

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation Docket No. ER10-188-000

ORDER OF CHIEF JUDGE ADOPTING PROTECTIVE ORDER

(Issued February 2, 2010)

On January 29, 2010, counsel for California Independent System Operator Corporation (ISO) filed a motion for the adoption of a Protective Order, requesting that the Chief Judge adopt the attached Protective Order in this proceeding. The ISO states that good cause exists for its adoption in order to protect proprietary and commercially sensitive information that is protected under the ISO Tariff and that parties have requested in order to facilitate settlement discussion. The ISO states its understanding that no party objects to adoption of this Protective Order. Accordingly, for good cause shown, the motion for adoption of a Protective Order is granted and the attached Protective Order is hereby adopted for use in this proceeding.

Curtis L. Wagner, Jr.
Chief Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation Docket No. ER10-188-000

PROTECTIVE ORDER

(Issued February 2, 2010)

1. This Protective Order 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 Federal Energy Regulatory Commission's (Commission) Chief Administrative Law Judge (Chief ALJ), or the Presiding Administrative Law Judge (Presiding Judge), if one should be appointed.

2. This Protective Order applies to the following 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 injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 CFR § 388.113(c)(1) (Critical Energy Infrastructure Information); and (C) A Participant shall designate as protected those documents or other materials that are confidential under the Tariff of the California Independent System Operator Corporation (ISO).

3. Definitions -- For purposes of this Order:

(a) The term "Competitive Duties" shall mean: (i) the marketing or sale of electric power at wholesale; (ii) the purchase or sale of electric power at wholesale; (iii) the direct supervision of *any* employee with such responsibilities; or (iv) the provision of consulting services in connection with the purchase, sale, or other marketing of electricity in the ISO's markets or the State of California (collectively, Competitive Duties).

(b) The term "Competitive Duty Personnel" shall mean any individual engaged in Competitive Duties. Counsel, or outside consultants who do not provide consulting services in connection with the purchase, sale, or other marketing of electricity in the ISO's markets or the State of California are not Competitive Duty Personnel.

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

(d)(1) The term “Protected Materials” means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Chief ALJ, by the Presiding Judge if one is appointed, 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. Alternatively, a Participant making available via secure website, CD, or DVD electronic files containing Protected Materials may indicate on the secure website, CD, or DVD that the documents contained therein include “PROTECTED MATERIALS” rather than physically marking each document. 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”. Alternatively, a Participant making available via secure website, CD, or DVD electronic files containing Protected Materials including Critical Energy Infrastructure Information may indicate on the secure website, CD, or DVD that the documents therein “CONTAIN CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE.” If the Protected Materials contain information not available to Competitive Duty Personnel pursuant to Section 8(c), the Participant producing such information shall additionally mark on each page containing such information the words “PROTECTED MATERIALS NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL.” Alternatively, a Participant making available via secure website, CD, or DVD electronic files containing Protected Materials including information not available to Competitive Duty Personnel may indicate on the secure website, CD, or DVD that the documents contained therein include “PROTECTED MATERIALS NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL.”

(2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(d)(1). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) 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, or (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. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(e) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials 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 Participants 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.

(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 case with an attorney described in Subparagraph (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 Chief ALJ, the Presiding Judge if one is appointed, or the Commission; or
- (6) employees or other representatives of Participants in this proceeding with significant responsibility for this docket;

provided, however, that, notwithstanding Sections 3(f)(1) through 3(f)(6), Competitive Duty Personnel may act as a Reviewing Representative only as provided in Section 8(d).

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 7-9.

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen 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 Material may be retained, if they are maintained in accordance with Paragraph 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. Protected Materials marked as “NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL” shall be returned to the Participant that produced them or destroyed by the Participant that received such Protected Materials within fifteen days of the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. 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 CFR § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. 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. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(f) above, 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 3(f) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Chief ALJ, or the Presiding Judge if one is appointed, for resolution.

(c) When Protected Materials have been marked "NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL," those materials and information derived therefrom may not be reviewed by, or disclosed to, Competitive Duty Personnel. 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 access to materials marked "NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL," shall either destroy such materials or return such materials to the Participant that produced them, 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.

