

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Astoria Generating Company, L.P and TC Ravenswood, LLC)	
)	
)	Docket No. EL11-50-000
vs.)	
)	
New York Independent System Operator, Inc.)	
)	

NOTICE OF THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

Paragraph 25 of the Commission’s August 31, 2011 *Order Directing Submission of Supplemental Information and Issuing Protective Order*¹ (“August 31 Order”), directed the NYISO to submit a supplemental answer within seven days (*i.e.*, by September 7, 2011). The NYISO was also directed to release the confidential information that will be included in the supplemental answer to all parties that execute the Non-Disclosure Certificate appended to the *Protective Order* that was issued as part of the August 31 Order. In the alternative, the NYISO was given five days from the date of the August 31 Order to propose an alternative protective agreement that was mutually agreeable to all parties to this proceeding.

The NYISO is submitting this *Notice* to confirm that it will not seek to file an alternative protective agreement. In addition, this *Notice* is to inform the Commission and the parties of the NYISO understanding of Paragraph 9(b)(5) of the *Protective Order*. That paragraph states that:

¹ *Astoria Generating Co., L.P. and TC Ravenswood, LLC v. New York Independent System Operator, Inc.*, 136 FERC ¶ 61,155 (2011).

If, after a good faith effort, parties fail to agree on designating a specifically-named inside employee(s) of a non-governmental Participant as a Reviewing Representative for the review of specific Highly Sensitive Protected Material(s) or all Highly Sensitive Protected Material(s), a party may request that the Commission so-designate such a specifically-named inside employee(s) who, for example, is not directly involved in, or having direct or supervisory responsibilities over, the purchase, sale, or marketing of electricity (including transmission service) at retail or wholesale, the negotiation or development of participation or cost-sharing arrangements for transmission or generation facilities, or other activities or transactions of a type with respect to which the disclosure of Highly Sensitive Protected Materials may present an unreasonable risk of harm

The NYISO does not read this provision to require that it may only disclose “Highly Sensitive Protected Materials” if all parties to this proceeding agree on the designation of “specifically-named inside employees” of parties that have executed Non-Disclosure Certificates. Such a procedure would appear to be contrary to the Commission’s likely intent, and NYISO’s understanding of the Order.

The NYISO reads Paragraph 9(b)(5) as permitting it to disclose “Highly Sensitive Protected Materials” regarding its exemption determinations for the Astoria Energy II LLC project (“AEII”) or the Bayonne Energy Center, LLC project (“BEC”) to “specifically-named inside employees” of a non-governmental requesting party to the extent that the NYISO, the requesting party, and Astoria Energy II LLC or Bayonne Energy Center, LLC (as applicable) mutually agree. This reading is consistent with the language of the *Protective Order*. It should also allow for the prompt disclosure of Highly Sensitive Protected Materials under Paragraph 9(b)(5) and reduce the need for parties to turn to the Commission to resolve disputes regarding access to such materials. It also recognizes that Astoria Energy II LLC and the Bayonne Energy Center, LLC submitted the highly sensitive confidential information at issue to the NYISO and

would be subject to “risk of competitive disadvantage or other business injury” if that information were “disclosed freely.”²

Respectfully submitted,

/s/ Ted J. Murphy
Counsel to the
New York Independent System Operator, Inc.

² *Protective Order* at P 2.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 6th day of September, 2011.

/s/ Vanessa A. Colón
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