

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Key-Span Ravenswood, LLC

Docket No. EL05-17-003

v.

New York Independent System Operator, Inc.

**Motion to replace the Consent Protective Order
of the New York Independent System Operator, Inc.**

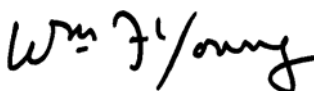
Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),¹ the New York Independent System Operator, Inc. (“NYISO”), by counsel, hereby moves the replacement of the Consent Protective Order submitted to the Presiding Judge on August 8, 2008 with the Consent Protective Order (“Revised Consent Protective Order”) attached hereto as Appendix A. The form of Protective Order submitted on August 8 was an earlier draft that was submitted in error. The Revised Consent Protective Order attached hereto represents the consensus of the parties on the appropriate form of protective order for this proceeding, as indicated at the prehearing conference in this matter held on August 11, 2008.

The NYISO has circulated this motion to counsel for the parties and understands that the parties consent to this motion and agree that the answer period to this motion specified in Rule 213 of the Rules of Practice and Procedure² should be waived, and the NYISO respectfully moves for such waiver.

Respectfully submitted,

NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

By: _____



Counsel

¹ 18 C.F.R. § 385.212.

² 18 C.F.R. § 385.213(d)(1).

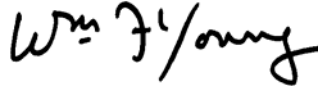
Robert E. Fernandez, General Counsel
Elaine D. Robinson, Director of Regulatory Affairs
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-7677
Fax: (518) 356-8825
rfernandez@nysio.com
erobinson@nyiso.com

William F. Young, Esq.
J. Christopher Upton, Esq.
Hunton & Williams LLP
1900 K Street, NW
Suite 1200
Washington, DC 20006-1109
Tel: (202) 955-1500
Fax: (202) 778-2201
wyoung@hunton.com
jupton@hunton.com
Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party designated on the office service list compiled by the Secretary in the above referenced dockets, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated at Washington, DC this 21st day of August, 2008.

A handwritten signature in black ink that reads "Wm. F. Young". The signature is written in a cursive, slightly slanted style.

Hunton & Williams LLP
1900 K Street, N.W.
Washington DC 20006-1109
(202) 955-1500

APPENDIX A

REVISED CONSENT PROTECTIVE ORDER

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

Key-Span Ravenswood, LLC

Docket No. EL05-17-003

v.

New York Independent System Operator, Inc.

PROTECTIVE ORDER

(Issued August ____, 2008)

This Protective Order (“Order”) shall govern the use of all Protected Materials produced or delivered by, or on behalf of, any Participant in connection with the proceeding before the Federal Energy Regulatory Commission (“Commission”) in Docket Number ER05-17-003 (“Proceeding”). Notwithstanding any order terminating this Proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the presiding officer for any proceedings in these dockets (“Presiding Officer”) or the Commission.

1. Definitions. For purposes of this Order:

(a) The term “Competitive Duties” shall mean the purchase, sale, or other marketing of energy, capacity, Transmission Congestion Contracts (“TCCs”), ancillary services, or any other product available in the New York Independent System Operator, Inc. (“NYISO”) markets; the supervision of any employee or employees whose duties include the purchase, sale, or other marketing of electricity, capacity, TCCs, ancillary services or any other product available in the NYISO markets; or the provision of consulting services in connection with the purchase, sale, or other marketing of electricity, capacity, TCCs, ancillary services or any other product available in the NYISO markets.

(b) The term “Competitive Duty Personnel” shall mean any individual engaged in Competitive Duties.

(c) The term “Non-Disclosure Certificate” shall mean a Non-Disclosure Certificate in the form attached hereto by which a Reviewing Representative, prior to receiving access to Protected Materials, shall certify his or her understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Order, and that such Reviewing Representative has read the Order and agrees to be bound by it.

(d) The term “Notes of Protected Materials” shall mean memoranda, handwritten notes, or any other form of information (including electronic form) that copies or discloses materials described in Section 1(g).

(e) The term “Originating Participant” shall mean the Participant first providing the Protected Materials to another Participant in this Proceeding.

(f) The term “Participant” shall mean a Participant as defined in 18 CFR 385.102(b) (2008).

