarterly reports including a separate average unit price for products with no energy-related value-added services for each of four groups of customers and by geographic area.<sup>2</sup> A subsequent Commission Order, issued April 25, 2014, stayed the requirement for ESCOs to submit historic data for non-residential customers.<sup>3</sup> Therefore, only historic price data for residential customers will be considered in this Determination.

It is staff's intention to make the historic pricing information for 2014 and 2015 public as outlined in and directed by the Order. However, ESCOs have submitted such information to the Records Access Officers (RAO) with a request for protection from disclosure under Public Officers Law (POL) §§87(2)(d) and 89(5)(a) and 16 NYCRR §6-1.3.

Thus, the RAO will make a Determination pursuant to POL §89(5) regarding all requests for protection from disclosure as outlined above. Companies may, within ten business days of receipt of this notification, submit to the RAO<sup>4</sup> a written Statement of the Necessity for such exception from disclosure pursuant to POL §89(5)(b)(1)(2).

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<sup>1</sup> Case 12-M-0476, Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in NYS. Order Taking Actions to Improve the Residential and Small Non-residential Retail Access Markets (issued February 25, 2014) (Retail Markets Order).

<sup>2</sup> The four original groups were: i) residential price fixed for a minimum 12 month period; ii) residential variable price; iii) small non-residential price fixed for a minimum 12 month period; and iv) small non-residential variable price. Id. at page 17.

<sup>3</sup> Case 12-M-0476, Order Granting Requests for Rehearing and Issuing a Stay (issued and Effective April 25, 2014).

<sup>4</sup> This request should be sent electronically to [recordsaccessofficer@dps.ny.gov](mailto:recordsaccessofficer@dps.ny.gov).

Those ESCOs challenging disclosure are strongly urged to explain why the previous decisions of the RAO and Secretary are not dispositive of the issue.<sup>5</sup>

Unless a contrary showing is made, receipt of this letter will be presumed to have occurred on December 4, 2015, so the deadline for my receipt of any such written statement of necessity is December 18, 2015.

Sincerely,

Donna M. Giliberto  
Assistant Counsel &  
Records Access Officer

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<sup>5</sup> The Retail Markets Order was cited in a subsequent Determination of the RAO and upheld on Appeal by the Secretary to the PSC; both writings denied confidential treatment to historic pricing information. See Matter 11-01661 and Matter 12-00172 - DPS Records Access Officer Determination of Trade Secret 14-01, issued March 27, 2014; and Appeal of Trade Secret Determination 14-01, issued April 28, 2014. See attached.

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