STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 17, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

CASE 11-M-0294 - In the Matter of the Filing of Annual Reports by Electric and Gas Corporations Subject to Lightened Ratemaking Regulation.

ORDER ADOPTING ANNUAL REPORTING REQUIREMENTS
UNDER LIGHTENED RATEMAKING REGULATION

(Issued and Effective January 23, 2013)

BY THE COMMISSION:

BACKGROUND

In the Order on Annual Reporting Under Lightened Ratemaking Regulation and Establishing Further Procedures (Reporting Proposal Order) issued March 23, 2012 in this proceeding, it was decided that competitive providers of utility services subject to lightened ratemaking regulation, including owners of generation facilities selling electricity at wholesale; electric, gas and steam service providers retailing their production; gas transportation and gathering service companies; and, similar utility service providers, could be required to file Annual Reports under Public Service Law (PSL) §66(6) or PSL §80(5). Attached to the Order was a proposed Annual Report format devised to accommodate the particular circumstances attending lightly regulated company operations while nonetheless providing for compliance with each reporting element stated in PSL §66(6)(a)-(g).[1] The Order also lists the utility service providers that are subject to some form of regulation under the PSL, but are not required to file an Annual Report.

Interested parties were invited to comment on the proposed Annual Report form, and the reporting requirements embodied therein, by May 29, 2012. That deadline was later postponed to July 30, 2012 in an Order Extending Deadline issued May 21, 2012 in this proceeding. Moreover, pursuant to a Revised Notice of Technical Conference issued July 3, 2012 in this proceeding, a Technical Conference was conducted on July 13, 2012, to discuss issues including the use of financial statements consolidated at the holding company level and unconsolidated financial data collected at individual generation facility sites in meeting annual reporting requirements.

Assemblyman James F. Brennan, Constellation Energy Nuclear Group (CENG), Couch White LLC, on behalf of a number of smaller-sized lightly-regulated service providers (the Small Entity Consortium), and the Independent Power Producers of New York, Inc. (IPPNY) submitted comments prior to the expiration of the July 30, 2012 deadline. In conformance with State Administrative Procedure Act (SAPA) §202(1), notice of the annual reporting proposal was also published in the State Register on April 11, 2012. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on May 29, 2012. No comments in addition to those listed above were

[1] Since §80(5)(a)-(g) repeats the contents of §66(6)(a)-(g) for steam corporations, references to §66(6) subsequently in this Order are inconclusive of §80(5).

received in response to the notice. Those comments are summarized below.

POSITIONS OF THE PARTIES

IPPNY

The proposed Annual Report form, IPPNY maintains, will not achieve the objectives listed in the Reporting Proposal Order as preserving system reliability, determining if generation facility owners are financially sound, identifying adequate maintenance practices, and depicting the health of the wholesale generator sector as a whole. While reaching similar goals is feasible for fully-regulated companies that must align their recordkeeping with the Uniform Systems of Accounts (USOA) and the ratemaking function, IPPNY protests that lightly regulated companies do not arrange their accounting and recordkeeping for the purpose of meeting regulatory scrutiny.

For example, IPPNY states, competitive market participants may expense costs in the period in which they were incurred, while rate-regulated companies may instead capitalize a cost as a regulatory asset for future rate recovery. Return metrics for lightly regulated companies in future periods may thereby be affected, IPPNY argues, because expensing costs instead of capitalizing them may reduce retained earnings. IPPNY concludes comparisons of wholesale merchant generator earnings to regulated company rates of returns are not meaningful.

The lack of uniformity across lightly-regulated companies in their accounting and recordkeeping methods, IPPNY claims, poses obstacles to consistent annual reporting. One difficulty, IPPNY explains, is that some companies keep their books and records on a consolidated basis for several generation facility sites, while others may instead keep site-specific records, and few or no companies keep records specific to each generation unit at a multi-unit site. Where financial statements for a number of operating subsidiaries are consolidated at the holding company level, IPPNY posits, consolidation may not reflect the full costs attributable to each individual subsidiary. As a result, IPPNY maintains it may be difficult to translate the balance sheet formats companies actually use into the balance sheet format set forth in the proposed Annual Report.

IPPNY also maintains that the categories used in a lightly regulated company’s accounting ledger may not be consistent with the proposed Annual Report format categorizations. It argues no definitions are provided for the Annual Report format categories, making compliance with the requirements more difficult. IPPNY would both broaden the categories for general reporting, and make more specific the categories for reporting site-specific costs, if those are required.

Compelling the provision of site-specific data for each subsidiary of a holding company, IPPNY contends, would pose additional difficulties to holding companies, forcing them to undertake an allocation, which they would not ordinarily perform, of corporate service costs, debt, income taxes and other expenses among multiple sites. That allocation, IPPNY insists, could only be accomplished through methods that would vary greatly among companies. Another complication with site-specific reporting, IPPNY discerns, may arise through a multi-site generation facility owner’s affiliation with a power marketer. A typical arrangement for a multi-site owner, IPPNY continues, is that the marketer takes ownership of the combined electric output from the entire portfolio of the generation company’s facilities. The marketer then undertakes risk management activities affecting the value of the combined output. As a result, IPPNY insists, it is difficult for a multi-site owner to unwind the marketer’s actions and determine the actual receipts obtained from the sale of electricity produced at any one individual site. Adding another objection to site-specific reporting, IPPNY contends that, instead of the detailed listing of electric equipment provided for in the proposed format, a general description of electric facilities located at a site should be deemed adequate.

