

November 6, 2012

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, Ste 7
Lansing, MI 48911

Re: MPSC Case No. U-17020
In Re Enbridge Energy, Limited Partnership

Dear Ms. Kunkle:

Enclosed for filing in the above-referenced matter, please find *Enbridge Energy, Limited Partnership's Response to Motion For Entry of a Protective Order and to Compel Discovery and Proof of Service*.

If you have any questions, please feel free to contact my office. Thank you.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.



Michael S. Ashton

MSA/arb
Enclosures
cc: All parties of record

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

**IN RE ENBRIDGE ENERGY, LIMITED)
PARTNERSHIP)
)
APPLICATION PURSUANT TO 1929 PA)
16; MCL 483.1 *et seq.* and Rule 601 of the)
Michigan Public Service Commission’s)
Rules of Practice and Procedure, R)
460.17601 to Replace, Construct and)
Operate Certain Pipeline Segments for the)
Transportation of Crude Oil and)
Petroleum in Berrien, Cass, St. Joseph,)
Kalamazoo, Calhoun, Jackson, Ingham,)
Oakland, Macomb, St. Clair Counties,)
Michigan)**

Case No. U-17020

**ENBRIDGE ENERGY, LIMITED PARTNERSHIP'S RESPONSE TO MOTION FOR
ENTRY OF A PROTECTIVE ORDER AND TO COMPEL DISCOVERY**

NOW COMES Enbridge Energy, Limited Partnership ("Enbridge"), by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and for its Response to Motion for Entry of a Protective Order and to Compel Discovery, hereby states as follows:

1. On October 5, 2012, Intervenors Leroy E. Rodgers, David A. Schmick, and Jerry A. and Joanne M. Mains ("Intervenors") submitted Discovery Request INT-ENB-062, which states: "Please provide a copy of the mapbook that Enbridge provided to Staff, as referenced on page 14, line 6 of Mr. Warner’s filed testimony" (the "Discovery Request").

2. On October 22, 2012, Enbridge objected to Intervenors’ Discovery Request on the grounds that the mapbook contains confidential information and proprietary information of Enbridge, including critical energy infrastructure information ("CEII"):

“Response: Enbridge objects to this discovery because the request asks for confidential and proprietary information of Enbridge. The mapbook provided to Staff constitutes critical energy infrastructure information ("CEII") and is protected from public disclosure pursuant to federal law. See, 18 C.F.R. §388.113

(accessing critical energy infrastructure information) and Docket No. *PL02-1-000* (October 11, 2001); 97 FERC 61030, 61086.”

3. On November 1, 2012, Intervenors filed a Motion for Entry of a Protective Order and to Compel Discovery (the “Motion”) in this matter related to the Discovery Request.

4. As set forth below, the mapbook requested in the Discovery Request contains confidential and proprietary information, which also constitutes CEII. Therefore, the Motion should be denied. Moreover, the Intervenors have not shown any need for the detailed and confidential information as presented in the mapbook.

5. FERC began its efforts with respect limiting public access to CEII in October of 2001, in response to the terrorist attacks of September 11, 2001, with the issuance of Treatment of Previously Public Documents, Docket No. PL02-1-000, 97 F.E.R.C. 61,030 (2001). *As a preliminary step*, FERC removed from public access oversized maps that detailed the specifications of energy facilities licensed or certified under Part I of the Federal Power Act and Section 7(c) of the Natural Gas Act. *Docket No. PL02-1-000, 97 F.E.R.C. 61,030 (2001)*.

6. Since its preliminary steps in 2001, FERC has issued a series of orders that establish formal procedures (at 18 CFR §388.112 and 388.113) for the management and consistent treatment of, and restrictions on access to, CEII (including but not limited to Orders No. 630, 630-A, 643, 649, 662, 683, 702¹ and 769). These orders expand the definition of CEII and clarify that CEII is no longer limited to oversized maps that detail the specifications of energy facilities licensed or certified under Part I of the Federal Power Act and Section 7(c) of the Natural Gas Act. *See also ConocoPhillips Transportation Alaska Inc. ExxonMobil Pipeline*

¹ Order 702, ¶2 relevantly states, "2. Shortly after the attacks on September 11, 2001, the Commission began its efforts with respect to CEII. As a preliminary step, the Commission removed from its public files and Internet page documents such as oversized maps that were likely to contain detailed specifications of facilities, and directed the public to use the Freedom of Information Act (FOIA) request process to obtain such information. The Commission established its CEII rules in Order Nos. 630 and 630-A." *Order 702, (October 30, 2007)*.

