



May 2, 2024

VIA E-MAIL

recordsaccessofficer@dps.ny.gov

Molly Magnis, Esq.
Records Access Officer
State of New York
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 22-E-0317 – Proceeding on a Motion of the Commission as to the Rules, Rates and Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service.

Dear Ms. Magnis:

New York State Electric & Gas Corporation (“NYSEG” or “Company”), respectfully requests that certain information requested by Department of Public Service (the “Department”) Staff in connection with the above matter be accorded trade secret and confidential commercial information status pursuant to 16 NYCRR §§ 6-1.3(a), 6-1.3(b). Specifically, the Company seeks to withhold from public disclosure a slide deck presentation and an excel spreadsheet related to the Company’s 2024 make ready unit pricing (hereafter, the “Confidential Information”). Among other things, the Confidential Information contains vendor pricing information associated with the Company’s joint use program. Once processed by your office, the Confidential information should be provided to the Department’s Richard George.

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 Company 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 accord trade secret protection from disclosure include, but are not limited to the following:

- i) the extent to which disclosure would cause unfair economic or competitive damage;
- ii) the extent to which 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 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 without the Company's permission; (ii) could be of great value to others; and (iii) if disclosed, could cause the Company or its vendors to suffer substantial economic harm. Accordingly, the Company respectfully requests that the Confidential Information be withheld from public disclosure because it qualifies as a trade secret under the Commission's rules.

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

Regards,



John R. Forbush
Senior Counsel

Encl.