These difficulties, IPPNY propounds, would be exacerbated if even more detailed reporting at the individual generation unit level were required. In particular, IPPNY cautions, fuel inventory costs and accounts receivable may not be recorded at the unit-specific level. As a result, IPPNY contends, neither uniform site-specific reporting, nor consistent unit-specific reporting, nor comparisons across companies are feasible.

IPPNY also believes that some of the information on operating characteristics of generation plant called for under the proposed Annual Report format must be obtained directly from the New York Independent System Operator (NYISO). IPPNY asks that the NYISO be requested to dedicate the resources necessary to provide the information on a timely basis. In addition to that prerequisite, IPPNY posits, any reporting deadline must be set at a time sufficiently after the NYISO’s publication of its Load and Capacity Data Book (Gold Book) to permit the reporting companies to use the data from the Gold Book in their Annual Reports.

Other considerations affecting the deadline for Annual Report filing, IPPNY notes, are the timing of the Form 10-k required by the Securities and Exchange Commission (SEC) in early March for public companies, and the availability of audited financial statements for closely-held companies that can come as late as 120 days following year end. As a result, IPPNY would set the due date for the Annual Report at the later of 180 days after a company's fiscal year end, or 45 days following the submission of the Form 10-k or the completion of an audited financial statement.

IPPNY also asks that it be recognized that, if companies must modify their recordkeeping procedures in order to comply with annual reporting requirements, they should be allowed sufficient time to make the needed alterations. As a result, IPPNY is concerned that reporting in 2013 for 2012 may be impracticable, and the filing of Annual Reports would be better delayed until 2014. If the filing is required in 2013, IPPNY asks for flexibility in evaluating compliance in the first reporting year.

Opposing the use of the verification attestation proposed in the Reporting Proposal Order format, which it finds vague and unreasonable, IPPNY notes that FERC requires that the verification attest that the reporting provided is correct only "in all material respects." IPPNY argues that it is essential to incorporate a similar materiality provision into the Annual Report verification adopted here. IPPNY would also modify the verification to state an attestation to the preparation of the Report in accordance with a company's normal accounting practices, not an attestation to the USOA or other regulatory accounting. As a result, IPPNY would include in the verification the statement that the "financial information contained in this report conforms in all material respects to the respondent's accounting practices."[2]

[2] IPPNY Comment, p. 13.

Compliance with the requirements imposed through the proposed format, IPPNY asserts, will compel the submission of highly confidential cost information not otherwise publicly reported. IPPNY believes that it should be decided in advance that this Annual Report information will be protected from public disclosure as confidential trade secret information under the Freedom of Information Law (FOIL). Releases of the information, IPPNY argues, would be detrimental to the efficient operation of competitive markets. Contending that uncertainty can be avoided and potential litigation can be forestalled, IPPNY asks for a ruling deciding that cost, financial, and operating characteristic information submitted in the Annual Reports will be kept confidential.

Summing up its arguments, IPPNY proposes an alternative to the format proposed in the Reporting Proposal Order. It would require submission of an Annual Report form containing two separate schedules, one for receipts and one for expenditures. On the receipts ledger, IPPNY asks that PSL annual reporting be designed to track the information detailed in the Electronic Quarterly Report (EQR) filings made to the Federal Energy Regulatory Commission (FERC). The EQR filings, IPPNY explains, are submitted on a quarterly basis and identify receipts from generation sales transactions, including those for transactions between affiliates as well as with third parties. IPPNY cautions, however, that, even though the EQR filings provide substantial information on wholesale generator receipts, the filings may exclude some revenues, such as capacity payments, if those revenues are managed by a marketer.

On the expenditures ledger, IPPNY continues, the Annual Report format should provide for the filing of whatever expenditure data the companies keep in their normal accounting system for the relevant legal entity. Companies should also be permitted to present explanations that would assist in the evaluation of the information provided. IPPNY believes this process will be workable while avoiding impacts adverse to the generators filing the Annual Reports.

Assemblyman Brennan

According to Assemblyman Brennan, the Annual Report is a vital tool that facilitates oversight of the power producer industry and opens it to transparency. Without the Annual Report, he believes, the public would lack access to much-needed information on sales, revenues, and costs at electric generation facilities. He argues that the information would also be useful for analyzing prices within restructured markets to determine if they are competitive and for guarding against market manipulation. In particular, Assemblyman Brennan asserts, Entergy Corporation (Entergy) does not disclose to the public information on the costs, revenues, and profits at the Indian Point Energy Center (Indian Point), where Entergy subsidiaries operate nuclear plants.

Assemblyman Brennan argues that restructured competitive electric markets have a poor track record. He claims the markets suffer from inherent inefficiencies, including the inability to store electricity economically; transmission constraints that compel the adoption of reliability requirements to ensure adequacy of electric capacity supply within New York City; inelasticity of electric demand and supply; and, barriers to entry. Assemblyman Brennan believes that deregulated competitive markets have been ineffective in lowering utility rates, and he attaches an Excess Profits Report, which he asserts analyzes Entergy’s finances and shows it earns in excess of the rate of return that would result if full ratemaking regulation were applied to its Indian Point operations.[3] Assemblyman Brennan concludes this analysis shows there is a lack of competition in restructured electric markets.