Company Unocal Pipeline Company Koch Alaska Pipeline Company, L.L.C., 2012 WL 4753328 (Reg Comm of Alaska, 2012) (Finding information related to the ExxonMobil Pipeline Company protected CEII, required to be sealed pursuant to a protective order).

7. Indeed, FERC formalized its rules relating to CEII in 18 CFR Part 388, which relates general FERC procedures for information and requests. In these FERC administrative rules, CEII is defined as follows:

“(1) Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the general location of the critical infrastructure.

(2) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.” *18 CFR §388.113(c)*.

8. Thus, despite Intervenors’ contention (see Motion, ¶9), nothing in this FERC regulation limits applicability of the confidential treatment of CEII to energy facilities licensed under Part I of the Federal Power Act and Section 7(c) of the Natural Gas Act.² As such, the confidential treatment of information constituting CEII is applicable to the Discovery Request.

9. The Discovery Request clearly constitutes a request for CEII. The mapbook, as provided to Staff, is CEII because it contains detailed specifications of Enbridge’s facilities, which include more than the general location of critical infrastructure. The mapbook includes

² The comments to FERC Order 769 (issued October 18, 2012) clarifies that the existing rules and the to-be-effective rules under Order 769 apply to oil and petroleum pipelines. The rules promulgated under Order 769 expanded the FERC rules relating to electronic filing of confidential and privileged information. Relevantly, the Order revises §348.2 (dealing with oil pipelines) to state: “(a) All filings under this Part must be made electronically pursuant to the requirements of §§ 341.1 and 341.2 of this chapter. A carrier seeking privileged treatment for all or any part of its filing must submit a request for privileged treatment in accordance with § 388.112 of this chapter.” This change clearly indicates that the treatment of CEII was already applicable to oil pipelines. See 141 FERC ¶ 61,049 (October 18, 2012)

details such as land features, locations of buildings and other structures, as well as the identification of roadways, all of which could aid persons in the carrying out of nefarious activities.

10. FERC and state public utility commissions across the country have repeatedly found maps to constitute CEII. *See In re: Petition to determine need for Polk 2-5 combined cycle conversion, by Tampa Electric Company*, 2012 WL 5177524 (Fla PSC 2012) (“CEII includes, among other things, connectivity or switching maps or diagrams”); *In the Matter of the Application of American Transmission Systems*, 2012 WL 354199 (Ohio PSC 2012) (Diagrams containing load-flow data constituted CEII); *Joint Petition of Vermont Transco LLC, Vermont Electric Power Company, Inc., and Central Vermont Public Service Corporation*, 2012 WL 760152 (Vt PSB 2012) (Petitioners made a prima facie showing that one-line diagram and site plans which together contained specific circuit identifiers, engineering notes, voltage levels, and component information, as well as other elements of the transmission system, fell within the FERC definition of CEII); *Petition of Southern Indiana Gas and Electric Co*, 2012 WL 641636 (Ind URC 2012) (Transmission system maps submitted confidentially to Commission in a technical appendix constituted CEII); *Bangor Hydro Electric Co*, 2010 WL 2006436 (Me PUC 2010) (“If released to the public the confidential information contained in the Section 203 Application, such as maps depicting transmission infrastructure, could compromise the security of the Bangor Hydro and Maine Public systems. FERC has maintained the confidentiality of this information. Public release of this CEII and any other CEII produced during the course of this proceeding would be harmful to Bangor Hydro's and Maine Public's interests, including security interests, and those of their customers”); *George Mavros*, 114 FERC P 62246 (2006) (detailed maps of a proposed pipeline and compression facility constituted CEII: “The detailed maps of

the proposed pipeline and compression facility could aid terrorists in endangering the lives or safety of citizens living in the vicinity of the facility. These documents qualify as CEII because they contain information that could be useful to someone planning an attack on the energy infrastructure; are exempt from mandatory disclosure under FOIA Exemption 7(F), and do not merely reveal the location of the facility”).

11. Having established that the mapbook constitutes CEII, Intervenor are only entitled to review this information if they establish a legitimate need for the information and establish their intended use for the information. Intervenor have failed to do so, and accordingly, the Motion should be denied.

12. Moreover, even if Intervenor can establish a legitimate need for the portion of the mapbook that related to their property, there is no legitimate need for Intervenor to have the entire mapbook subject to the Discovery Request. At best, each Intervenor may be able to establish a need for the pipeline location on his or her property. However, to date, this has not occurred.

