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Deputy General Counsel

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VIA E-MAIL

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Jessica Vigars
Records Access Officer
State of New York
Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 17-M-0815 – Comments of the Joint Utilities addressing Tax Cuts and Jobs Act of 2017 – Request for Trade Secret Status

Dear Ms. Vigars:

New York State Electric & Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”) (collectively, the “Companies”), subsidiaries of Avangrid, Inc., respectfully request that certain information that will be filed with the Commission in the above-referenced case be accorded confidential trade secret and commercial information status pursuant to the Commission’s regulations (16 NYCRR §§ 6-1.3(a), 6-1.3(b)), thereby prohibiting its disclosure. Specifically, the Companies seek trade secret and confidential commercial information protection for two tables contained in NYSEG/RG&E’s Appendix (Appendix 4) to the Joint Utilities’ Comments to Staff’s Proposal to Address the Accounting and Ratemaking Consequences of the Tax Cuts and Jobs Act of 2017. The redacted tables in Appendix 4 contain sensitive information specific to the Companies’ finances and accounting (hereafter, the “Confidential Information”).

Public Officers Law (“POL”) Section 87(2) states in relevant part that agencies may deny access to records that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise.” N.Y. Pub. Off. Law § 87(2)(d)(McKinney 2007). The Commission not only has the power but also the affirmative responsibility to provide for the protection of trade secrets. N.Y. Tel. Co. v. Pub. Serve. Common., 56 N.Y.2d. 213, 219-20 (1982). The New York State Court of Appeals has held that the trade secret exemption in POL Section 87(2)(d) is triggered when public disclosure of the trade secret material would “cause substantial harm to the competitive position of the person from whom the information was obtained.” Encore College Bookstores, Inc. v. Auxiliary Serves. Corp. of the State Univ. of N.Y. Farmingdale, 87 N.Y.2d 410, 419 (1995) (citations omitted).

The Commission has promulgated regulations to implement the provisions of the POL. See 16 NYCRR § 6-1.1, *et seq.* Section 6-1.3 allows a party to seek confidential trade secret protection for any records submitted to the Commission. *Id.* § 6-1.3. Section 6-1.3(b)(2) requires the

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Companies to “show the reasons why the information, if disclosed, would cause substantial injury to [its] competitive position.” Id. § 6-1.3(b)(2).

The Commission defines a “trade secret” as “any formula, pattern, device or compilation of information which is used in one’s business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it.” Id. § 6-1.3(a). Factors to be considered by the Commission in determining whether to grant confidential status to trade secrets include, but are not 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 statutes(s) or regulations specifically excepting the information from disclosure.

Id. § 6-1.3(b)(2).

Here, the Confidential Information constitutes confidential commercial information and/or a trade secret pursuant to the criteria listed above because it: (i) is neither generally available to the public nor easy for members of the general public to obtain or duplicate without the Companies’ permission; (ii) would be of great value to others; and (iii) if disclosed, could cause the Companies to suffer substantial economic harm. Specifically, the Confidential Information is proprietary to the Company and contains non-public commercially sensitive business information relating to the Companies’ respective cash flows, earnings, and credit ratings.

In light of the above, the Confidential Information falls within the Commission’s trade secret rules, and the Companies respectfully request that it be granted trade secret protection.

Please let me know if you have any questions. We appreciate your office’s courtesies.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jeffrey A. Rosenbloom".

Jeffrey A. Rosenbloom
Deputy General Counsel

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