

**PLANNING COORDINATORS AND TRANSMISSION PLANNERS
CRITICAL ENERGY INFRASTRUCTURE INFORMATION
SHARING AND NON-DISCLOSURE AGREEMENT
IN FURTHERANCE OF COMPLIANCE WITH
FEDERAL ENERGY REGULATORY COMMISSION AND
NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION REQUIREMENTS
JULY 1, 2016**

This Critical Energy Infrastructure Information Sharing and Non-Disclosure Agreement in Furtherance of Compliance with Federal Energy Regulatory Commission and North American Electric Reliability Corporation Requirements (the “Agreement”) is made and entered into by and between the Parties listed in Attachment 1, which Attachment 1 shall be revised from time to time to reflect new and withdrawn Parties. Hereafter, the Parties shall be referred to individually as “Party” and, collectively, as “Parties.”

WITNESSETH:

WHEREAS, the Parties to this Agreement are authorized North American Electric Reliability Corporation (“NERC”) Planning Coordinators and/or Transmission Planners who perform transmission planning pursuant to the Federal Energy Regulatory Commission’s (“Commission”) Order No. 1000¹ that have agreed to collaborate for the purposes of performing transmission planning and related matters required as part of and in support of compliance with the Commission’s Order No. 1000 and/or NERC’s MOD-32² requirements; and

WHEREAS, the Parties may share and exchange information between and among themselves pursuant to this Agreement, and such information may contain or be itself deemed Critical Energy Infrastructure Information (“CEII”); and

WHEREAS, the Parties have agreed on a process for sharing and exchanging CEII between and among the Parties and protecting CEII received by the Parties pursuant to this Agreement, as set forth herein;

NOW THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable consideration, the

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000 at P 346, FERC Stats. & Regs. ¶ 31,323 (2011) (“Order No. 1000”), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (“Order No. 1000-A”), *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012) (“Order No. 1000-B”), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

² Reliability Standard MOD-032-1 (and all subsequent MOD-032 versions) is(are) a consolidation and replacement of certain existing NERC Reliability Standards, and require(s) data submission by applicable data owners to their respective Transmission Planners and Planning Coordinators to support the Interconnection-wide case building process in their Interconnection.³ See Glossary of Terms Used in NERC Reliability Standards, North American Electric Reliability Corporation (Jan. 29, 2016), located at:

http://www.nerc.com/pa/stand/glossary%20of%20terms/glossary_of_terms.pdf.

receipt, adequacy and sufficiency of which are acknowledged, the Parties hereby agree as follows:

I. The Objectives

- a.** The Parties agree that this Agreement is intended to set forth their agreement only on the topic of the sharing and exchange of CEII between and among the Parties and the protection of CEII received by the Parties pursuant to this Agreement. This Agreement applies only to the sharing and exchange of data for the purposes of performing coordinated transmission planning in fulfillment of the Commission's Order No. 1000 and/or NERC's MOD-032 requirements, where the data that may be required to be shared or exchanged may contain or be itself deemed CEII (the "Objectives").
- b.** This Agreement is not intended to replace the Parties' own individual and/or regional processes or agreements addressing CEII information normally requested through a Party's own individual and/or regional CEII request process.

II. Definitions

- a.** "Critical Energy Infrastructure Information" or "CEII" shall include power flow models; stability models; short circuit models; and/or contingency lists, monitored lists and other associated information shared or exchanged between and among Parties pursuant to this Agreement and used to fulfill Commission Order No. 1000 and NERC MOD-32 requirements, and shall include, whether furnished before or after the mutual execution of this Agreement, whether oral, written or recorded/electronic, and regardless of the manner in which it is furnished, all information that is marked as "Critical Energy Infrastructure Information" or "CEII" or which under all of the circumstances of this Agreement should be treated as CEII.
- b.** "Party" shall mean those individuals or organizations listed in Attachment 1 to this Agreement.
- c.** "Planning Coordinator" shall mean a NERC registered entity responsible for coordinating and integrating transmission facility and service plans, resource plans, and protection systems.³
- d.** "Recipient Party" shall mean any Party to this Agreement receiving CEII from any other Party pursuant to this Agreement.

³ See Glossary of Terms Used in NERC Reliability Standards, North American Electric Reliability Corporation (Jan. 29, 2016), located at: http://www.nerc.com/pa/stand/glossary%20of%20terms/glossary_of_terms.pdf.