13. Finally, the Intervenor’s proposed Protective Order is not properly tailored for the production of the mapbook in this proceeding. For limited example, Paragraph 1 is overly broad in the designation of confidential information and is not limited to the mapbook. Paragraph 2 references “regulatory personnel” and is vague as to what persons constitute regulatory personnel of the Intervenor who would have access to this information. Further, Paragraph 2 references access for persons who are preparing testimony, when this phase of the proceeding has been concluded. Paragraph 3 would require not only the production of a mapbook but production in an electronic format, which is clearly not needed. Further, the proposed Protective Order does not require all persons obtaining the Confidential Information to first sign an acknowledgement of

the existence of the Protective Order and their agreement to be bound by the terms of Protective Order. Thus, Intervenor's proposed Protective Order is inadequate to protect this information. If the portions of the mapbook were to be produced to the Intervenor it should be done so pursuant to the attached Confidentiality Agreement.

WHEREFORE, Enbridge Energy, Limited Partnership respectfully requests this Commission to deny Intervenor's Motion for Entry of a Protective Order and to Compel Discovery. In the alternative, Enbridge requests that the production of the mapbook requested in the Discovery Request be limited as follows:

1. Any information disclosed to Intervenor must be made pursuant to an appropriate non-disclosure agreement (or protective order) entered into by each Intervenor.³
2. Each Intervenor is only entitled to the portion of the mapbook that relates to his or her property.
3. Intervenor may not use or maintain any of the disclosed information beyond the duration of this proceeding. Upon completion of this hearing, all disclosed information must be returned to Enbridge.

Respectfully submitted,



Dated: November 6, 2012

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Lansing, Michigan 48933
(517) 377-0875
mashton@fraserlawfirm.com

³ Public utility commissions across the country have deemed information CEII in accordance with §388.113(c) and ordered a protective order prior to disclosure of such information. *See Application of Wind Energy Transmission Texas*, PUC Docket No 38825, 2010 WL 4773032 (Tex PUC 2010).

APPENDIX

- A. Confidentiality Agreement
- B. *ConocoPhillips Transportation Alaska Inc. ExxonMobil Pipeline Company Unocal Pipeline Company Koch Alaska Pipeline Company, L.L.C.*, 2012 WL 4753328 (Reg Comm of Alaska, 2012)
- C. *In re: Petition to determine need for Polk 2-5 combined cycle conversion, by Tampa Electric Company*, 2012 WL 5177524 (Fla PSC 2012)
- D. *In the Matter of the Application of American Transmission Systems*, 2012 WL 3542199 (Ohio PSC 2012)
- E. *Joint Petition of Vermont Transco LLC, Vermont Electric Power Company, Inc., and Central Vermont Public Service Corporation*, 2012 WL 760152 (Vt PSB 2012)
- F. *Petition of Southern Indiana Gas and Electric Co*, 2012 WL 641636 (Ind URC 2012)
- G. *Bangor Hydro Electric Co*, 2010 WL 2006436 (Me PUC 2010)
- H. *George Mavros*, 114 FERC P 62246 (2006)
- I. *Application of Wind Energy Transmission Texas*, PUC Docket No 38825, 2010 WL 4773032 (Tex PUC 2010).

APPENDIX

A

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is entered into as of this 8th day of November, 2012 by and among: (i) Enbridge Energy, Limited Partnership (“Enbridge”); and (ii) Leroy E. Rodgers, David A. Schmick, and Jerry A. and Joanne M. Mains (collectively referred to as “Intervenors”).

WHEREAS, Enbridge and Intervenors are parties in MPSC Case No. U-17020 (“Proceeding”) before the Michigan Public Service Commission (“Commission”);

WHEREAS, Intervenors have requested as part of discovery in this Proceeding to review detailed maps that contain confidential and proprietary information of Enbridge and constitute critical energy infrastructure information (“CEII”), which is protected from public disclosure pursuant to federal law. 18 C.F.R. §388.113;

WHEREAS, Enbridge is willing to disclose the portion of the detailed maps to the Intervenors which relate to the parcel of land owned by the Intervenors; and

WHEREAS, Intervenors have agreed to maintain the confidentiality of such maps and information pursuant to the terms of this Confidentiality Agreement.

NOW THEREFORE, Intervenors and Enbridge agree as follows:

1. This Confidentiality Agreement governs the use and disclosure of confidential and commercially sensitive information (“Protected Materials”) to be disclosed by Enbridge to Intervenors in this Proceeding.
2. The Protected Materials that this Agreement protects is the response to the following discovery request in the instant Proceeding: INT-ENB -062 (partial response relating to parcels owned by the Intervenors).

The information subject to this Agreement does not include:

- i. Information lawfully known by the Intervenors at the time of disclosure;
 - ii. Information that is or becomes available to the general public through no fault of Intervenors, or their employees, agents, consultants or attorneys; and
 - iii. Information that is disclosed by the Intervenors in response to government or judicial request, provided that Enbridge is given notice of the request and a reasonable opportunity to object or seek a protective order.
3. This Agreement protects not only the Protected Materials described in Paragraph 2, but also protects from disclosure the information contained therein in any form.

