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Cc: Van Ort, David (DPS) <David.VanOrt@dps.ny.gov>

Subject: ESCO Proceedings - Further Guidance for Parties (Cases 15-M-0127, 12-M-0476, 98-M-1343)

To the parties:

It is my pleasure to advise you that Administrative Law Judge David Van Ort will be presiding with me over these proceedings. In the future, please copy Judge Van Ort on any correspondence you would provide to me.

I have received several questions from parties seeking further clarification of my ruling and the process for requesting confidential treatment of discovery responses. Please see the below guidance. Should you have other questions, please direct them to me or Judge Van Ort by email.

Thank you.

Ashley Moreno

Administrative Law Judge

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Q1. Q. Will a protective order be issued soon?

A. Yes. Until that time, please follow the instructions provided in my ruling and further clarified below.

Q2. Q. Whom do I serve my discovery responses on?

A. Discovery responses must be served on the requesting party, any other party who so requests and Judge Moreno. You need not serve Judge Van Ort with discovery requests or responses. If any part of a discovery response includes information that is sensitive and you wish to request confidential treatment, follow the instructions below.

Q3. Q. Part of my response to an information request includes sensitive information that I wish to be treated as confidential. What do I do?

A. Parties are required to comply with my February 8, 2017 Ruling on Schedule and Procedure.

If a party is asserting any part of its response to an information request should be maintained as confidential, it must file its request for confidential treatment and serve all parties and me . In so doing, the party must follow the Commission's Rules of Procedure at 16 NYCRR §6-1.3(b)(2). Generally, this means a party must: identify the records or portions thereof that are considered to be 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.

If the request for confidential treatment itself contains confidential information, the party should file a redacted version of the request and separately provide me, by email, the unredacted version of its request.

By separate email, parties must provide the confidential documents, labeled as confidential, only to me, counsel for Department of Public Service (DPS) Staff and counsel for the Utility Intervention Unit (UIU). DPS Staff and UIU are required to treat the information as confidential information and, as I described in my ruling, are subject to disciplinary action, fine or prosecution for the disclosure of confidential information. So long as a party complies with these directives, particularly, submitting a statement addressing the factors stated in 16 NYCRR §6-1.3(b)(2), the allegedly confidential information will be accorded confidential status and excepted from disclosure and maintained apart by the agency from other records until 15 days after entitlement to confidential status has been finally denied or such further time as ordered by a court of competent jurisdiction.