In the Excess Profits Report, Assemblyman Brennan explains, Entergy's refusal to make financial data public is overcome by obtaining information from other sources. Monthly generation and fuel consumption data for Indian Point are available from the Federal Energy Information Administration, production costs may be derived from Nuclear Energy Institute reports, and other information may be found in Entergy's corporate reports, from the Nuclear Regulatory Commission and other sources. Based on the information collected, it is concluded in the Excess Profits Report that Entergy is able to charge consumers approximately $487 million more than it could if it were subject to full ratemaking regulation, an amount estimated at 70% greater, and 2.99¢ per kWh beyond, a fully regulated rate.[4]

Moreover, on October 15, 2012, Assemblyman Brennan provided an update of the Excess Profits Report, dated September 17, 2012. The updated Report reiterates the conclusions of the initially-filed Report.

CENG

CENG, the owner of nuclear generation facilities located in Oswego and Wayne Counties, New York, states that it supports IPPNY's positions. CENG adds that considerations specific to its operations demonstrate the potential for wide variation in financial, accounting and legal structures among wholesale generation companies.

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[3] "Deregulation of Electric Generation in New York State and Excess Profits For Power Producers: The Case of the Entergy Corporation and the Indian Point Energy Center" (September 17, 2012).

[4] These figures are taken from a correction to the Report Assemblyman Brennan provided by e-mail dated August 2, 2012.

CENG asserts that it, and other wholesale generators, do not necessarily maintain their accounting systems in the format identified in the proposed Annual Report form. CENG notes that some companies may not assign costs and revenues within their accounting record systems using the specific categories listed in the proposed format. For example, CENG continues, it does not break down expenses between operational expenses and maintenance expenses, as the proposed form does. CENG asks that undue burdens be avoided by allowing companies to file information consistent with the categories from their existing accounting records. In the alternative, it proposes that categories within the Annual Report format should be aggregated to the extent feasible.

Pointing out that the Reporting Proposal Order imposed accounting and financial statement requirements on the operating companies identified as directly owning utility plant located in New York, CENG notes that it owns nuclear generation units at one site outside of New York in addition to the three nuclear units at the two sites it owns within New York. CENG states it has formed separate operating companies at each of its two in-state and one out-of-state sites, with those companies combining together for management purposes supervision over the operations of all the generation units at any one site. Financial statements, CENG emphasizes, are then produced at the holding company level for all three sites taken together. CENG adds that accounting records are kept on an operating company and site-specific basis, but that it does not regularly maintain records for each generation unit.

CENG asks that the conclusion on site-specific reporting reached in the Reporting Proposal Order be modified to allow it and other similarly-situated companies to submit financial reports, such as balance sheets and income statements, at the holding company level rather than at the operating company level. It maintains that affording this flexibility will significantly reduce the reporting burden, while the information provided would yield a more complete view of the overall financial health of the company that actually financially supports generating facility operations. If, CENG surmises, the financial statements are deemed to lack sufficient detail, additional information could be requested. As to providing information on a unit-specific basis for each generation unit individually, CENG protests that such an approach would be costly and burdensome because it would be forced to adopt new recordkeeping and accounting procedures.

Turning to the operational data requirements identified for generation facilities in the proposed Annual Report format, CENG claims most of the information requested is available from other sources, such as the NYISO. CENG argues requiring the submission of information available elsewhere in the Annual Report format would be duplicative and that information already submitted to the NYISO should be obtained from it instead of from a reporting company.

Noting that the proposed format requires the submission of detailed information on the electric plant location, design, and plant components, such as conductors, devices, and underground lines, CENG argues that collecting, organizing and submitting such information is overly burdensome and unnecessary. Because the utility plant subject to the reporting requirement is already constructed and is not subject to cost-based regulation, CENG argues, a general description of the plant, such as that provided in petition seeking lightened regulatory treatment, should be adequate.

The Small Entity Consortium

Analyzing the issues raised in this proceeding from the perspective of small lightly-regulated companies providing utility service to a few retail customers, the Small Entity Consortium argues that undue burdens on these smaller entities should be avoided, especially where the lightly-regulated function is but a small percentage of an overall non-utility business operation. As a result, the Consortium would not impose full Annual Report form requirements on those entities whose lightly-regulated activity is not a substantial contributor to overall revenues received at a site, or the revenues from the activity do not exceed $5.0 million annually.

The Consortium posits that reporting for these small, lightly regulated entities should be limited to the categories of: 1) annual revenues from lightly-regulated activity; 2) the percentage of those revenues in proportion to the overall activity at a site; 3) a list of customers; and, 4) a description of the method used to calculate customer charges and bills. Instead of supplying detailed descriptions of utility equipment, the Consortium continues, submitting a general description of the lightly-regulated facilities would be deemed satisfactory, and meeting that requirement could be satisfied through referencing prior proceedings where the facilities are described. These requirements, the Consortium concludes, should yield information sufficient to meet reporting goals for these smaller-sized companies.

DISCUSSION AND CONCLUSION

Several modifications to the format proposed in the Reporting Proposal Order are appropriate. In particular, allowing companies to respond to the Annual Report format's balance sheet and income statement requirements at the organizational level where financial statements are compiled, even if those statements are consolidated, will yield a more complete depiction of the financial circumstances affecting the operation of generation facilities located in New York than would the development of a format focused exclusively on site-specific circumstances. Modifying the financial statement reporting format to allow for consolidated reporting, however, requires that some site-specific generation facility information be provided separately, so that certain important circumstances which affect operations only at New York locations can also be evaluated. Adjustments to categories listed in the proposed format's balance sheet and income statement are also appropriate, to ease the burden of compliance with the revised reporting requirements.

