CASTLETON POWER LLC

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Via Electronic Mail

THE ATTACHMENT TO THIS LETTER CONTAINS
CONFIDENTIAL AND PROPRIETARY INFORMATION

July 1, 2023

Jessica Vigars, Esq.
Records Access Officer
New York State Department of Public Service
3 Empire State Plaza
Albany, New York 12223-1350

Re: Matter 13-01288 - In the Matter of Financial Reports for Lightly Regulated Utility Companies

Dear Ms. Vigars:

Castleton Power LLC ("CP"), the owner and operator of a 72 megawatt natural gas-fired cogeneration facility located in Castleton, New York (the "Facility"), hereby respectfully requests that the Records Access Officer ("RAO") grant permanent trade secret and confidential commercial information status to the information designated as Confidential through yellow highlighting in the attached electronic form of Annual Report (the "Confidential Information"), under Section 6-1.3(b)(1) of the New York State Public Service Commission's ("Commission") Rules and Regulations (16 NYCRR § 6-1.3) and Section 87(2)(d) of the New York Public Officers Law ("POL"), because such information is confidential, proprietary, and constitutes a trade secret. Concurrent with this letter, CP has submitted its Annual Report for its 2021 calendar year electric operations to the Commission with the Confidential Information redacted in compliance with the Commission's January 23, 2015, order issued in Case 11-M-0294.

Pursuant to Section 6-1.3(b)(2) of the Commission's Rules and Regulations and Section 87(2) of the Public Officers Law:

> a person submitting trade secret or confidential commercial information to the Department shall clearly state the reason(s) why the information should be excepted from disclosure, as provided for in §87(2)(d) of the Public

> Officers Law. In all cases, the person must show the reasons why the information, if disclosed, would be likely to cause substantial injury to the competitive position of the subject commercial enterprise. Factors to be considered include, but are not necessarily limited to:
> (i) the extent to which the disclosure would cause unfair economic or competitive damage;
> (ii) the extent to which the 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 statute(s) or regulations specifically excepting the information from disclosure.

The Confidential Information includes detailed cost information and plant operating characteristics of the Facility, which include minimum generation levels, operating hours, heat rate, and outage rate, and certain of CP's financial information, which include its balance sheet, expenses, and net income. The Confidential Information is commercially sensitive and not publicly available. Disclosure of the Confidential Information would cause substantial competitive and economic injury to CP's competitive position because it describes in detail the costs of operating the facility and key related technical data that affect the economics of plant performance. This information could be used by competitors to determine the Facility's production costs, according CP's competitors an advantage in the completive markets that would cause unfair economic and competitive damage to CP.

Disclosure would provide CP's competitors access to information that is not known to them, that would be valuable to them, and that would be extremely difficult if not impossible for them to develop on their own. Courts have held that such information is confidential and should be excepted from disclosure under New York's Freedom of Information Law because disclosure of financial data could result in competitors inferring essential aspects of a generator's production costs, which would give competitors an undue advantage.[1] Further, it has long been established that the release of such information would be detrimental not only to the company itself but also to markets and, concomitantly, consumers.[2]

Accordingly, excepting the attached Confidential Information from disclosure is consistent with New York Public Officers Law because disclosure would cause substantial

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[1] *New York State Elec. & Gas Corp. v. New York State Energy Planning Bd.*, 221 A.D.2d 121 (3d Dept., 1996).

[2] *See, e.g.* Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators, 139 FERC ¶ 61053, at P 30 (2012); *N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,169, at P 15 (2010); S. Cal. Edison Co., 135 FERC ¶ 61,201, at P 20 (2011); *Hydrogen Energy Cal. LLC*, 135 FERC ¶ 61,068, at P 25 (2011); *N.Y. Indep. Sys. Operator, Inc.*, 130 FERC ¶ 61,029, at P 3 (2010).

competitive and economic injury to CP's competitive position. For the foregoing reasons, CP respectfully requests that the Confidential Information be deemed trade secret information and protected from disclosure.

Respectfully submitted,

By: /s/
Thomas J. Gesicki

cc: Secretary Hon. Michelle Phillips (via e-mail) (w/out attachment)