

June 19, 2015

Via E-mail

Donna Giliberto, Esq.
Records Access Officer
State of New York Department of Public Service
Three Empire State Plaza, 18th Floor
Albany, New York 12223-1350

Subject: Request for Records – Nine-part request seeking, but not limited to, complete list of all corporations and entities subject to lightened rate-making regulation and annual reporting requirements under Case 11-M-0294

Dear Ms. Giliberto:

The New York Independent System Operator, Inc. (“NYISO”) submits this letter in response to your May 21, 2015 letter regarding the above noted subject. A number of NYISO market participants in this matter have asserted confidentiality with respect to data or information relevant to their participation in NYISO markets. The NYISO wishes to provide the below information regarding its treatment of certain information contained within the Annual Reports of entities subject to lightened rule-making regulation at issue here (“Annual Reports”), as such information may assist you in making your determination pursuant to Public Officers Law § 89(5).

The NYISO’s FERC-approved tariff requires that certain information in its possession be treated as confidential. The NYISO Code of Conduct, Attachment F to the NYISO Open Access Transmission Tariff, defines confidential information to include, pertinently: “any commercially sensitive information including, without limitation, trade secrets, equipment specific information (*e.g.*, generator specific data such as heat rates, etc.), and business strategies, affirmatively designated as Confidential Information by its supplier or owner.” Information that the NYISO must treat as confidential pursuant to its tariff consists not only of its market participants’ trade secrets, business strategies, and generator specific information such as heat rates, but also information such as revenues that may permit a party to “reverse engineer” or otherwise determine its market participants’ confidential information or trade secrets – such as its marginal cost for providing electricity.

On April 25, 2014 the NYISO submitted a Statement of Necessity and supporting Affidavit by Dr. Nicole Bouchez addressing material designated as confidential by the NYISO in Case 12-E-0577. The Statement and Affidavit addressed the impact that the release of certain confidential information—in particular, information that could permit a competitor to determine a generator’s marginal cost of producing energy—can have on the subject generator’s competitive position and New York energy markets. Certain

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information provided by generators in the Annual Reports, such as unit heat rates and revenue data, is among the information cited by Dr. Bouchez in her Affidavit.

As Dr. Bouchez explained, releasing data that can be used to determine a generator's marginal cost can disadvantage the generator in bidding against other generators to serve load and therefore causes competitive harm to the generator. Making such data public can also place the subject generator at a negotiating disadvantage with buyers in future bilateral arrangements for energy and capacity. From a broader market perspective, Dr. Bouchez noted that if a competitor or competitors are able to determine a generator's marginal cost, they can more easily engage in predatory pricing, inappropriately exercise market power, or collude with other generators, which can cause higher clearing prices. For example, a generator or generators with knowledge of another generator's marginal costs could increase its offer prices to an amount significantly in excess of its own marginal costs, but sufficiently below the marginal cost of their more expensive competitors, to ensure the generator will continue to be dispatched, resulting in a higher price (assuming the unit was the unit setting the price). These outcomes would result in harm to the competitive nature of NYISO markets and, ultimately, harm New York consumers of electricity if such behavior resulted in higher prices.

Finally, the NYISO notes that—in response to a similar FOIL request in 2014 for the Annual Reports—you relied on Dr. Bouchez's April 25, 2014 Affidavit in your June 30, 2014 Determination. In that Determination, you concluded that certain information contained within the Annual Reports should remain protected from disclosure as trade secrets. That Determination was upheld by the Commission Secretary, following an appeal, on August 13, 2014.

For these reasons, the NYISO respectfully requests that you take Dr. Bouchez's analysis provided in the NYISO's April 25, 2014 submission in Matter 12-E-0577 under consideration here. Please feel free to contact me at (518) 356-7537 or at csharp@nyiso.com if you have any questions or concerns.

Very truly yours,

/s/ Christopher R. Sharp
Christopher R. Sharp
Compliance Attorney

cc: All parties of record