- e. “Third-Party” shall mean any individual or organization other than a Party or Recipient Party that requests or demands upon a Party or Recipient Party release or disclosure of CEII. A Third-Party shall include, but shall not be limited to, a court of competent jurisdiction issuing any subpoena or discovery requests, any federal, state or local governmental subdivision, department, official, agency or court, or arbitration panel, or other business, company, entity, consultant or individual requesting CEII that is covered in this Agreement. For purposes of this Agreement, Third-Party shall not include FERC and NERC or Regional Entities of NERC and employees of FERC and NERC or Regional Entities of NERC.
- f. “Transmission Planner” shall mean a NERC registered entity that develops a long-term (generally one year and beyond) plan for the reliability (adequacy) of the interconnected bulk electric transmission systems within its portion of the Planning Authority area⁴ or an entity that is listed on Schedule A to this Agreement. Additional entities may be added to Schedule A of this Agreement only after all Parties who have executed Attachment 1 of this Agreement have agreed in writing to add such additional entities to Schedule A of this Agreement.

III. Exchange of CEII

a. Exchange of CEII Between and Among the Parties

- i. Parties may share and exchange CEII between and among other Party(ies) to this Agreement as necessary to assist in achieving the Objectives.
- ii. A Party that receives CEII shared or exchanged pursuant to this Agreement may only use such CEII for purposes of supporting the Objectives, and shall not disclose or share such CEII with any Third-Party(ies) except as consistent with the CEII Third-Party Procedures below.
- iii. Recipient Party may internally disclose CEII received from other Party(ies) pursuant to this Agreement only to the Recipient Party’s duly authorized employees, who (i) need to know the information to do their jobs; (ii) have been advised of the duty of non-disclosure imposed by this Agreement; and (iii) have executed a copy of the acknowledgment attached hereto and made a part hereof, as Attachment 2. Each Recipient Party agrees to keep an updated list of its duly authorized employees who have read this Agreement and executed Attachment 2 of this Agreement, and to ensure that only those employees who meet the criteria have access to CEII received from other Parties pursuant to this Agreement.

⁴ *Id.*

- iv. All CEII received pursuant to this Agreement shall be maintained in a secure place. Recipient Party shall protect the CEII from unauthorized use, access or disclosure in the same manner as Recipient Party protects its own CEII and with no less than reasonable care. Recipient Party may make copies of CEII, but such copies are CEII and subject to these same procedures. Recipient Party may make notes of CEII, which notes shall be treated as CEII if they contain CEII.
- v. Recipient Party must return all CEII received pursuant to the terms of this Agreement or destroy such CEII within fifteen (15) days of a written request of the disclosing Party to do so, except that CEII notes may be retained in accordance with paragraph III.a.iv., above. If requested, Recipient Party shall also submit an affidavit or certificate of destruction stating that, to the best of Recipient Party's knowledge, all CEII has been returned or destroyed and that CEII notes have either been returned, destroyed or are being maintained by Recipient Party in accordance with paragraph III.a.iv., above.
- vi. If a Party is legally required to disclose the CEII by subpoena, law or other directive of a court, administrative agency, arbitration panel, or other authority, such Party agrees to provide the other Parties prompt written notice of such requirement prior to any such disclosure and to cooperate with all Parties in taking steps to restrict or narrow the information the disclosing Party must disclose, including seeking an appropriate protective order or other remedy and/or taking steps to resist or narrow the scope of such request or legal process.
 - 1. Even if the disclosing Party is authorized to disclose the CEII (for example, if the disclosing Party obtains the Parties' written consent or becomes legally required to do so), the disclosing Party agrees to disclose only the minimum amount of information required to be disclosed and to seek appropriate protections, such as seeking an appropriate protective order or other remedy.

b. Exchange of CEII with Third-Parties

- i. Third-Party access to CEII that is shared or exchanged between and among the Parties to this Agreement is limited to information associated with coordinated transmission planning in fulfillment of the Commission's Order No. 1000 and/or NERC's MOD-32 requirements.
- ii. Parties are authorized to release CEII to Third-Parties consistent with the Parties' own individual and/or regional processes, as applicable, or agreements addressing CEII information normally requested through a

Party's own individual and/or regional CEII process, provided a Party's own individual and/or regional, as applicable, CEII process includes:

1. Identification of the Third-Party(ies); and
 2. An effective non-disclosure agreement with the Third-Party(ies) that covers the CEII ("Third-Party NDA"), and:
 - a. restricts the use of the CEII to the Objectives of this Agreement; and
 - b. includes indemnification by the Third-Party(ies) for any claims resulting from or related to the Third-Party's(ies') use or release of such CEII ("Third-Party Indemnification").
- c. Exchange of CEII with FERC and NERC or Regional Entities of NERC and Employees Thereof**
- i. If the requestor of CEII that is shared or exchanged between and among the Parties to this Agreement is FERC and/or NERC or Regional Entities of NERC and/or an employee of FERC and/or NERC or Regional Entities of NERC, the Party will release the information if the Party confirms that the requestor(s) is/are FERC and/or NERC or Regional Entities of NERC and/or employees of FERC and/or NERC or Regional Entities of NERC and that the CEII material is subject to the FERC and/or NERC or Regional Entities of NERC rules of procedure applicable to CEII.

IV. Additional Terms and Conditions

- a. Any Party may withdraw from this Agreement by giving twenty (20) days prior written notice of its intent to withdraw to each other Party, provided the provisions and obligations contained herein regarding CEII shall remain in full force and effect with respect to each Recipient Party for as long as such Recipient Party maintains possession of CEII received pursuant to this Agreement or until a court of competent jurisdiction finds that the information provided to Recipient Party does not qualify as CEII.
- b. Any Planning Coordinators and/or Transmission Planners, as defined in this Agreement, may join this Agreement by executing a counterpart version of Attachment 1 of this Agreement and forwarding it simultaneously (on the same day) by electronic mail (pursuant to section IV.o. of this Agreement) to all of the Parties listed in Attachment 1 of this Agreement and to the Tracking Coordinator at: pctp-track-coord@eipconline.com.

The Tracking Coordinator and the Parties listed in Attachment 1 of this Agreement shall have ten (10) business days from the date of electronic receipt of the joining entity's executed counterpart version of Attachment 1 of this Agreement to determine whether the entity requesting to join this Agreement is a Planning Coordinator and/or Transmission Planner as defined in this Agreement. If the entity meets the definition of Planning Coordinator and/or Transmission Planner as defined in this Agreement, such entity shall be affirmed as eligible to join this Agreement.

- c. CEII received under this Agreement will not knowingly be used for an illegal purpose or in a manner that does not further the Objectives.
- d. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable in any respect or with respect to any information, such provision in all other respects or with respect to all CEII information, shall nevertheless continue in full force and effect without being impaired or invalidated and shall be enforced to the full extent permitted by law or regulation.
- e. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. A facsimile or photocopy of a Party's signature shall have the same force and effect as an original. By executing this Agreement, each Party represents that such Party has full power, authority, ability and legal right to execute, deliver and perform under, and comply with, this Agreement and the performance hereof and compliance herewith has been duly authorized by all necessary action of the signatory's organization/employer. The Parties' assent to and acceptance of this Agreement shall be evidenced by their making available CEII to each other signatory/Party.
- f. Breach of Party or Recipient Party's obligations under this Agreement shall cause immediate, irreparable harm to the other Parties or Recipient Parties, for which there will not be adequate remedy at law. All non-breaching Parties or Recipient Parties reserve the right to avail themselves of any and all legal and equitable rights or remedies they may have under federal or state law.
- g. All CEII is provided "as is" and with any and all faults. The Parties shall not be liable for the accuracy or completeness of CEII.
- h. No Party is responsible or liable for any other Party's designation of their information as CEII, including any improper designation.
- i. The Parties understand that Third-Parties may have access to CEII shared or exchanged between and among the Parties, as contemplated by Section III.b. of this Agreement. A Recipient Party shall not be responsible or liable to other

Parties for a Third-Party's use or misuse of information that the Recipient Party provided to such Third-Party provided that the Recipient Party complied with Section III.b. and subject to the provisions of Section IV.k. below. In addition, no Parties shall be responsible or liable to other Parties for disclosures to Third-Parties by FERC, NERC, or a Regional Entity of NERC, or by the employees of FERC, NERC, or a Regional Entity of NERC.