As to IPPNY's other proposals, its approach to the verification required for an Annual Report attestation and its criticisms of the proposed filing deadline for submitting the Annual Reports have merit. Its proposed revisions to receipts and expenditures reporting, however, would not yield information sufficient to satisfy annual reporting purposes, and its request that confidentiality be determined prior to the time of filing is contrary to law and cannot be granted.[5]

Consolidated Reporting

In the Reporting Proposal Order, it was decided that reporting should be made at the level of the entity or subsidiary that owned and operated the utility plant within New York. As IPPNY and CENG point out, however, holding companies that own multiple wholesale generation facilities in New York

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[5] The issues raised by the Excess Profits Report, and IPPNY's comparisons of utility rates of return to lightly regulated company returns, are beyond the scope of this proceeding and will not be addressed further here.

frequently operate them through site-specific subsidiaries, while often consolidating financial statements for the site-specific subsidiaries at an upstream holding company level. There, the financial information from the subsidiaries operating sites in New York can be further combined with the financial information from subsidiaries located in other states.

Because these multi-facility holding companies often raise capital to finance their operations on a multiple-site basis, and furnish centrally-provided services shared among those sites, performing accounting and preparing financial statements at the holding company level is appropriate. Given this combination within holding company structures of financial and operational support for separate subsidiaries managing generation facilities at specific sites within and outside New York, the holding companies’ financial situations and circumstances can be relevant to the financial health of the operational subsidiaries. On the other hand, the individual circumstances present at the operational subsidiaries viewed separately from the holding company may not accurately depict the subsidiaries’ overall financial situations. Moreover, attempting to separate shared corporate service costs incurred by a holding company into operational subsidiary costs at specific sites would be burdensome. Lightly regulated holding companies do not normally perform such allocations of cost as a fully regulated company would under regulatory accounting protocols, and requiring separate allocations absent the guidance provided by those protocols, which are not imposed on lightly regulated companies, could yield incomplete, inaccurate or misleading results.

Therefore, holding companies that prepare financial statements at a level upstream from their New York operational subsidiaries may comply with the Annual Report format by reporting information extracted from the holding company's consolidated financial statement at the Annual Report format's balance sheet and income statement. In doing so, the holding company where the financial statements are prepared will identify itself; the relationship of that entity to the subsidiaries owning and operating individual New York generation facility sites would be clarified in conjunction with the site-specific reporting described below.

Balance Sheet and Income Statement Reporting

IPPNY and CENG note that wholesale generators are not subject to cost of service regulation and do not conform their accounting practices to the USOA. They complain that the terminology used in Annual Report format's balance sheet and income statement seems derived from the USOA, is not otherwise well-defined, and may not dovetail readily with the accounting protocols in place at some holding companies. They also present one specific criticism -- that operational and maintenance expenses reflected on the proposed format's income statement should not be divided into separate categories. That modification, to combine the two into one category, is readily made. In addition, revisions to the proposed categories listed at the Reporting Proposal Order's balance sheet and income statement formats are appropriate to better facilitate reporting by lightly regulated entities not subject to the USOA.

The revisions, as detailed in the final Annual Report format attached at Appendix A, are directed to more completely disconnecting ties to USOA formats in favor of a more generic format, albeit any standardized annual reporting format will inevitably bear some resemblance to other standardized formats. The revisions reconfigure the previously-proposed categorizations, with some eliminated and the scope of others broadened, in accordance with the more generic approach. This revised format will better accommodate the variation among lightly regulated company accounting practices, by affording a lightly regulated company more opportunity to match a category it already employs to a reporting format category, while declining to make an entry at a reporting category that is not applicable to its operations.[6]

The cost classification categorizations and terminology reflected in the revised format need not be narrowed by greater definitional specificity. Attempting to constrain the definitions would restrict reporting flexibility to the detriment of the companies subject to the reporting requirement. That the terminology and categories are not narrowly defined opens them to more flexible responses, enabling reporting companies to better match their individual accounting classifications to the Annual Report format’s classifications. As IPPNY points out, providing explanations, which could be set forth at footnotes, would assist in this process, and nothing in the format of the Annual Report prevents such clarifications.

This approach to compliance with annual reporting requirements recognizes the fact that the lightly regulated entities making these Annual Reports are not required to maintain records on a uniform basis or in regulatory formats and that the formulation of a format that specifically lists all possible recordkeeping and accounting permutations is neither feasible nor necessary. Instead, building flexibility into the format should permit lightly regulated entities to respond adequately to annual report requirements while still submitting information on a basis sufficiently uniform to achieve some comparability and serve other useful purposes.

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[6] The revised income statement asks for both current year and prior year amounts; the prior year figures need not be provided in the first year of reporting.

