

September 5, 2012

VIA E-MAIL

Ms. Donna Giliberto
Records Access Officer
New York State Public Service Commission
3 Empire State Plaza
Albany, New York 12223

Re: REQUEST FOR TRADE SECRET PROTECTION

ATTACHMENT CONTAINS CONFIDENTIAL INFORMATION

Dear Ms. Giliberto:

Pursuant to Public Officers Law §§ 87[2](d), 89[5](a)(1), and Section 6-1.3 of the Commission's Rules of Procedure, 16 N.Y.C.R.R. § 6-1.3, Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk" or "Company") submits this request for trade secret protection for the certain information in the attached document. The ESCO customer counts contained in the attached document are hereinafter referred to as the "Confidential Information." Niagara Mohawk is providing this document in response to a request made by Doug Elfner of the Department of Public Service Staff.

The Designated Information Meets the Test for Trade Secret Protection

Niagara Mohawk requests that the Confidential Information be protected from public disclosure as trade secret information. The Commission's Rules of Procedure set forth several non-exclusive factors to be considered in judging a request for trade secret status:

1. The extent to which disclosure would cause unfair economic or competitive damage;
2. the extent to which the information is known by others;
3. the value of the information to the possessor of the data and its competitors;
4. the difficulty and cost of developing the information;
5. the difficulty of recreating the data without permission; and

6. whether the data is otherwise exempted by law from disclosure.

16 N.Y.C.R.R. § 6-1.3(b)(2). Niagara Mohawk respectfully submits that the Confidential Information meets the governing standard.

The Confidential Information consists of information on the number of accounts that each listed energy services company (ESCO) has in Niagara Mohawk's service territory. The Commission and the Secretary of the Commission previously have found that the number of customers an ESCO serves is confidential information.¹ The number of accounts that each ESCO has is closely related to the number of customers that an ESCO has, and therefore should also be treated as confidential information that is exempted from public disclosure. The ESCOs have argued that the disclosure of such customer information could cause substantial injury to the competitive positions of ESCOs, especially new market entrants and those with specific geographic marketing campaigns.² The ESCOs have also asserted in a motion, parts of which are still pending before the Administrative Law Judges in Case 12-E-0201 and 12-G-0202 that disclosure of pricing information data and compilation concerning ESCO activities has the potential to provide unfair economic advantage to other entities as it presents pricing data for individual entities currently in the market - information that is not know by other competitors and remains solely within the province of the ESCO and the customer.³

For the foregoing reasons, Niagara Mohawk respectfully requests that the Confidential Information be deemed trade secret information and therefore be protected from disclosure.

Respectfully submitted,

/s/ Jeremy J. Euto

Jeremy J. Euto

Enclosures

¹ Case No. 98-M-1343, In the Matter of Retail Access Business Rules, Case No. 07-M-1514, Petition of New York State Consumer Protection Board and the New York City Department of Consumer Affairs Regarding the Marketing Practices of Energy Service Companies, and Case No. 08-G-0078, Ordinary Tariff Filing of National Fuel Gas Distribution Corporation to establish a set of commercially reasonable standards for door-to-door sales of natural gas by ESCOs, *Order Adopting Amendments To The Uniform Business Practices, Granting In Part Petition On Behalf Of Customers And Rejecting National Fuel Gas Distribution Corporation's Tariff Filing* (Issued and Effective October 27, 2008) at p. 26 (citing October 20, 2006 letter from Secretary Brillling).

² *Id.*

³ Case No. 12-E-0201 and 12-G-0202, Niagara Mohawk Power Corporation d/b/a National Grid – Electric and Gas Rates, *Motion of the Retail Energy Supply Association (RESA) Objecting to Disclosure of Data in Connection with Public Utility Law Project of New York Interrogatory Nos. 91 and 107* (dated August 16, 2012) at p. 3.