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TOP STORY

CAYUGA COUNTY

Newly released records show Cayuga County agency getting \$4 million for digester

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The Cayuga County digester in Sennett.

The Citizen file

After refusing to disclose financial information over a nearly six-month state Freedom of Information Law exchange, the Cayuga County Soil and Water Conservation District released full contract details regarding its regional methane digester on Thursday.

The district, which is a government entity and thus subject to FOIL, gave The Citizen its unredacted lease agreement with CH4 Generate Cayuga and an electric services agreement after The Citizen notified the agency it was preparing to take legal agency to secure the information.

The 2016 lease-to-own agreement reveals that CH4 Generate Cayuga, a company under the California-based firm Generate Capital, is paying the district \$4 million over a 20-year period for the digester, which cost the district about \$10.5 million to build. Besides an initial payment of \$250,000, Generate Capital has been required to pay the district \$16,666.67 per month, with the arrangement ending in 2036.

Proposed over a decade ago, the digester was pitched as a way to help local farmers get rid of excess manure by generating it into electricity that could be used by county-owned facilities. The district's original plan was to operate the digester on County House Road in Sennett itself, but it shut the system down in 2014 after struggling to make it cost effective.

That led to the county connecting with CH4 Generate Cayuga, which took on the lease agreement in January 2016. So far, the project has been back up and running since about April 2016.

Meanwhile the district still owes Cayuga County approximately \$1,225,000, loaned for the digester's construction, a principal amount that is expected to be paid off by 2033. By that year, the district will have paid the county about \$2,125,564.75 including interest, according to the county treasurer's office.

As part of its deal with CH4, the district is purchasing electricity generated from the digester at \$0.085 per kilowatt hour over a five-year period, with the option to renew for an additional five years. Cayuga County in turn has held an electric services agreement with the district since July 20, 2015, purchasing electricity from it at the same price.

The district had partially denied The Citizen's original April 25 request for records on the digester lease and electricity services deal by redacting electricity pricing and lease financial information, as well as the contract lengths. The district argued the information was considered to be "a "trade secret" and thus exempt from public view.

The Citizen made a formal FOIL appeal to the district, quoting Robert Freeman, the executive director of the state Committee on Open Government. Based on the information provided, Freeman did not feel the "trade secret" exception was relevant. Nevertheless the district denied the appeal, with Chairman Ray Lockwood writing that he did not feel the public would care about such information and it would only be of interest to CH4 Generate Cayuga's competitors.

The newspaper then requested an advisory opinion from the state Committee on Open Government. On July 14, four days after the request, one was provided stating that neither CH4 Generate Cayuga nor the district "had provided sufficient justification for how the pricing and duration of agreement information would constitute 'trade secrets' nor have they provided persuasive evidence that disclosure would cause the harm envisioned by the statute."

The district still refused to release the information, so in September, The Citizen retained Albany-based attorney Michael J. Grygiel, a media law specialist from the international law firm of Greenberg Traurig LLP.

On Sept. 22, Grygiel sent a letter to the district's attorney, once more requesting the redacted information and stating the newspaper's intention to file a petition in court if it was not supplied.

Among several legal precedents supporting full disclosure that were outlined in the letter, Grygiel also pointed out that the district had already placed in the public domain some of the information it was withholding in the FOIL response. The Citizen was able to locate records filed with the Cayuga County Clerk's office showing the lease length, which was redacted in the original FOIL response, to be 20 years.

"(T)he District's withhold of the duration of the Lease Agreement after it had already been responsible for placing that information in the public domain indicates not only a lack of candor but bad faith in denying The Citizen's FOIL appeal," Grygiel wrote. "In the final analysis, the District's position exemplifies the recalcitrance the (New York state) Legislature intended to combat by its 2006 amendments to FOIL, and is precisely the type of 'runaround' that the New York Court of Appeals has condemned as inimical to an agency's disclosure obligations under FOIL."

Grygiel also notified the district that should the newspaper prevail in a legal challenge, it would ask a judge to require the district to cover its legal costs.

Neither Lockwood nor Doug Kierst, executive director of the district, responded to The Citizen's request for comment after the new disclosures last week.

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