The other criticisms IPPNY levels against the annual reporting format lack merit. The PSL §66(6) reporting format need not be tied to FERC’s EQR reporting format, as IPPNY proposes. While the data wholesale generators collect through the EQR format will assist them in preparing the PSL Annual Reports, with that data in hand, it should not be unduly difficult to collect data on their revenues from the other sources they mention and combine all the data at the PSL Annual Report location. IPPNY protests that some of that needed data, in the form of capacity and hedging payment amounts, may be in the hands of a company affiliated with the generation facility owner through a holding company arrangement. The affiliation, however, should result in a relationship between sister companies that facilitates the collection of data instead of obstructing it. Since the primary sources of revenues are readily obtainable because provided through the EQR filings, and any additional payments can be obtained through the affiliate relationship, reflecting the total amount as the receipts reported should not pose unduly burdensome difficulties.

Consequently, the wholesale revisions to the receipt and expense reporting formats that IPPNY proposes, to match the reporting already made elsewhere and to reflect only recordkeeping and accounting practices already in place at each individual company, are rejected. The information provided would be incomplete and would lack any consistency. As a result, the formatting IPPNY proposes would not achieve the goals stated in the Reporting Proposal Order.

<u>Site-Specific Reporting</u>

Since holding company consolidated reporting will be permitted on the above basis, it is necessary to collect some information specific to New York generation facility sites on a separate basis. Therefore, a new page will be added to the

Annual Report format that was proposed in the Reporting Proposal Order, listing certain site-specific revenue and expense information that is required to form a foundation for evaluating the state of operations at a particular site.[7] The categories of that format are limited in number and are designed to facilitate deriving the information needed to comply from commonly-kept unconsolidated accounting records.

IPPNY and CENG criticize the level of detail required for site-specific plant and equipment reporting under the proposed format. These criticisms have some merit, in that the categories are overly narrow and specific. Simplification of the proposed requirements can be accomplished, however, and the format is revised accordingly, through reducing the number of categories and broadening their scope, without losing the level of uniformity necessary to the Annual Report function. An important component of that function is that all information be available at a single source where it can be readily located when needed. Proposals to incorporate into the Annual Report references to the information and descriptions provided elsewhere do not conform to that function and are rejected.

These parties also argue that some of the site-specific generation unit operational data they would be required to report raise difficulties because the NYISO requires the submission of the same data. The information requested, however, is that reported by the generation unit operator to the NYISO in the first instance, so there should be little conflict. To the extent there are deviations, because of timing of the

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[7] The categories include: capacity revenues, energy and ancillary services revenues, other revenues, net plant in service, accumulated depreciation, depreciation charged to reporting period, property taxes, on-site operations and maintenance expense, fuel expense, fuel inventory, and other expenses.

NYISO data collection procedures or NYISO adjustments to the data, they can be addressed in footnotes, or, in perhaps a few unusual cases, through subsequent corrections. As a result, no changes to the generation unit reporting format need be made.

Other than the generation unit operational data, however, reporting on matters and costs specific to individual generation units will not be required. As IPPNY claims, data on unit-specific matters and costs may be difficult to derive from existing accounting records and compelling its collection could be burdensome. The site-specific reporting discussed above, rather than unit-specific reporting, should be adequate to meet the goals stated in the Reporting Proposal Order.

Filing and Confidentiality

The proposed reporting format provides that the Annual Report will be due March 31 of each year. IPPNY proposes that, instead of a specific deadline, companies be permitted to file at deadlines set based on their individual circumstances. Such an approach, however, would be confusing and verification of compliance would be difficult and time-consuming. As a result, a uniform date is needed, albeit that companies can report on periods other than a calendar year if they so indicate in conformance with the annual reporting instructions that will accompany the Annual Report format.[8]

As IPPNY contends, however, selection of March 31 as the deadline does not recognize the obligations confronting lightly regulated companies. While regulated companies that keep their accounts in accordance with the USOA and regulatory requirements can readily comply with a March 31 deadline, lightly regulated companies may confront different

[8] As can any company that is subject to annual reporting, a lightly regulated company may request from the Secretary an extension of time to file its Annual Report.

circumstances. Bookkeeping and accounting systems differ widely among the various companies, which themselves are subject to a diverse range of reporting requirements. As a result, they may need considerably more time to file their Annual Reports than fully regulated companies. Therefore, the time for filing shall be set at July 1 of each year instead of March 31.[9]

IPPNY’s proposal to accord confidentiality protection to Annual Report filings before they are made, however, cannot be adopted. Both FOIL, at Public Officers Law §89, and our regulations, at 16 NYCRR Part 6, provide that assertions of confidentially can be made only at or after the time information is filed, based on the actual content of the material presented. Moreover, entities seeking confidentiality protection must demonstrate that restricting release of the information is justified. Such a demonstration cannot be made in advance of the filing.

Nonetheless, wholesale generators and other entities may file their Annual Reports subject to requests that the information provided be treated as confidential. As IPPNY points out, data whose release would harm the competitive position of a participant in competitive markets, or disrupt the functioning of those markets generally, can be protected from disclosure as a trade secret. As a result, upon a showing that information provided in an Annual Report meets the standards for protection from disclosure, it will not be released, in conformance with FOIL and our regulations. This approach to treatment of confidential information has been successful in the past in shielding confidential information from release, and

[9] Setting this date as the deadline leaves sufficient time for the filing of Annual Reports in 2013 covering 2012 periods, and renders it unnecessary to consider further IPPNY’s suggestion that commencing filing be delayed until 2014.

IPPNY presents no reasons justifying departure from existing practices. Therefore, its request for a pre-determination that Annual Report filings will be treated as confidential is denied.

