

# NEWS

## Assemblymember Jim Brennan

44th Assembly District

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### FOR IMMEDIATE RELEASE

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**MORE THAN 30 ELECTRIC POWER COMPANIES, INCLUDING THE STATE'S LARGEST PRIVATE GENERATORS OF ELECTRICITY, ARE SEEKING TO DENY PUBLIC ACCESS TO THEIR FINANCIAL FILINGS AT THE NEW YORK STATE PUBLIC SERVICE COMMISSION;**

**BRENNAN BATTLES INTERNAL RULING BY COMMISSION'S FREEDOM OF INFORMATION OFFICE THAT FILINGS ARE TRADE SECRETS IN APPEAL TO COMMISSION ITSELF.**

On August 25, 2015, State Assemblymember Jim Brennan (D.-WF), chair of the Assembly Committee on Corporations Authorities, and Commissions, appealed a ruling by the Public Service Commission's Records Access Officer that the public be denied access to the financial filings of more than 30 power companies at the Commission on the grounds that the information in the reports are trade secrets and would harm the companies. The information includes the revenues, expenses, and profits from their operations in New York. The companies include Entergy, the owner of 3 nuclear plants, Exelon, the owner of 3 nuclear plants in upstate New York, NRG Power, and others that comprise the overwhelming bulk of the private generation of power in the State.

The Assemblymember filed a brief and a 190-page affidavit containing both legal and evidentiary arguments before the Secretary of the Public Service Commission. "The wholesale electric power industry seeks to conceal its profits from the public by claiming that the bidding system would be undermined if rivals knew each other's costs," Mr. Brennan said, "but our evidence shows that argument is without merit because the bidder's identities are easily

ascertainable and their costs are easily calculated from regular Federal filings made by these companies.” The affidavit was provided by consultant Dr. Robert McCullough.

**Supporting Brennan’s initiative are a number of consumer advocacy groups including, the Public Utility Law Project, NYPIRG, AARP for New York State, Common Cause NY and Citizens’ Environmental Coalition.**

Gerry Norlander, Counsel to the Public Utility Law Project stated, “The NYISO wholesale power market operates without transparency and essentially outside of State oversight, while its operation has resulted in soaring energy costs.” “As Supreme Court Justice Brandeis said 102 years ago, sunlight is the best remedy to the actions of shadowy cartels whose actions are not in the public interest,” continued Norlander. “The PSC should not uphold these blanket claims to secrecy; rather, it should allow them to be exposed to the light of day so that New Yorkers can see why their electricity costs are so high.”

Russ Haven, NYPIRG Legislative Counsel said, “This is a test of whether the state's Freedom of Information Law's presumption of openness can be evaded by power generators' self-serving assertions of the need to protect trade secrets and competitive positions, or if they must back up their professed support for transparent markets with useful data. Assemblymember Brennan is doing important work to shed light on the electric energy production marketplace and help the public understand how their rates are set.”

Beth Finkel, State Director of AARP for New York State stated, “AARP commends Assemblyman Brennan for his leadership in fighting for more transparency in our wholesale energy marketplace.” “New Yorkers pay some of the highest energy costs in the nation, and we need every tool available to help us scrutinize how these rates are set so we can make energy more affordable. Sunlight is fundamental to these efforts.”

“It is time to put the public squarely in the forefront of the Public Service Commission,” said Susan Lerner, Executive Director of Common Cause NY. “Article 1, Section 16.2 of the Public Service law clearly states that ‘...all documents and records in [the PSC’s] possession shall be public records’ – it’s past time that we go back to the PSC’s original mission.”

Barbara Warren, Executive Director of the Citizens' Environmental Coalition stated, “It is unacceptable to see the Public Service Commission seeking to protect energy producers rather than New Yorkers, who suffered a record number of shut-offs last year because of their inability to pay some of the highest energy bills in the nation.”

**Among the key findings of Brennan’s affidavit are:**

The nuclear plants bid zero dollars into the wholesale market system; instead, they generate as much power as they can since they operate as part of the baseload, rather than the peaking system. They don’t “compete” and therefore there is no reason to shield their finances from disclosure. The nuclear plants generate 30% of the State’s electricity.

Claims by the industry that if their costs were revealed they would be able to underbid each other in the market are farcical; Mr. McCullough, the author of the affidavit, filed the power plant efficiency ratios for 486 New York power plants obtained from the Federal Environmental Protection Agency NEEDS database.

The industry claimed that the bidders' identities need to remain secret; but Mr. McCullough tracked and identified the identities of companies filing the bids with ease and expressed the view that sophisticated market participants could do the same.

In this appeal, Mr. Brennan stated:

1. The Public Service Commission has produced no studies of competition in the electric industry or made any independent analysis of industry claims of the need for secrecy; instead they merely grant blanket exemptions from disclosure for the companies.
2. Some companies, like National Grid and PSE&G, are filing complete reports. This must mean they do not view disclosure of their finances as harming their competitive position.
3. A State law requires electric companies to file annual reports detailing their revenues and expenses; it does not distinguish between "competition" and "non-competitive."
4. The filings are for calendar year 2013, two years ago. Since bidding occurs in a day-ahead market whose prices fluctuate according to fuel prices and electric demand, summaries of revenues, expenses, and profits from several years ago cannot impact competition today.
5. For trade secret status to apply, a party must show substantial competitive injury, But Mr. Brennan's affidavit demonstrates that there can be no injury since the information is easily obtainable and available. The industry's claims of harm are therefor without merit and do not meet the standards for trade secret status.

Previous studies by Mr. Brennan and Dr. McCullough estimated overcharges of up to \$2 billion a year from wholesale power generation. A review of 2010 power costs by Mr. Brennan's office estimated that 13 power plants representing 40% of in-state generation were overcharging consumers, compared to prices if they were still regulated, by \$1.1 billion a year.

Mr. McCullough produced a study in 2009 for the Assembly Corporations Committee, then headed by Assemblymember Richard Brodsky, that the wholesale electric industry was overcharging consumers by \$2 billion a year.

Mr. Brennan said, "The wholesale electric power industry is a cartel that needs to have its prices re-regulated." Mr. Brennan sponsors legislation that would exercise greater State control over wholesale markets and ban the cartel pricing system, whereby companies get maximum bid price no matter what their costs.

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