(g) The term “Protected Materials” shall mean materials of the following types that are associated with the Proceeding:

(i) any materials associated with any Participant’s bid data;

(ii) any materials relating to bidding strategies of any of the Participants;

(iii) any materials provided or submitted by the Participant and labeled “PROTECTED MATERIALS” or “CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE” or with other words of similar import;

(iv) any materials provided or submitted by the Participant and labeled “PROTECTED MATERIALS—NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL,” such materials being available to Competitive Duty Personnel pursuant to Section 8;

(v) those materials (including deposition transcripts and exhibits) provided by the Participant in response to discovery requests and marked as specified in subsections (iii) or (iv) above;

(vi) Notes of Protected Materials;

(vii) any other materials that are made subject to this Order by any presiding judge in the Proceeding, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; and

(viii) copies of or information contained in, obtained from, or derived from such materials described in Section 1(g)(i) through Section 1(g)(vii);

provided, however, notwithstanding the provisions of Sections 1(g)(i) through 1(g)(viii), Protected Materials shall not include:

(A) any information or document contained in the files of the Commission (unless the information or documents were submitted to the Commission subject to a request for privileged treatment/exemption from disclosure pursuant to Commission regulations, and such information or documents has not been denied privileged treatment/exemption from disclosure by the Commission), or of any other federal or state agency, or any federal or state court, unless the information or document has been determined not to be protected by such agency or court;

(B) information that is public knowledge or that becomes public knowledge other than through disclosure in violation of this Order; or

(C) information that has been acquired in a manner that is lawful and not in violation of this Order or any other agreement.

(h) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate, who is engaged in the conduct of this Proceeding, who needs to know the information in the Protected Materials to carry out that person’s responsibilities in this Proceeding, and who is:

(i) an attorney who has made an appearance in this Proceeding and requested Protected Materials in connection with such Proceeding;

(ii) an attorney, paralegal, or other employee associated with an attorney described in Section 1(h)(i);

(iii) an expert or an employee of an expert retained by the Participant for the purpose of advising in connection with, preparing for, or testifying in this Proceeding;

(iv) a person designated as a Reviewing Representative by order of the Presiding Officer or the Commission; or

(v) an employee or other representative of the Participant with significant responsibility for this Proceeding;

provided, however, that, notwithstanding Sections 1(h)(i) through 1(h)(v), Competitive Duty Personnel may act as a Reviewing Representative only as provided in Section 8.

2. Obligation to Protect Protected Materials. Except as otherwise provided in this Order, the Participant and each Reviewing Representative shall:

(a) maintain all Protected Materials in a secure place;

(b) treat the Protected Materials as confidential in accordance with this Order;

(c) use at least the same degree of care to avoid publication or dissemination of the Protected Materials as it employs (or would employ) with respect to its own information that it does not (or would not) desire to have published or disseminated, but in any event not less than reasonable care; and

(d) not use Protected Materials except as necessary for the conduct of this Proceeding.

3. Individuals Permitted to Review Protected Materials. The Participant shall limit access to the Protected Materials to Reviewing Representatives and shall not disclose Protected Materials to anyone other than in accordance with this Order.

4. Evidence of Reviewing Representative Status. The Participant shall deliver to the other Participants, as applicable, a copy of a Non-Disclosure Certificate, in the form specified in the Attachment to this Order, signed by a Reviewing Representative prior to disclosure of any Protected Material to that Reviewing Representative.

5. Participant Responsible for Reviewing Representative. The Participant shall ensure that Reviewing Representatives treat Protected Materials as confidential in accordance with this Order. Without limiting the foregoing, attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Order. The Participant shall be responsible for the failure of any Reviewing Representative to comply with the terms of this Order.

6. Reviewing Representative May Make Notes and Copies. Reviewing Representatives may make copies of Protected Materials and may make Notes of Protected Materials (which, pursuant to Section 1(g), shall be Protected Materials).

7. Sharing of Protected Material Between Reviewing Representatives. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative have satisfied all qualifications, requirements and conditions necessary to be Reviewing Representatives.

8. Competitive Duty Personnel. (a) Protected Materials marked “Not Available to Competitive Duty Personnel” and information derived therefrom may not be reviewed by, or disclosed to, a Reviewing Representative engaged in Competitive Duties except for good cause shown in accordance with the procedures specified below. If any person who has been a Reviewing Representative subsequently is assigned to perform any Competitive Duties, or if the designation of previously available Protected Materials is changed to “Not Available to Competitive Duty Personnel,” that person shall thereafter have no further access to materials marked “Not Available to Competitive Duty Personnel” (or information derived therefrom), shall dispose of such materials, and shall continue to comply with the requirements set forth in the Non-Disclosure Certificate executed by such person and this Protective Order with respect to any Protected Materials to which such person previously had access, unless such person is permitted to continue serving as a Reviewing Representative in accordance with the following procedures.