Verification

The circumstances the lightly-regulated companies confront also justifies treating the verification they must attest to upon submission of an Annual Report differently than the attestation required of a traditionally regulated company. While a fully regulated utility must keep its books according to the USOA, and verifying their submission against the USOA can be readily accomplished, the information required of lightly regulated companies may not be so readily verified. Instead, their books and records are kept according to systems that are not automatically matched to Annual Report requirements, as is the USOA. Therefore, the exacting attestation required of regulated companies that ties them to the USOA cannot be expected of lightly regulated entities.

As IPPNY points out, providing for a materiality standard alleviates the burden that would be imposed on lightly regulated entities if the same verification were required of them as is required of fully regulated companies. IPPNY’s proposed language cannot be adopted in whole, however, because it presumes that its wholesale revisions to the balance sheet and income statement format will be adopted, while they are instead rejected as discussed above, and because of the requirements of PSL §66(6). That statute requires that, if the company official making the verification does not have personal knowledge of the facts, the official must set forth the sources of information or belief. Modification of IPPNY’s proposed verification language is needed to resolve these discrepancies. The modified verification set forth at the revised Annual Report format attached hereto accomplishes the necessary revisions.

Other Issues

The Small Entity Consortium protests that the existing annual reporting format is too complicated for their operations, and does not recognize that they are often affiliated with larger enterprises. Where such an affiliation exists, however, PSL §66(13) and §80(11) provide that incidental regulation is available. That form of regulation carries with it exemption from annual reporting requirements. Therefore, most of the service providers the Small Entity Consortium describes are already exempt from annual reporting.

When companies have been unable to obtain incidental regulation, it is because their primary purpose is to provide a utility service. In those instances, it must be presumed that the utility function is carried on separately from other non-utility operations because circumstances justify that separation of functions. But that separation indicates that these entities are equipped with sufficient resources to manage an operation dedicated to utility service and so should be able to comply with the standard reporting format. To the extent that reporting some specific information on their books is in a format different from the annual reporting format, or is entirely unavailable, they may explain the circumstances in a footnote or request a waiver of the requirement.

CONCLUSION

Many of the commentators request that discretion be exercised and a flexible approach be taken when the first filings made in conformance with the new annual reporting requirements are reviewed for compliance with those requirements. As discussed above, flexibility is built into the reporting approach for lightly regulated entities. Moreover, as with any newly-introduced methodology, compliance difficulties that arise can be addressed without imposing sanctions, so long as good faith efforts at compliance are made. IPPNY's argument that the proposed format will not achieve the goals adumbrated in the Report Proposal Order, however, is rejected for the reasons stated in that Order.

Accordingly, the Annual Report format attached as Appendix A is adopted. The entities subject to lightened ratemaking regulation are directed to file their first such Annual Report by July 1, 2013, for year 2012 periods.[10]

The Commission orders:

1. The Annual Report requirements discussed in the body of this Order are adopted and lightly regulated entities subject to those requirements shall file Annual Reports as of July 1 of each year, beginning with July 1, 2013, in the format attached as Appendix A.

2. The deadline provided for in Ordering Clause No. 1 may be extended as the Secretary may require.

3. This proceeding is continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN
Acting Secretary

[10] The Annual Report form will be made available in a digital spreadsheet format at www.dps.ny.gov, in the same location as other Annual Report forms.

APPENDIX A

LIGHTLY REGULATED
Gas, Electric and Steam Companies

ANNUAL REPORT

OF

(Address of principal business office at end of year)

FOR THE

YEAR ENDED

TO THE

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Name, title, address and telephone number (including area code), of the person to contact concerning this report:

GENERAL INSTRUCTIONS

1 This form of annual report is for those electric companies, gas companies and steam companies that have obtained an order providing for lightened regulation from the Public Service Commission of the State of New York, as provided by statutes of the said State.

2 The word *respondent,* wherever used in this report, means the person, firm, association, company, partnership, or corporation in whose behalf the report is made.

3 The Annual Report should be filed electronically. If the Annual Report is filed confidentially, a redacted and unredacted report should be filed. Both should be filed electronically to the respective e-mail addresses provided at dps.ny.gov. The verification page should be printed, signed by the authorized company representative, notarized and mailed to the Hon. Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223. Do not file the entire report in paper, only the verification page.

4 If it is necessary or desirable to insert additional statements for the purpose of further explanation of schedules, they should be properly identified electronically. Inserts for each schedule should be numbered and line Numbers, where needed, shown on the margin of each sheet. This also applies to all special or unusual entries not provided for in this form. Where information called for herein is not given, state fully the reason for its omission.

5 Every annual report should in all particulars be complete in itself, and reference to reports of former years or to other reports should not be made to take the place of required entries except as otherwise specifically authorized.

6 This report form is designed to cover the calendar year. If the respondent makes a report for any other period, the beginning and the end of the period must be clearly stated on the front cover, and throughout the report the appropriate cancellations of printed dates must be made. When operations cease during the year because of the disposition of property, the balance sheet and supporting schedules should consist of balances and items immediately prior to transfer (for accounting purposes), and the income statement and supporting schedules should be to the date of such transfer (for accounting purposes). If the books are not closed as of that date, the data in this report should be supported by information set forth in, or as a part of, the respondent's books of account.

7 Cents are to be omitted on all schedules except where they apply to averages and figures per unit where cents are important. The amounts shown on all supporting schedules shall agree with the item in the statement they support.

