

August 7, 2026

VIA ELECTRONIC FILING

Hon. Michelle L. Phillips
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 23-M-0287: Mpower Response to OIE Letter

Dear Secretary Phillips:

On July 10, 2026, Mpower Energy LLC (“Mpower”) filed a letter requesting the New York Public Service Commission refrain from issuing a decision on its May 14, 2026 *Order Instituting Proceeding and to Show Cause* (the “Order”) in the above-referenced proceeding¹ until such time as Mpower has an opportunity to receive a response from the Records Access Officer (“RAO”) to Mpower’s Freedom of Information Law (“FOIL”) request, which Mpower anticipates will include documents and information necessary for its defense. On July 13, 2026, Department of Public Service Staff from the Office of Investigations and Enforcement (“OIE”) filed a letter demanding this request be denied. Mpower now provides this letter to update the Commission Secretary on the status of the FOIL response and respond to OIE’s letter.

1. Status of FOIL Request

On July 31, 2026, the RAO issued correspondence to Mpower indicating that more time was needed to provide a response to Mpower’s FOIL request. The RAO has now stated that a response will be provided by August 28, 2026. Accordingly, Mpower renews its request for the Commission not to issue a decision until the FOIL response is received and Mpower has an opportunity to address all of the allegations in the Order.

2. Mpower is Not Utilizing FOIL as a “Delay Tactic”

OIE’s July 13 correspondence states that “the submission of FOIL requests should not be used as a delay tactic to avoid engaging with enforcement-related allegations. This enforcement matter should proceed separately and independently from the FOIL Request. The Commission cannot be

¹ Case 23-M-0287, *Proceeding on Motion of the Commission to Seek Consequences against Mpower Energy LLC for Violations of the Uniform Business Practices*, Mpower Supplement to Extension Request (Filed July 10, 2026) (the “Extension Request”).

expected to refrain from taking further action in this proceeding until an unrelated administrative matter is resolved.”² Mpower, however, is not utilizing FOIL to delay this proceeding, but rather to ensure that Mpower has the ability to fully respond to all of Staff’s allegations and defend itself. Indeed, Mpower previously timely responded to the Order in June and has continuously engaged in addressing the enforcement related allegations in this proceeding. Mpower has a due process right to be heard on the allegations in the Order but does not have the ability to do so without the information from the FOIL response. While OIE has tabbed the FOIL process as an “unrelated administrative matter” and Mpower’s request as a “second bite at the apple,” these connotations are not accurate given that the Order references communications and data provided by the utilities to Staff that formed the basis, at least in part, for Staff’s contentions in the Order.³ Mpower has no ability to obtain and respond to this information without the FOIL response and therefore no ability to defend itself from these allegations. As a result, issuing a decision without allowing Mpower the opportunity to review and respond to the information relied upon in the Order would be prejudicial to Mpower and violate Mpower’s due process rights.

3. Mpower’s FOIL Request is Not Duplicative of Previous Requests

OIE further contends that Mpower’s FOIL request is duplicative of previous requests and therefore unlikely to produce responsive records to Mpower. However, this is not accurate. Mpower’s FOIL request was specifically tailored to seeking records, correspondences, communications, and documents that reference, support, or relate to the allegations in the May 14, 2026 Order to Show Cause. Accordingly, the information sought by Mpower could not possibly have been obtained in any of its previous FOIL requests. For these reasons, Mpower’s request should be granted and Mpower should be permitted to further respond to the Order once it obtains the necessary information from the RAO’s FOIL response.

If you have any questions concerning this request, please contact me directly. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Michelle K. Piasecki

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² Case 23-M-0287, *supra*, OIE Response to Supplemental Request (Filed July 13, 2026) at 1.

³ Case 23-M-0287, *supra*, Order to Show Cause (Issued May 14, 2026) at 13-15.