



## Phillips Lytle LLP

Via Electronic Mail  
(recordsaccessofficer@dps.ny.gov)

June 11, 2018

Jessica Vigars  
Records Access Officer  
Office of General Counsel  
New York State Public Service Commission  
Three Empire Plaza  
Albany, New York 12223-1350

Re: APG&E (NY), LLC and APG&E (TX), LLC Request for Confidential Treatment

Dear Ms. Vigars:

AP Gas and Electric (NY), LLC and AP Gas and Electric (TX), LLC (collectively "APG&E") respectfully requests that the enclosed comments and exhibits (collectively "Comments") be treated as trade secret and confidential commercial information pursuant to the New York Public Officers Law §§ 87(2)(d) and 89(5)(a) and 16 NYCRR § 6-1.3.

Pursuant to New York Public Officers Law §§ 87(2)(d), an agency may deny public 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." That section contains two distinct categories of exemption: the first covers records, or portions of records, that are trade secrets, and the second protects records that would, if disclosed, cause substantial competitive injury to the party seeking exemption. The Commission Regulations in 16 NYCRR § 6-1.3 permit parties to request protection from disclosure of trade secrets or confidential commercial information. A trade secret is defined 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." 16 NYCRR § 6-1.3(a). The factors to be considered by the Commission in determining whether the information should be exempted from disclosure as either a trade secret or as confidential commercial information include:

ATTORNEYS AT LAW

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1. the extent to which the disclosure would cause unfair economic or competitive damage;
2. the extent to which the information is known by others and can involve similar activities;
3. the worth or value of the information to the person and the person's competitors;
4. the degree of difficulty and cost of developing the information;
5. the ease or difficulty associated with obtaining or duplicating the information by others without the person's consent; and
6. other statute(s) or regulations specifically excepting the information from disclosure.

APG&E's Comments contain trade secrets and confidential commercial information pertaining to its customer accounts, load data, sales, and business strategy, which if disclosed would cause substantial injury to the competitive position of APG&E in the retail energy marketplace. Disclosure of this proprietary information would advantage APG&E's competitors by giving them insight into APG&E's customer accounts, load data, sales, and business strategy. This information is not known by other suppliers in the retail energy market, and is of great value to APG&E's business. As such, APG&E respectfully requests that its Comments be protected from further disclosure and maintained in safe keeping by the Records Access Officer as provided in the Commission's regulations. Should you have any questions regarding this request, please contact me by telephone at (716) 847-7082 or by email at [KBlake@phillipslytle.com](mailto:KBlake@phillipslytle.com).

Sincerely,

Phillips Lytle LLP

By *Kevin C. Blake*  
Kevin C. Blake

Enclosure