(b) Competitive Duty Personnel may serve as Reviewing Representatives, only upon the following conditions being fulfilled prior to disclosure of Protected Materials marked “Not Available to Competitive Duty Personnel” to such person: (i) the Participant who employs or has retained that person must certify in writing to each affected Participant that its ability to participate in this proceeding effectively would be substantially prejudiced if it were unable to rely upon the assistance of the person with Competitive Duties as a Reviewing Representative; (ii) the Participant claiming such prejudice must identify by name, job title and Competitive Duties of the proposed Reviewing Representative; and (iii) the person with Competitive Duties for whom designation as a Reviewing Representative is requested must provide a Non-Disclosure Certificate, in the form specified in the Attachment to this Order, acknowledging his or her familiarity with the contents of this Order and restrictions on the disclosure or use of Protected Materials. If an Originating Participant objects to the designation as Reviewing Representative of a person with Competitive Duties pursuant to the exception in this Section 8 and the Participants are unable to resolve their differences after a good faith effort to do so, the Participant seeking the Reviewing Representative designation shall submit such request to the Presiding Officer for resolution.

9. Retroactive Designation. If a Participant believes that Protected Materials previously distributed to Reviewing Representatives contain market sensitive information, public disclosure of which would competitively harm the Participant, and should be treated as if they had been labeled “Not Available to Competitive Duty Personnel,” the Participant must (i) email Participants on the service list (or the appropriate restricted service list, if one has been established), specifically stating which documents contain such data; (ii) make a showing as to why such data should be subject to the restrictions applicable to materials designated as “Not Available to Competitive Duty Personnel;” and (iii) seek the consent of all Participants who are or may be affected by such restrictions, and such consent shall be unreasonably withheld. If no agreement is reached concerning the designation of previously distributed materials marked as “Not Available to Competitive Duty Personnel,” the Participant may withdraw the attempt to obtain such designation or submit the dispute to the Presiding Officer for resolution. If previously distributed material is designated as “Not Available to Competitive Duty Personnel,” it will be the responsibility of the receiving Participant and its Reviewing Representative to assure compliance with this Order thereafter. The affected Participant will not be responsible for redistributing or re-labeling the materials.

10. No Limitation to Participant’s Review of Participant’s Material. Nothing in this Order shall prevent an employee or agent of a Participant from reviewing information that originated from that Participant.

11. Use of Protected Material for Commercial Advantage Prohibited. A Reviewing Representative may not use information contained in any Protected Materials obtained through this Order (i) to give the Participant, the Reviewing Representative, or any other person a commercial or competitive advantage, or (ii) for any purpose not legitimately related to participating in this proceeding.

12. Effect of Change in Reviewing Representative Status. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in the review of Protected Materials, is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Section 1(h), or otherwise becomes not qualified to be a Reviewing Representative, access to Protected Materials by that person shall be terminated. Even if no longer engaged in the review of Protected Materials, every person designated a Reviewing Representative shall continue to be bound by the provisions of this Order and the Participant shall continue to have responsibility for that person’s compliance with the terms of this Order.

13. Participant’s Use of Protected Materials in Public Forum. If a Participant desires to include, utilize, or refer to any Protected Materials in a filing, testimony or exhibits during any hearing in these Proceedings in such a manner that might disclose such material to persons other than Reviewing Representatives, the Participant shall both notify counsel for the Originating Participant and the Presiding Officer of such desire, identifying with particularity each of the Protected Materials proposed to be so disclosed. The Originating Participant may request the Presiding Officer to limit attendance at such hearing to persons who are Reviewing Representatives, and to direct that the relevant portions of this transcript be marked as Protected Materials.

14. Dispute Resolution. The Presiding Officer shall resolve any disputes under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Officer, the parties to the dispute shall use their best efforts to resolve it. Any Participant that contests the designation of materials as protected shall notify the Originating Participant 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 five (5)-day period, files a motion with the Presiding Officer, 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 Officer finds that the materials at issue are not entitled to protection, the procedures of Section 16 apply.

