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 <cgedeme@entergy.com>; 'chani@joscoenergy.com' <chani@joscoenergy.com>;

'chris.hendrix@texasretailenergy.com' <chris.hendrix@texasretailenergy.com>;
 'chris.kallaher@directenergy.com' <chris.kallaher@directenergy.com>;
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 'Michael.Messer@linde.com'; 'Michael.Nguyen@yepenergy.com' <Michael.Nguyen@yepenergy.com>;
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 'statong@dteenergy.com' <statong@dteenergy.com>; 'stefan@nextutilityenergy.com'
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Giliberto, Donna (DPS) <Donna.Giliberto@dps.ny.gov>
Subject: DPS ESCO Proceeding - Guidance for Non-Parties

To all non-parties:

DPS Staff issued information requests on February 2, 2017 directed to ESCOs. Some of those ESCOs are parties to Case 15-M-0127, Case 12-M-0476, or Case 98-M-1343, and some are not parties to any of those cases. **This guidance is directed ONLY to those ESCOs who are NOT parties to any of the three cases mentioned above.**

It is my understanding that some non-party ESCOs are preparing responses to DPS Staff information requests. Several individuals have contacted me seeking guidance regarding responding to those information requests. Since others may have the same questions, the questions and responses are provided below for your information.

Non-parties who have further questions should contact the individuals identified below as appropriate.

Ashley Moreno

Administrative Law Judge

Office of Hearings and Alternative Dispute Resolution

Department of Public Service

3 Empire State Plaza, Albany, NY 12223

t (518) 473-8123 | f (518) 473-3263 | ashley.moreno@dps.ny.gov

www.dps.ny.gov

Q1. Q. I am an ESCO. Am I a party to Cases 15-M-0127, 12-M-0476 and 98-M-1343?

- A. ESCOs are not automatically parties to these three cases. A person interested in actively participating in these cases must seek to intervene to become a party. If you currently appear on the party list for any of the above-mentioned cases, you are considered to be a party. In the event that the party status of an entity or person is challenged, a formal ruling will be issued either confirming or denying their party status. If you do not appear on any of those lists, you are not a party.

You may view the party list in each of these three cases by following these steps: 1) access the Department's website at www.dps.ny.gov; 2) click on "Search"; 3) enter the case number in the "Search by Case Number"; and 4) click on the "Party List" tab to view the party list. This process must be repeated for each of the three cases.

If you would like to intervene and actively participate in these proceedings, you may file a request to intervene. Below are three links to the Department's website. The first describes the ways in which members of the public can monitor or actively participate in Commission proceedings. The second describes the information you must provide to request party status, modify your contact information if you are already a party, or be added to the service list in these proceedings. You may also request party status or subscribe to the service list in these proceedings electronically by becoming a registered user of the Department's Document and Matter Management (DMM) system. The third link provides instructions on how to become a registered user of the DMM system.

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/EC36B65739ED90B9852578BD0067EDB0?OpenDocument>

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/D4DADE0C9F1FAE568525788100537361?OpenDocument>

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/B785AE8643B0B8D9852576A9005E090D?OpenDocument>

Please note that, if the Commission renders a decision that impacts ESCOs in New York State, that decision will apply as directed, whether or not an ESCO actively participated as a party in these proceedings.

Q2. Q. I am planning to respond to Staff's information requests, but need more time to prepare a response. What do I do?

- A. You should contact Staff counsel, Mr. Dwyer or Mr. Kramer, directly. Tom Dwyer: (518)474-5366 or francis.dwyer@dps.ny.gov. Steven Kramer: (518)473-0236 or Steven.Kramer@dps.ny.gov.

Q3. Q. Whom do I serve with responses to Staff's information requests?

- A. If you plan to respond to Staff's information requests and are not a party to Case 15-M-0127, 12-M-0476 or 98-M-1343, responses need be provided only to Staff counsel. Your responses should not be filed with the PSC Secretary; rather they should just be emailed to Staff Counsel. If your response contains information that you wish to be maintained as confidential by the Department of Public Service, you should direct your response to the information request with a request for confidential treatment to the DPS Records Access Officer, Donna Giliberto, an attorney in the Department's Office of General Counsel. See below.

Q4. Q. Some of the information in my response to Staff's information requests is sensitive and I would like it to be maintained as confidential by the Department of Public Service. What do I do?

- A. If there is information that you seek to have protected by the Department as trade secret, confidential commercial or critical infrastructure information, or otherwise as exempt from disclosure under New York's Freedom of Information Law (Public Officers Law Sections 84-90), you must submit the documents to the Records Access Officer for the Department of Public Service as described in the Department's regulations at 16 NYCRR 6-1.3. **Any document that is alleged to contain confidential material that you seek to have maintained as confidential by the Department must not be provided to any other person, including Staff Counsel.** Instead, Ms. Giliberto will arrange for the information to be released to Staff on a need-to-know basis, in a manner that allows her to keep track of who has access to the document.

While the regulations describe in detail what is required, generally, a person seeking to have a document protected by the Department must: submit the documents to the Records Access Officer clearly identifying the records or portions thereof considered to be confidential (clearly marking the documents as confidential); state why the information should be excepted from disclosure, as provided for in Section 87(2)(d) of the Public Officers Law; and, if the basis for seeking confidential treatment is trade secret or confidential commercial information, show the reasons why the information, if disclosed, would cause substantial injury to the competitive position of the subject commercial enterprise.

The Records Access Officer for the Department of Public Service is Ms. Donna Giliberto. If you have any questions about this process, you may contact Andrea Versaci, assistant to the Records Access Officer, at 518-486-2661.

Attached to this email are two documents prepared by the Records Access Officer. The first document contains confidential filing guidelines prepared by the Records Access Officer. The second document is a sample letter to the Records Access Officer.

Additional information regarding filing confidential documents with the Records Access Officer, the Freedom of Information Law (FOIL) and the Department's regulations is available on the Department's website. Links to those pages are provided below.

<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/2C2BF964121B6B2B85257B6B00675C5D?OpenDocument>
<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/CE5C6339C86EF6D485257687006F39F4?OpenDocument>
<http://www3.dps.ny.gov/W/PSCWeb.nsf/All/49775FD17CDEE7F285257C910059DEED?OpenDocument>

Q5. Q. If I follow the instructions in Administrative Law Judge (ALJ) Moreno's February 8, 2017 Ruling, will my information be maintained by the Department as confidential?

A. Rulings made in these proceedings are not binding on non-parties. Persons who are not parties to these proceedings should follow the process, described above, if they wish to have a document maintained as confidential by the Department of Public Service.

Q6. Q. I am not a party to these proceedings and I served a copy of my response to Staff's information requests to ALJ Moreno, Staff counsel and counsel for UIU. Some of the information in my response to Staff's information request is sensitive and I would like it to be maintained as confidential by the Department of Public Service. Will my information be protected? What do I do now to ensure it is protected?

A. If you have mistakenly provided the documents that you wish to be treated as confidential to ALJ Moreno, Staff counsel and counsel for UIU, you must take additional action to ensure that your information is maintained as confidential by both the Department of Public Service and the Department of State.

You should contact the Records Access Officer for the Department of Public Service and provide the allegedly confidential material to the Records Access

Officer as described in Q4., above. This will ensure that the materials that were filed with the Department of Public Service will be handled according to the FOIL rules and be treated as confidential.

To ensure that the information you submitted is protected by the Department of State, you should contact the Records Access Officer of the Department of State, Kristy McCann, at Kristy.McCann@dos.ny.gov.