

Attachment III

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.

Docket No. ER21-____-000

PROTECTIVE ORDER

(Issued _____, 2021)

1. This Protective Order, and the attached Non-Disclosure Certificate and Non-Disclosure Certificate for Competitive Duty Personnel, shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge (“Presiding Judge”) or the Federal Energy Regulatory Commission (“Commission”).

2. This Protective Order applies to the following two categories of materials: (a) a Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business or commercial injury; and (b) a Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 C.F.R. § 388.113(c)(1) (“Critical Energy Infrastructure Information”).

3. Definitions – For purposes of this Protective Order:

A. The term “Participant” shall mean a Participant as defined in 18 C.F.R. § 385.102(b).

B. The term “Protected Materials” shall mean: (A) information and materials (including depositions) provided by a Participant in response to discovery requests, and designated in good faith by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other information or materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as “PROTECTED MATERIALS” or with words of similar import as long as the term “Protected Materials” is included in that designation to indicate that they are Protected Materials. In the event Protected Materials are provided in electronic or other forms (such as models, spreadsheets and their data inputs and formulas) that cannot be physically marked (“INTANGIBLE MATERIALS”), their status as Protected Materials shall be clearly communicated to the recipients at the time they are provided. Recipients shall appropriately mark any physical documents that were produced through the application or use of Intangible Materials.

(1) If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on

each page containing such information the words “CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION – DO NOT RELEASE.”

(2) If Protected Materials represent or contain competitively sensitive data concerning: (a) non-public business development, acquisition, or marketing data, plans or activities; (b) non-public financial data, or strategic business or financial plans or activities; or (c) negotiations of services, prices or rates concerning the marketing, sale, purchase or transmission of electric energy, capacity or ancillary services, or the marketing, sale, purchase or transportation of any input to the production of electric energy, the public disclosure of which a Participant in good faith believes would competitively harm the disclosing Participant (hereinafter “Market Sensitive Information”), the disclosing Participant may additionally mark on each page containing such information the words “NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL.”

C. The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic forms) that copy or disclose materials described in Paragraph 3.B. Notes of Protected Materials are subject to the same restrictions provided in this Protective Order for Protected Materials except as specifically provided in this Protective Order.

(1) Protected Materials shall not include: (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court; (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order; or (C) any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. ¶ 31,140. Notwithstanding the foregoing, Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

D. The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which representatives of Participants who have been granted access to Protected Materials, excluding Protected Materials marked as “Not Available To Competitive Duty Personnel,” shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such representatives have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

E. The term “Non-Disclosure Certificate for Materials Marked as Not Available To Competitive Duty Personnel” shall mean the certificate annexed hereto by which representatives of Participants who have been granted access to Protected Materials marked as “Not Available To Competitive Duty Personnel,” shall certify (i) that they are qualified under Paragraph 3G to review such materials and (ii) their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective

Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificate for Materials Marked as Not Available To Competitive Duty Personnel shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

F. The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff designated as such in this proceeding;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this proceeding with an attorney described in Paragraph 3F(2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
- (5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this Docket.

G. For purposes of reviewing materials that are marked as “Not Available To Competitive Duty Personnel,” the term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff;
- (2) A member or staff of any state or local utilities commission which is a Participant;
- (3) An attorney who has made an appearance in Docket No. ER17-____-000 for a Participant or an in-house attorney who otherwise has significant responsibility for this proceeding;
- (4) Attorneys, paralegals, and other employees working with an attorney described in Paragraph 3G(3) for purposes of Docket No. ER17-____-000;
- (5) An outside expert or an employee of an outside expert retained by a Participant for the purpose of advising, preparing for or testifying in Docket No. ER17-____-000 who is working under the direction of an attorney described in Paragraph 3G(2) or 3G(3), and who affirmatively agrees, through execution of a Non-Disclosure Certificate for Materials Marked as Not Available To Competitive Duty Personnel, not to utilize such materials or any information derived therefrom in providing advice to market

participants concerning the marketing, sale, purchase or transmission of electric energy, capacity or ancillary services, or the marketing, sale, purchase or transportation of any input to the production of electric energy, or for any other purpose outside the scope of this proceeding;

- (6) Those certain officers or employees of a Participant who have significant responsibilities with respect to Docket No. ER17-____-000, and whose responsibilities do not include the marketing, sale, purchase or transmission of electric energy, capacity or ancillary services, or the marketing, sale, purchase or transportation of any input to the production of electric energy, or the direct supervision of any personnel that have such responsibilities. It is contemplated that the number of Reviewing Representatives under this paragraph will be limited to no more than two per Participant.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 3F and 3G.

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating the instant proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Materials is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen (15) days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts, and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Materials may be retained, if they are maintained in accordance with Paragraphs 6 below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participants that receive them in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 3F and 3G. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 C.F.R. § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representatives in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 10. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the

information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding in any way that could give a commercial advantage to any Participant (including the Reviewing Representative's own employer or client) or to any competitor of any Participant.

9. Subject to the provisions of Paragraph 3G regarding access to Protected Materials which are Not Available to Competitive Duty Personnel, in the event that a Participant wishes to designate as a Reviewing Representative a person either excluded by Paragraph 3G(6) or not described in Paragraph 3F or 3G, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 3F or 3G with respect to those materials. If no agreement is reached, the Participant may submit the disputed designation to the Presiding Judge for resolution.

10. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate or a Non-Disclosure Certificate for Materials Marked as Not Available To Competitive Duty Personnel, as applicable, provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial, and clerical personnel employed by the same entity as the attorney and under the attorney's instruction, supervision, or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Materials to that Reviewing Representative. Present employees, attorneys, experts, and others currently employed by a Participant in connection with Docket No. ER14-____-000 are not required to execute a Non-Disclosure Certificate or a Non-Disclosure Certificate for Materials Marked as Not Available To Competitive Duty Personnel in connection with that Participant's own Protected Materials.

11. Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

12. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative entitled to receive the specific category of Protected Materials as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed the applicable Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in this proceeding, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraphs 3F or 3G, access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

13. Subject to Paragraphs 17 through 20, the Presiding Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Judge, the parties to the dispute shall use their best efforts to resolve it. Any Participant that contests the designation of materials as protected, including the designation of Protected Materials that are “Not Available to Competitive Duty Personnel,” shall notify the Participant that provided the Protected Materials by specifying in writing the materials whose designation is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the Participant seeking protection. If the Presiding Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 19 shall apply. The procedures described above shall not apply to Protected Materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission’s Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

14. All copies of all documents reflecting Protected Materials that are submitted for filing with any body (whether filed with the Commission, the Presiding Judge, or any other judicial or administrative body), including the portion of the hearing testimony, exhibits, transcripts, motions, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked with the appropriate designation (as relevant) under Paragraph 3 and shall be filed under seal and served under seal upon the Commission, Presiding Judge or other judicial or administrative body, as applicable, and all Reviewing Representatives for the particular category of Protected Materials who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked “Contains Critical Energy Infrastructure Information – Do Not Release.” For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such will also be filed with the Commission, Presiding Judge or other judicial or administrative body, as applicable, and served on all parties on the service list. Counsel for the producing Participant shall provide to all Participants who so request, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to ensure that Protected Materials are not distributed to unauthorized persons.

15. If any Participant desires to include, utilize, or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in this proceeding in such a manner that might require disclosure of such Protected Materials to persons other than Reviewing Representatives, such Participant shall first notify both counsel for the disclosing Participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Materials will be governed by procedures determined by the Presiding Judge.

16. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

17. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge or the Commission may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

18. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.

19. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for five (5) business days from the date of issuance of such a decision, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, until such time as the matter is acted upon. In the event the issue is not certified by the Presiding Judge or the Commission otherwise declines to act on the merits of the request, the protection afforded by this Protective Order shall continue for an additional seven (7) business days. None of the Participants waive their rights to seek additional administrative or judicial remedies after a Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests for Protected Materials in the files of the Commission under the Freedom of Information Act (5 U.S.C. § 552).

20. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

21. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

22. In the event a Participant receives a request to disclose Protected Materials under a public disclosure law, the Participant who received the request to disclose Protected Materials shall promptly and prior to any disclosure notify in writing the Participant who provided the Protected Materials, as well as any other Participant about whom information included in Protected Materials is requested to be disclosed (collectively, the "Affected Participants"), so that the Affected Participants may seek, at their own expense, to prevent the disclosure of the Protected Materials, using any available remedy at law or equity. It shall not be a violation of this Protective Order for a Participant to disclose Protected Materials when it is required by law or order to do so and subject to civil or criminal liability if it fails to disclose the Protected Materials, provided that, where feasible in accordance with law, the Participant from whom disclosure is requested shall provide the Affected Participants five days' written notice prior to disclosing the Protected Materials for which disclosure is requested. No Participant shall oppose or otherwise interfere with an Affected Participant's efforts to maintain the confidentiality of the Protected Materials; provided, however, that this provision does not limit a Participant's rights under Paragraphs 17, 18 or 20 of this Protective Order to challenge the designation of materials as "Protected Materials."

23. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

24. If a Participant believes that Protected Materials it previously distributed to Reviewing Representatives contain Market Sensitive Information, public disclosure of which would competitively harm the Participant, and should be treated as if such Protected Materials had been labeled "Not Available to Competitive Duty Personnel," the disclosing Participant must so notify all Participants and counsel for Participants that received the Protected Materials. Such notice must specifically identify the Protected Materials that contain such Market Sensitive Information, make an informal showing of why such information should be subject to the restrictions applicable to Protected Materials labeled "Not Available to Competitive Duty Personnel," and must seek the receiving Participants' consent to treatment of the subject materials as "Not Available to Competitive Duty Personnel." Such consent shall not be unreasonably withheld, delayed or conditioned. If no agreement is reached within five (5) business days concerning the designation of previously distributed Protected Material as "Not Available to Competitive Duty Personnel," the disclosing Participant may submit the dispute to the Presiding Judge. In the event that previously distributed Protected Material is subsequently designated as "Not Available to Competitive Duty Personnel," it will be the responsibility of the receiving Participant to ensure compliance with this order after the additional designation; the disclosing Participant will not be responsible for redistributing or re-labeling the affected Protected Materials.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.

Docket No. ER21-____-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials, excluding any Protected Materials designated as Not Available to Competitive Duty Personnel, is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order and shall be used only in connection with this proceeding. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

New York Independent System Operator, Inc.

Docket No. ER21-____-000

NON-DISCLOSURE CERTIFICATE
FOR MATERIALS MARKED AS
NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL

I hereby certify my understanding that access to Protected Materials, including any Protected Materials marked as Not Available to Competitive Duty Personnel, is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, that I am qualified under Paragraph 3G of the Protective Order to review materials marked as Not Available to Competitive Duty Personnel and that I agree to be bound by the Protective Order. In addition, if I am an outside expert or employee of an outside expert whose access to materials marked as Not Available to Competitive Duty Personnel is provided under Paragraph 3G(5) of the Protective Order in this proceeding, I expressly agree not to utilize such materials marked as Not Available to Competitive Duty Personnel in providing advice to market participants concerning the marketing, sale, purchase or transmission of electric energy, capacity or ancillary services, or the marketing, sale, purchase or transportation of any input to the production of electric energy, or for any other purpose outside the scope of this proceeding. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order and shall be used only in connection with this proceeding. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____