Name of Respondent	This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report

OFFICERS AND MANAGEMENT

Title (a)	Name (b)	Address (U.S mail & E-mail) (c)	Telephone Number (d)
Chief Executive Officer			
Manager of Operations			
Emergency Contact			

Name of Respondent	This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report

CONTROL OF STOCK CORPORATIONS

(if so organized)

1. Show the requested information concerning shareholders of the respondent who at the date of the latest closing of the stock-book prior to the actual filing of this report held ten per centum or more of the voting capital stock or the respondent. If the stock-book was not closed within one year, show such shareholders as of the end of the year.

2. If voting power was not in proportion of the number of shares held, give full particulars.

Name of Shareholder (a)	Number of voting shares held (date) ______________________			
	Common (b)	Preferred		Other securities with voting power (e)
		First (c)	Second (d)	

If not incorporated, identify below each partner/member/other owner holding more than a 10% interest in the lightly regulated company making this Report, and the size of that interest as of the end of the reporting year.

Name of Respondent *		This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report
COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)			
Line No.	Title of Account (a)	Balance at Beg. of Year (b)	Balance at End of Year (c)
1	**PLANT**		
2	Plant		
3	Construction Work in Progress		
4	TOTAL Plant (Enter Total of lines 2 and 3)	0	0
5	(Less) Accum. Prov. for Depr. Amort. Depl.		
6	Net Plant (Enter Total of line 4 less 5)	0	0
7	**OTHER PROPERTY AND INVESTMENTS**		
8	Other Property		
9	(Less) Accum. Prov. for Depr. and Amort.		
10	Investments in Associated Companies		
11	Investment in Subsidiary Companies		
12	Other Investments		
13	Special Funds		
14	TOTAL Other Property and Investments (Total of lines 8-9, 10-13)	0	0
15	**CURRENT AND ACCRUED ASSETS**		
16	Cash and Cash Equivalents		
17	Notes Receivable		
18	Accounts Receivable		
19	(Less) Accum. Prov. for Uncollectible Acct.-Credit		
20	Notes Receivable from Associated Companies		
21	Receivables from Assoc. Companies		
22	Fuel Stock		
23	Plant Materials and Operating Supplies		
24	Merchandise		
25	Other Materials and Supplies		
26	Inventories		
27	Prepayments		
28	Interest and Dividends Receivable		
29	Rents Receivable		
30	Accrued Revenues		
31	Miscellaneous Current and Accrued Assets		
32	TOTAL Current and Accrued Assets (Enter Total of lines 16 thru 31)	-	-
33	**DEFERRED DEBITS**		
34	Unamortized Debt Expense		
35	Extraordinary Property Losses		
36	Clearing Account		
37	Miscellaneous Deferred Debits		
38	Accumulated Deferred Income Taxes		
39	TOTAL Deferred Debits (Enter Total of lines 34 thru 38)	0	0
40	TOTAL Assets and Other Debits (Enter Total of lines 6, 14, 32, 39)	0	0

* If a holding company, identify New York subsidiaries and their relationship to respondent below

Name of Respondent*		This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report
COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)			
Line No.	Title of Account (a)	Balance at Beg. of Year (b)	Balance at End of Year (c)
1	**PROPRIETARY CAPITAL**		
2	Common Stock Issued		
3	Preferred Stock Issued		
4	Premium on Capital Stock		
5	Other Paid-in Capital		
6	Retained Earnings		
7	Unappropriated Undistributed Subsidiary Earnings		
8	TOTAL Proprietary Capital (Enter Total of lines 2 thru 7)	0	0
9	**LONG-TERM DEBT**		
10	Bonds		
11	Advances from Associated Companies		
12	Other Long-Term Debt		
13	TOTAL Long-Term Debt (Enter Total of Lines 10 thru 12)	0	0
14	**OTHER NONCURRENT LIABILITIES**		
15	Obligations Under Capital Leases - Noncurrent		
16	Accumulated Miscellaneous Operating Provisions		
17	TOTAL Other Noncurrent Liabilities (Enter Total of lines 15 thru 16)	0	0
18	**CURRENT AND ACCRUED LIABILITIES**		
19	Notes Payable		
20	Accounts Payable		
21	Payables to Associated Companies		
22	Taxes Accrued		
23	Interest Accrued		
24	Dividends Declared		
25	Matured Long-Term Debt		
26	Miscellaneous Current and Accrued Liabilities		
27	Obligations Under Capital Leases - Current		
28	TOTAL Current and Accrued Liabilities (Enter Total of lines 19 - 27)	$0	$0
29	**DEFERRED CREDITS**		
30	Accumulated Deferred Investment Tax Credits		
31	Other Deferred Credits		
32	Other Liabilities		
33	Accumulated Deferred Income Taxes		
34	TOTAL Deferred Credits (Enter Total of lines 30 thru 33)	$0	$0
35	TOTAL Liabilities and Other Credits (Enter Total of lines 8, 13, 17, 28 and 3	$0	$0

* If a holding company, identify New York subsidiaries and their relationship to respondent below

