

# NEW REVENUE REPORTING REQUIREMENTS FOR NEW YORK ELECTRIC GENERATING FACILITIES

*Hodgson Russ Renewable Energy Alert*  
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As new sources of generation have come online in New York, each with different revenue streams and cost structures, significant issues have arisen over the proper valuation of these resources. Section 575-A was recently added to New York's Real Property Tax Law to help provide a basis for making these determinations. It requires that certain financial information be provided by electricity generators.

The amendment applies to all electric generating facilities (except those located at a residence and operated by a residential customer) and requires these facilities to annually file a report with the State's Department of Taxation and Finance (the Department) disclosing inventory (exclusive of transmission system assets), revenue and expenses associated with those business operations for the most recent fiscal year. It is assumed that the information will be used to aid in the valuation of the real estate on which the generation facilities have been constructed.

In order to promote timely filings, the Department created a draft template form which will contain the required financial information. The initial draft would require the disclosure be filed for generators with capacity of at least 1MW. The Department has reached out to interested stakeholders to provide comments on the draft forms and is commended for this outreach. We have, on behalf of one client, submitted comments.

Failure to file the annual report will result in a \$10,000 fine paid to the state in addition to a \$1,000 fine for each day the report remains unfiled. This amendment takes effect on January 1, 2020 and the annual reports will be due on or before April 30 of each year.

***Freedom of Information Law Note:***

Neither the amendment nor the form addresses whether the information that may well be proprietary will be protected from disclosure under the New York Freedom of Information Law, Public Officers Law (POL), Article 6. POL § 87(2)(d) allows agencies to deny access to any record constituting "trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the

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competitive position of the subject enterprise.” It is therefore recommended that upon filing the form all information the generator considers proprietary should be clearly marked as “confidential.”

To learn more about this reporting requirement, or the valuation of generating assets, please contact a member of Hodgson Russ’s Renewable Energy Practice at: <https://www.hodgsonruss.com/practices-industries-147.html>.

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