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Subject: ESCO Proceedings - Further 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. I received questions from some ESCOs who are not parties to these proceedings. I circulated questions and responses for informational purposes to non-party ESCOs on February 15, 2017. I have since received several other questions from non-parties. The questions and responses are provided below for your information.

This guidance is directed ONLY to those ESCOs who are NOT parties to any of the three cases mentioned above.

Non-parties are further advised that at the January 26, 2017 procedural conference held in these proceedings, I gave an overview of the evidentiary process. A transcript of the procedural conference is available on the Department's website. You may access it by: 1) going to the Department's website www.dps.ny.gov; 2) clicking "Search"; 3) entering any of the three case numbers associated with these proceedings (15-M-0127, 12-M-0476 or 98-M-1343). The transcript of the procedural conference was filed on 2/8/2017.

If you are not a party to these proceedings and have further questions about the information requests issued by Department of Public Service Trial Staff, you are encouraged to reach out to DPS Staff counsel.

Thank you,

Ashley Moreno

Administrative Law Judge

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Q6. Q. Are individuals or entities who are not parties to these proceedings required to respond to information requests issued by Department of Public Service Staff?

A. In general, the obligation to respond to information requests stems from an individual's or entity's role as a party to a proceeding, which makes that individual or entity subject to the Commission's Rules of Procedure regarding discovery. If you are not a party, those Rules do not apply and do not provide

a source of authority for Department of Public Service Staff to compel you to respond to discovery requests.

However, non-parties should be aware that, pursuant to Public Service Law Section 19, the Public Service Commission has the power to issue subpoenas and subpoenas duces tecum. This means that, if a commissioner or authorized employee, including an administrative law judge, signs and issues a subpoena, the subpoenaed individual or entity would be required to present themselves for questioning and/or produce documents. Department of Public Service Staff or other parties to these proceedings may seek a subpoena from the assigned administrative law judges to compel responses to questions or production of documents. A subpoena is enforceable in New York State court, which would also hear challenges to the subpoena. Failure to comply with an enforceable subpoena is a misdemeanor criminal offense. No party has sought a subpoena from us at this time.

Q7. Q. Are individuals or entities who are not parties to these proceedings required to respond to information requests issued by parties *other than* Department of Public Service Staff?

- A. As explained above, because individuals or entities who are not parties are not subject to the Commission's discovery rules contained in the Rules of Procedure, they are not required to respond to information requests of the parties under those rules.

However, as explained above, a party may choose to seek information from a non-party by requesting that a subpoena or subpoena duces tecum be issued. If a subpoena or subpoena duces tecum is signed and issued by a commissioner or authorized employee, including an administrative law judge, the subpoenaed individual or entity would be required to present themselves for questioning and/or produce documents. A subpoena is enforceable in New York State court, which would also hear challenges to the subpoena. Failure to comply with an enforceable subpoena is a misdemeanor criminal offense. No party has sought a subpoena from us at this time.

Q8. Q. If a non-party responds to information requests issued by Department of Public Service Staff or any other party, should they provide the responses to parties other than the requester?

- A. If a non-party responds to information requests issued by a party in these proceedings, they need only serve the party requesting the information with the response.