



PRESS RELEASE

Assemblymember Jim Brennan
44th Assembly District

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GROUPS SAY PUBLIC SERVICE COMMISSION HAS LET THE PUBLIC DOWN BY SIDING WITH THE ELECTRIC INDUSTRY THAT BASIC FINANCIAL INFORMATION IN ANNUAL REPORTS WERE TRADE SECRETS

Following a Public Service Commission (“PSC”) determination on appeal that annual financial and operating data of the electric industry were trade secrets that should be withheld from the public, Assemblymember Brennan (D.-W.F.-Bklyn) and groups sent a letter saying that the Commission has disappointed the public.

Prior to the determination, consumer advocacy groups including, New York’s Utility Project (formerly known as PULP), New York Public Interest Research Group (“NYPIRG”), the Consumers Union, AARP, Alliance for a Green Economy, Environmental Advocates, and Common Cause/NY, sent letters of support to the PSC urging that the Assemblymember’s appeal be granted and that the information be released to the public.

New York’s Utility Project had also written an article in opposition to the electricity industry’s use of trade secret status as a way to keep the reports confidential.¹

The annual reports, which are filed by companies in the wholesale electric business, include information on their profits from New York operations. The companies were directed by the Commission to file annual reports in 2012, to begin July 1, 2013, after Mr. Brennan complained to the Commission that the Commission’s exempting the wholesale electric industry from reporting in New York violated the Public Service Law. Companies filed their reports but redacted critical information

¹ <http://utilityproject.org/2014/08/12/consumer-groups-urge-psc-to-release-annual-reports-of-lightly-regulated-electric-companies/>

claiming their revenues, expenses, and profits are "trade secrets" exempt from disclosure under New York's Freedom of Information Law ("FOIL"). Mr. Brennan and the consumer groups argue that the information in the annual reports does not qualify for the exemption. Without the information it is not possible to know the extent to which New York's high electric rates are due to price gouging.

"Knowing the profits of companies like Entergy will show whether deregulation of the wholesale electric industry is working," Mr. Brennan said. "Studies conducted by my office in 2012 showed many companies in the wholesale electric business were earning spectacular profits because the prices they charged were excessive," Mr. Brennan said. "The electric industry is seeking to conceal their profiteering by claiming trade secret status for their annual reports," he added. "With this information, the Legislature and the public might conclude that the Commission should take steps to reduce electric prices and help consumers and the New York economy with cheaper power," he continued.

In March 2014, Mr. Brennan, who chairs the Assembly Committee on Corporations, Authorities, and Commissions, submitted freedom of information requests to the Public Service Commission for the complete, unredacted annual reports of the wholesale electric companies. Under the Commission's trade secret regulations, which allow for very limited exceptions under State law from access to government records, the industry was allowed to comment on Mr. Brennan's request. Virtually the entire industry weighed in that its reports should get trade secret status on the grounds that the industry was highly competitive, and the Commission's Records Access officer ruled on June 30, 2014 that the reports were trade secrets.

A party denied access to state government records has a right to appeal access to the agency itself, in this case the Public Service Commission. Assemblymember Brennan filed his appeal on July 30, 2014. The PSC denied the request for appeal on August 13, 2014. This week, Assemblymember Brennan and the consumer advocacy groups sent a joint letter to the PSC expressing their disappointment with the determination. The letter included the following joint statement:

"The Public Service Commission should serve the public, not the electric companies who don't want consumers to know how much of a profit they are making here in New York. We are extremely disappointed that the Commission has decided against the public's interest by allowing the electricity industry to continue to keep their annual financial reports confidential. The exceptions to New York's Freedom of Information Law for competitive information are drawn very narrowly, and are not intended to shield the basic facts about how businesses operate in our state, and how much money they make. This is essential financial data that ratepayers, journalists and policymakers need to monitor the performance of the electric utilities and the effectiveness of public oversight. For too long, the public has been kept in the dark in this matter. Allowing the industry to conceal their profits or losses on New York operations makes it harder for the public to determine whether the current market structure is providing a reasonable deal for ratepayers, and it makes it harder for groups to advocate for more affordable, cleaner and safer alternatives. It is unacceptable and not in the public interest for the electric industry to demand prices in secret and then hide revelation of their profits while New York consumers suffer from the highest electric rates in the continental United States.

We vow to continue to work together to see that this information is released to the public.”

Sincerely,

Assemblymember Jim Brennan

Peter M. Iwanowicz, Executive Director of Environmental Advocates of New York

Gerry Norlander, Executive Director of the Public Utility Law Project

Chuck Bell, Programs Director for Consumers Union

Laura Haight, Senior Environmental Associate for the New York Public Interest Research Group

Jessica Azulay, Program Director for Alliance for a Green Economy

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