- j.** Except as provided in Section IV.k. below, no Party shall be liable for any consequential damages incurred by any other Party arising from a breach or violation of this Agreement or any Third-Party NDA.
- k.** A Party that has incurred damages (including consequential damages) due to the actions or inactions of a Third-Party shall have the right to recover such damages from the Recipient Party that provided the CEII to the Third-Party to the extent that the Recipient Party has Third-Party Indemnification for the same, and is indemnified by a Third-Party. Each Party will use commercially reasonable efforts to pursue any available Third-Party Indemnification for a breach or violation of this Agreement or the applicable Third-Party NDA. Each Party will remit to the other Parties payment it receives under such Third-Party NDA to the extent of damages incurred by the other Parties arising from any such breach or violation by a Third-Party of this Agreement or of the Third-Party NDA. If insufficient payment is received from such Third-Party(ies) to cover all damages incurred by the Parties, then such payment shall be allocated proportionately among such Parties relative to the amount of damages incurred by each of the Parties.
- l.** Nothing in this Agreement, whether express or implied, is intended to create or confer any rights or remedies under or by any reason of this Agreement (or otherwise) on any person or entity other than the Parties.
- m.** The Parties may exercise their rights under this Agreement at any time, even if they delayed doing so or failed to do so in the past.
- n.** This is the entire agreement among the Parties concerning the sharing and exchange, use, and duty of non-disclosure of CEII pursuant to this Agreement. No modification or waiver of any part of this Agreement is legally enforceable unless all of the Parties have agreed in writing.
- o.** All notices or other correspondence provided for in this Agreement shall be in writing and shall be addressed to the attention of the person and at the address provided on the relevant Party's signature block on Attachment 1 of this Agreement unless another address has been designated in writing and delivered to all of the Parties. All such notices or other correspondence shall be deemed delivered (i) on the date delivered in person; (ii) two business days after being

deposited with an internationally recognized overnight courier service; (iii) four business days after being sent by first class, registered or certified U.S. mail, postage prepaid; or (iv) on the date of the read receipt after being sent by electronic mail.

- p.** This Agreement is to be governed by the laws of the State of Delaware, regardless of the choice of law principles of that State or any other.

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ATTACHMENT 1

LIST OF PARTIES AND SIGNATURES

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their names by their respective duly authorized representatives, as of the day and year indicated by the signature. Each individual signing below represents and warrants to the others that he/she is authorized to enter into this Agreement on behalf of his/her company/employer, that he/she has the power and authority to enter into this Agreement, and that this Agreement does not violate any other agreement that his/her company/employer has with any other third party.

[INSERT FULL LEGAL NAME OF COMPANY]

By: _____

Printed Name: _____

Title: _____

Address for Notices: _____

Email: _____

Date: _____

[INSERT FULL LEGAL NAME OF COMPANY]

By: _____

Printed Name: _____

Title: _____

Address for Notices: _____

Email: _____

Date: _____

[INSERT FULL LEGAL NAME OF COMPANY]

By: _____

Printed Name: _____

Title: _____

Address for Notices: _____

Email: _____

Date: _____

[INSERT FULL LEGAL NAME OF COMPANY]

By: _____

Printed Name: _____

Title: _____

Address for Notices: _____

Email: _____

Date: _____

**ATTACHMENT 2
ACKNOWLEDGMENT**

I am a duly authorized employee of _____, a Party to the Critical Energy Infrastructure Information Sharing and Non-Disclosure Agreement in Furtherance of Compliance with Federal Energy Regulatory Commission and North American Electric Reliability Corporation Requirements (“Agreement”). I have read the entire Agreement. I understand that, pursuant to the terms of the Agreement, the Party of which I am an employee may receive Critical Energy Infrastructure Information (“CEII”) (as that term is defined in the Agreement) from other Parties to the Agreement. I also understand that the Party of which I am an employee has agreed not to use or disclose CEII received from other Parties to the Agreement, pursuant to the Agreement, to anyone, in any way, except as authorized by the Agreement and to advise all of its duly authorized employees, like myself, who receive CEII pursuant to the Agreement of the limitations on use and the non-disclosure obligations contained in the Agreement. I acknowledge the sensitive nature of CEII, including the CEII that I may receive as an authorized employee of a Party, and understand that I may not disclose it to anyone other than in accordance with the terms of the Agreement. Furthermore, I understand that any disclosure of such CEII by me not in accordance with the terms of the Agreement may constitute a violation of the Agreement by the Party of which I am an employee.

ACKNOWLEDGED AND EXECUTED by (attach additional sheets as necessary):

Signature: _____
Printed Name: _____
Title: _____
Organization: _____
Date: _____

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SCHEDULE A

Pursuant to the terms of this Agreement, additional entities that shall be considered a Transmission Planner for purposes of this Agreement include:

The Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, D/B/A Dalton Utilities