Name of Respondent *		This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report
STATEMENT OF INCOME FOR THE YEAR			
Line No.	Account (a)	TOTAL Current Year (b)	 Previous Year** (c)
1	**REVENUES**		
2	Operating Revenues		
3	Other Revenues		
4	TOTAL Revenue (Enter Total of lines 2-3)	$0	$0
5	**EXPENSES**		
6	Operation and Maintenance Expenses		
7	Depreciation Expense		
8	Amortizations		
9	Interest Expense		
10	Amortization of Debt Discount/Expense		
11	Taxes Other Than Income Taxes		
12	TOTAL Expenses (Enter Total of lines 6-11)	0	0
13	Net Operating Income (Enter Total of line 4 less 12)	0	0
14	**OTHER INCOME AND DEDUCTIONS/EXTRAORDINARY ITEMS**		
15	Gains/Losses - Net		
16	Extraordinary Income		
17	Extraordinary Deductions		
18	Net Other Income and Deductions (Enter Total of lines 15 and 16 less line 17)	0	0
19	Net Income before Income Taxes (Enter Total of lines 13 and 18)	0	0
20	**INCOME TAXES**		
21	Income Taxes -- Federal		
22	-- Other		
23	Provision for Deferred Income Taxes - Net		
24	Investment Tax Credit Adj.		
25	TOTAL Income Taxes (Enter Total of lines 21 thru 24)	0	0
26	Net Income (Enter Total of line 19 less 25)	$0	$0

* If a holding company, identify New York subsidiaries and their relationship to respondent below

** The prior year figures need not be provided in the first year of reporting.

Name of Respondent	This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report

Lightly Regulated Generation Facilities
Generation Unit Annual Operational Data

Name of Generation Unit:

Location of Generation Unit:

Item (a)	Amount (Annually by Reporting Year) (b)
Summer Capability (MW)	
Winter Capability (MW)	
DMNC Test (MW)	
Minimum Generation Level (MW)	
Total Available Hours	
Total Synchronous Hours	
Hours of Planned Maintenance Outage	
Hours on Forced Outage	
Hours on Partial Forced Outage	
Average Full Load Heat Rate (btu/kWh)	

Supply a separate sheet for each generation unit that is classified by the New York Independent System Operator as a separate unit.

Name of Respondent	This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report

Lightly Regulated Generation Facilities
Site Specific Revenues and Expenses

Name of Holding Company:

Name of Generation Subsidiary:

Location of Generation Site:

Item (a)	Amount (Annually/End of Reporting Period) (b)
Capacity Revenues	
Energy and Ancillary Services Revenues	
Other Revenues	
Net Plant in Service	
Accumulated Depreciation	
Depreciation Charged to Reporting Period	
Property Taxes	
On Site O&M	
Fuel Expense	
Fuel Inventory	
Other Expenses	

Supply a separate sheet for each generation subsidiary that is classified by the holding company as a separate subsidiary.

Name of Respondent	This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report

ELECTRIC PLANT
(Lightly Regulated Companies)

Item (a)	Description (b)
Real Property	
Structures	
Generation Units	
Reservoirs, Dams and Waterways	
Electric Delivery Lines	
No. of Retail Service Connections	

Provide a separate sheet for each separate site listed at Page 7.

Name of Respondent	This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report

GAS PLANT
(Lightly Regulated Companies)

Item (a)	Description (b)
Real Property	
Structures	
Production Equipment and Wells	
Gas Delivery Lines	
No. of Retail Service Connections	

Name of Respondent	This Report is: (1) [ ] An Original (2) [ ] A Resubmission	Year of Report

STEAM PLANT
(Lightly Regulated Companies)

Item (a)	Description (b)
Real Property	
Structures	
Steam Production Equipment	
Steam Delivery Lines	
No. of Retail Service Connections	

DIRECTIONS CONCERNING VERIFICATION OF THIS REPORT

Section 66, subdivision 5, and Section 80, subdivision 5, of the Public Service Law, contain the following: "it shall be the duty of every … [lightly regulated gas, electric and steam] corporation to file with the Commission an annual report, verified by the oath of the president, vice president, treasurer, secretary, manager, or receiver, if any, or by the person required to file the same."

The deponent shall specify those portions of the foregoing report concerning which the deponent does not possess actual knowledge, identifying them by page numbers and schedules where indicated below. If the portion excepted is only a part of a schedule, the numbers of the lines excepted must also be shown.

VERIFICATION.

State of ____ } ss.:

County of ____

____ being duly sworn deposes and says:

I am the ____ of ________________________________

(Here insert the official title of the deponent.) Here insert the exact name of the respondent.)

I have examined the foregoing annual report of the said company which consists of ___ printed pages, being pages ___ to ___, both inclusive and insert pages ___, and to the best of my knowledge, information and belief all statements of fact contained in this annual report are correct statements in all material respects regarding the business affairs of the respondent, and the financial statements and other financial information contained in this annual report conform in all material respects to the respondent's books and records kept in accordance with its accounting practices.

As to the foregoing matters stated upon my information and belief instead of my knowledge, I believe the annual report to be true in all material respects. The sources of my information and belief as to the matters not stated upon my knowledge are as follows:

____

(signature)

Subscribe and sworn to before me,

a ____

in and for the state and county above named, this

_____________ day of ___________________, 20_____

My commission expires ___________________, 20___

____

(signature of officer authorized to administer oaths.) (Affix seal or stamp)

The foregoing oath must be executed and this report filed with the State of New York, Department of Public Service, Public Service Commission, Albany, N.Y. 12223, on or before July 1, next following the end of year of reporting.