

147 FERC ¶ 61,014
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 4, 2014

In Reply Refer To:
Hudson Transmission Partners, LLC
v.
New York Independent System
Operator, Inc.
Docket No. EL12-98-000

Cadwalader, Wickersham & Taft LLP
700 Sixth Street, NW
Washington, DC 20001

Attention: Joseph B. Williams
Counsel for Brookfield Energy Marketing LP

Dear Mr. Williams:

1. In a January 14, 2014 order,¹ the Commission issued a Protective Order and Non-Disclosure Certificate to govern access to confidential information that was to be included in the New York Independent System Operator's (NYISO) filing to comply with the Commission's November 21, 2013 order² on Hudson Transmission Partners' (HTP) complaint (Complaint) regarding NYISO's market power mitigation determination for the HTP project. On February 28, 2014, Brookfield Energy Marketing LP (Brookfield) filed a motion to modify the Protective Order. In this order the Commission grants Brookfield's motion and issues the attached Non-Disclosure Certificate for Competitive Duty Personnel. The Commission directs NYISO to make the confidential information available to a party to the proceeding in accord with its signature on the Non-Disclosure Certificate, or the Non-Disclosure Certificate for Competitive Duty Personnel, consistent with the procedure provided in the Protective Order as modified herein.

¹ *Hudson Transmission Partners, LLC v. New York Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,022 (2014) (January 14, 2014 Order).

² *Hudson Transmission Partners, LLC v. New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,156 (2013) (November 21, 2013 Order).

2. In the November 21, 2013 Order, the Commission granted, in part, and denied, in part, HTP's Complaint alleging that NYISO improperly implemented its New York City buyer-side market mitigation exemption test with respect to HTP's new 660 MW high voltage, direct current merchant transmission facility (HTP Project). As part of its exemption test of the HTP Project, NYISO applied a "scaling factor" to reduce HTP's projected energy revenues used in calculating the HTP Project's net cost of new entry. In the November 21, 2013 Order, as relevant here, the Commission found that the use of a scaling factor is reasonable, but required NYISO to submit a compliance filing to provide the specific scaling factor that it applied to HTP, to explain in detail how such factor was calculated, and to support its methodology.

3. On December 20, 2013, NYISO filed a motion for the adoption of a protective order, stating that compliance with the Commission's directive could require the direct or indirect disclosure of confidential information. NYISO also stated that the information it expected to disclose would not only be that of the project developer but would be data of other unaffiliated entities. In the January 14, 2014 Order, the Commission granted NYISO's motion and issued a Protective Order and Non-Disclosure Certificate. The Commission directed NYISO to make the confidential information available to the parties to the proceeding who sign a Non-Disclosure Certificate.

4. Brookfield moves to modify the Protective Order to restrict access for "Competitive Duty Personnel" to aggregated data that includes data reflecting hourly transactions from the Linden VFT merchant transmission facility (Linden VFT) during the data period (Linden VFT Data).³ Brookfield states that NYISO informed it that aggregated confidential transaction data would be included as Protected Materials and would be disclosed to approved Reviewing Representatives who signed the Non-Disclosure Certificate. Brookfield states that it may be possible for other market participants to use the Linden VFT Data in conjunction with other public sources of information to disaggregate the transaction data of their competitors and such disclosure could result in competitive harm.

5. Brookfield proposes to change the existing Protective Order by using existing language in the Protective Order to define a new term "Competitive Duty Personnel" and to include language providing for a non-disclosure certificate that would deny such personnel access to "Highly Sensitive Protected Materials." Brookfield proposes a separate form of non-disclosure agreement for "Competitive Duty Personnel." It also requests that NYISO mark the Linden VFT Data as "Highly Sensitive Protected Materials."

³ Brookfield states that the "Data Period" is an 18-month period beginning with the first date of the day-ahead market transaction scheduled for the Linden VFT (November 1, 2009) through the date the scaling factor formula for the HTP Project was specified (May 16, 2011). Brookfield February 28, 2014 Motion at n.2.

6. Pursuant to Rule 213(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(d)(1) (2013), any answer to a motion must be made within 15 days after the motion is filed. No answers were filed.

7. We grant Brookfield's motion to modify the January 14, 2014 Protective Order and we issue the attached Non-Disclosure Certificate for Competitive Duty Personnel. We find that the proposed modifications to the Protective Order are limited in scope and tailored to meet Brookfield's concern that information specific to Linden VFT could be disaggregated and could cause competitive harm. We note that no objections to the proposed modifications were filed. We find that the Protective Order, as modified, will meet both the legitimate needs of the parties in this proceeding to obtain the subject information as well as the need to adequately protect those entities whose confidential information may be disclosed.

8. Accordingly, the Commission hereby grants Brookfield's February 28, 2014 Motion and issues the attached Non-Disclosure Certificate for Competitive Duty Personnel for use in this proceeding, as discussed in the body of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Hudson Transmission Partners, LLC

Docket No. EL12-98-000

v.

New York Independent System Operator, Inc.

NON-DISCLOSURE CERTIFICATE FOR COMPETITIVE DUTY PERSONNEL

(Issued)

I hereby certify my understanding that access to Protected Materials in the above-captioned case 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 my duties and responsibilities include "Competitive Duties" as described in the Protective Order and, as such, I understand that I shall neither have access to, nor disclose, the contents of the Protected Materials that are marked "Contains Protected Material Not Available to Competitive Duty Personnel," any notes or other memoranda, or any other form of information that copies or discloses Protected Materials that are marked as "Contains Protected Material Not Available to Competitive Duty Personnel." I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Title: _____

Representing: _____

Date: _____