(d) Notwithstanding the foregoing, persons who otherwise would be disqualified as Competitive Duty Personnel may serve as Reviewing Representatives, subject to the following conditions: (i) the Participant who employs or has retained that person must certify in writing to the Commission and each affected producing Participant that its ability effectively to participate in this proceeding would be substantially and unduly prejudiced if it were unable to rely upon the assistance of the particular Reviewing Representative; (ii) the party claiming such prejudice must identify by name and job title the particular Reviewing Representative required, and must acknowledge in writing to the affected producing Participant that access to the Protected Materials that are designated "NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL" shall be restricted only to the purpose of participation in this proceeding, absent the written consent of the affected producing Participant; and (iii) the Participant who employs or has retained that person must acknowledge that any other use of the materials shall constitute a violation of a lawful order issued by the Commission; and the person designated as one of the

Competitive Duty Personnel must provide a Non-Disclosure Certificate, in the form specified in the Attachment to this Protective Order, acknowledging his or her familiarity with the contents of this Order and the particular restrictions contained in this paragraph. If a producing Participant objects to the designation as Reviewing Representative of a person with Competitive Duties pursuant to the exception in this Section 8(d) 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 Chief ALJ, or the Presiding Judge if one is appointed, for resolution.

(e) If a Participant believes that Protected Materials previously distributed to Reviewing Representatives contain market sensitive information, public disclosure of which would competitively harm that Participant, and should be treated as if they had been labeled "NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL," that Participant will be responsible for redistributing or re-labeling the materials.

(f) Once materials are clearly and correctly labeled, compliance will be the responsibility of the Reviewing Party.

9. (a) 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; provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel 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 Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(f), 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.

11. Subject to Paragraph 18, the Chief ALJ, or the Presiding Judge if one is appointed, shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Chief ALJ, or the Presiding Judge if one is appointed, 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 party that provided the protected materials by specifying in writing the materials the designation of which 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 Chief ALJ, or the Presiding Judge if one is appointed, 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 Chief ALJ, or the Presiding Judge if one is appointed, finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 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.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers (including properly designated electronic means) endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Chief ALJ, or the Presiding Judge if one is appointed, and all Reviewing Representatives 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." Such documents containing materials not available to Competitive Duty Personnel shall be additionally marked "CONTAINS MATERIAL NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL." 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 and served on all parties on the service list and the Chief ALJ, or the Presiding Judge if one is appointed. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. 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 these proceedings in such a manner that might require disclosure of such material to persons

other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Chief ALJ, or the Presiding Judge if one is appointed, of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Chief ALJ, or the Presiding Judge if one is appointed.

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

15. Nothing in this Protective Order shall preclude any Participant from requesting the Chief ALJ, the Presiding Judge if one is appointed, 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 Chief ALJ, or the Presiding Judge if one is appointed, may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Chief ALJ, the Presiding Judge if one is appointed, or the Commission.

17. All Protected Materials filed with the Commission, the Chief ALJ, the Presiding Judge if one is appointed, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers (including properly designated electronic means) bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION - DO NOT RELEASE." Such documents containing materials not available to Competitive Duty Personnel shall be additionally marked "CONTAINS MATERIAL NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL."

18. If the Chief ALJ, or the Presiding Judge if one is appointed, 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 determination of the Chief ALJ, or the Presiding Judge if one is appointed, 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 decision of the Chief ALJ, or the Presiding Judge if one is appointed, respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any

appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Protected Materials in the files of the Commission.

19. 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.

20. 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.

21. 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 (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

Curtis L. Wagner, Jr.
Chief Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System
Operator Corporation

Docket No. ER10-188-000

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 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. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____
Title: _____
Representing: _____
Date: _____

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System
Operator Corporation

Docket No. ER10-188-000

NON-DISCLOSURE CERTIFICATE FOR COMPETITIVE DUTY PERSONNEL

I hereby certify my understanding that access to Protected Materials marked “NOT AVAILABLE TO COMPETITIVE DUTY PERSONNEL” in the above-captioned case is provided to me pursuant to the terms and restrictions of the Protective Order in said 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 that may come into my possession or under my control, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials may not be disclosed to anyone other than in accordance with that Protective Order. I promise not to make or facilitate any such prohibited disclosure, and I acknowledge my understanding that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission and may subject me to sanctions and punishment in accordance with law.

By: _____
Title: _____
Representing: _____
Date: _____

Document Content(s)

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