15. Termination; Obligations in Connection with Termination. This Order shall terminate and Protected Materials shall no longer be available to the Participant upon the later of the date (“Termination Date”) that (i) an order terminating the Proceeding becomes no longer subject to judicial review or (ii) any other Commission or other proceeding relating to the Protected Materials is concluded and no longer subject to judicial review. If requested to do so in writing after the Termination Date, the Participant shall, within fifteen (15) days of such request, return the Protected Materials to the Originating Participant, or shall destroy the Protected Materials; provided, however, that the Participant may retain the following types of Protected Materials so long as they are maintained in accordance with Section 2: (i) copies of filings, official transcripts and exhibits in the Proceeding that contain Protected Materials, (ii) any material required to be maintained by law, and (iii) Notes of Protected Materials. To the extent Protected Materials are not returned or destroyed, they shall remain subject to this Order. Within the fifteen (15) day period to return Protected Materials the Participant, if requested by the Originating Participant to do so, shall also submit to the Originating Participant an affidavit stating that, to the best of its knowledge, the Participant has returned or destroyed all Protected Materials, except to the extent that return or destruction is not required under this Section 15, in which case the Participant will maintain such Protected Materials in accordance with Section 2. This Section 15 shall survive termination of this Order in relation to Protected Materials retained after the Termination Date.

16. No Need for Protection. If the Presiding Officer 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 three (3) business days from the date of issuance of the Presiding Officer’s decision, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Officer’s decision respecting Protected Materials or Reviewing Representatives, or the Commission’s denial of any appeal thereof. The provisions of 18 CFR 388.112 (2008) 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 (1994).

17. Remedies Not Exclusive. No Participant waives the right to pursue any legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

18. Requests for Non-Application. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Officer, 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 Officer may alter or amend this Protective Order as circumstances warrant at any time during the course of this Proceeding.
19. Amendments. Each Participant governed by this Order has the right to seek changes in it as appropriate from the Presiding Officer or the Commission.
20. No Implied Rights. Nothing in this Order shall be construed as granting or conferring any rights, by license or otherwise, expressly, implicitly or otherwise, under any patents, copyrights or trade secrets. Nothing in this Order shall be construed as requiring the disclosure of any confidential information, other than as required by the regulations, rules or orders governing this Proceeding. No rights or obligations other than those expressly stated herein shall be implied from this Order; in particular, no obligation to perform any work or project or to enter into any business relationship shall be deemed to exist by virtue of this Order.
21. Order Not Exclusive. Nothing in this Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials delivered by an Originating Participant to a Participant under this Order. Nothing in this Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.
22. Filing. All Protected Materials filed with the Commission, the Presiding Officer, or any other judicial or administrative body, in support of, or as part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order.
23. Survival. Termination of this Order shall not relieve the Participants of obligations that by their nature should survive such termination, including as specified in Section 15.
24. Disclosure Pursuant to Court Order. In the event that a Participant (or its Reviewing Representative), pursuant to applicable law or legal process, is requested or required to disclose Protected Materials to a jurisdictional entity, the Participant shall provide the Originating Participant with prompt written notice of such request or requirement and, if practicable, afford the Originating Participant with a reasonable opportunity to consult with the Participant with regard to the steps that may be taken to reduce the extent of Protected Materials that must be disclosed or to enable the Originating Participant to seek an appropriate protective order or other remedy reducing the extent of the Protected Materials that must be disclosed. In any event, the Participant (or its Reviewing Representative) shall disclose only as much of the Protected Materials as the Participant's legal counsel determines is legally required to be disclosed in order to comply with such applicable law or legal process (as such may be affected by any protective order or other remedy obtained by the Originating Participant or any other person on a timely basis).

25. Communications. All notices and other correspondence hereunder shall be in writing and shall be sent by (i) electronic mail whenever possible, or (ii) first class mail, by personal delivery, or by a nationally recognized courier service, in accordance with the service list for this Proceeding.

John P. Dring
Presiding Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Key-Span Ravenswood, LLC

Docket No. EL05-17-003

v.

New York Independent System Operator, Inc.

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order (“Order”) in this Proceeding, that I have been given a copy of and have read the Order, that I fall within the scope of individuals qualified to be Reviewing Representative (as defined in Section 1(h) of the Order, or, in the case of Competitive Duty Personnel, as defined in Section 8 of the Order), and Protected Materials (including any Notes of Protected Materials) that may come into my possession or under my control shall not be disclosed to anyone other than in accordance with the Order and shall be used only for purposes of this Proceeding and for no other purpose. I understand that I am prohibited by the Order from making, facilitating, or permitting any prohibited disclosure. I acknowledge my understanding that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

Capitalized terms shall have the meaning given to them in Section 1 of the Order.

By: _____

Title: _____

Representing: _____

Date: _____