4. Intervenor's access to the Protected Materials shall be restricted to only the Intervenor and their attorneys of record who both: (i) require access to review all issues material to Case No. U-17020 before the Commission; and (ii) sign a separate acknowledgment (the form of which is attached hereto) acknowledging that the Protected Material is confidential and agreeing to abide and be bound by the terms of this Agreement.
5. Enbridge shall furnish the Protected Materials subject to the terms of this Agreement for the purpose of allowing Intervenor access to information requested by Intervenor for the purposes of advocating positions in this Proceeding.
6. Intervenor shall take all necessary steps to protect the Protected Materials from being available for review by third parties or from being stored or otherwise included with materials available for public disclosure.
7. Protected Materials shall not be released or disclosed by Intervenor to any other person, except to the extent authorized in this Agreement. The Protected Materials may not be used for any purpose in any other proceeding, provided, however, that this provision shall not prohibit an Intervenor from requesting access to the Protected Material through discovery in another proceeding or using the Protected Material pursuant to a protective order or confidentiality agreement in another proceeding. Any copies of the Protected Material provided to Intervenor (including any copies thereof made by Intervenor) either pursuant to this Agreement or a Protective Order shall be returned to Enbridge upon completion of this Proceeding (and any appeals therefrom).
8. Prior to disclosing any of the Protected Material in this Proceeding, Intervenor shall provide Enbridge written notice at least 10 days prior to such proposed use or disclosure to allow Enbridge a reasonable opportunity to seek an appropriate protective order governing such use and/or disclosure.
9. It is intended that the Protected Materials subject to this Agreement should be shielded from disclosure to the full extent permitted by law. Intervenor acknowledge and agree that Enbridge will suffer irreparable harm if Intervenor fail to comply with any of the obligations under this Agreement and that monetary damages will be inadequate to compensate for such breach. Accordingly, the Parties agree that Enbridge shall be entitled, in addition to any other remedies available either at law or in equity, to injunctive relief to enforce the terms of this Agreement.
11. The provisions of this Agreement shall not terminate at the conclusion of this Proceeding. The provisions of this Agreement shall terminate as to the particular documents described in Paragraph 2 to the extent that the terms of such documents become public documents.
12. This Agreement cannot be modified except in writing and signed by the parties. This Agreement shall inure to the benefit of the parties and shall be binding by the heirs, legal representatives and assigns of the parties. This Agreement shall be governed by the laws of the State of Michigan.

THIS CONFIDENTIALITY AGREEMENT IS AGREED AND EXECUTED BY EVIDENCE OF OUR SIGNATURES AFFIXED HERETO.

On Behalf of Enbridge

On Behalf of Intervenors

By: _____ (Signature) By: _____

ACKNOWLEDGEMENT AND AGREEMENT

The undersigned is an Intervenor or an attorney of record for the Intervenor subject to Confidentiality Agreement, dated as of November 8, 2012, between Enbridge and the Intervenors in connection with MPSC Case No. U-17020.

The undersigned has received, read and understands the provisions of such Confidentiality Agreement. In exchange for access to such confidential information, the undersigned agrees to abide by, and be legally bound by, the Confidentiality Agreement.

Dated: _____, 2012 _____

APPENDIX

B

H

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ConocoPhillips Transportation Alaska Inc. Exx-
onMobil Pipeline Company Unocal Pipeline Com-
pany Koch Alaska Pipeline Company, L.L.C.
Dockets P-08-9, et al. (Consolidated)

Regulatory Commission of Alaska
September 28, 2012

ORDER CONFIRMING RULING REGARDING
TRANSCRIPT

Carmen A. Cintron, Presiding Administrative Law
Judge

Debra J. Brandwein, Presiding Administrative Law
Judge

1. On Friday, September 28, 2012, during the Hearing in this matter, it was discovered that a portion of the transcript from Tuesday, September 25, 2012, Volume No. 57, beginning on Page 8883, Line 13 through and including Page 8888, Line 2 was the subject of protected CEII.

2. A ruling was made from the bench that with proposed redactions, the specified pages from the transcript were to be made public, and a non-redacted privileged version of the transcript will remain under seal with the Secretary's office and e-Library. The following redactions have to be made to the public version: Transcript Volume No. 57 at Page 8883, Line 13 remove the words beginning "THE WITNESS: So if", through and including Page 8888, Line 2 with the words "THE WITNESS: Yes."

3. The redacted version of Transcript Volume No. 57, Pages 8883, Line 13 through and including 8888, Line 2 as specified above in paragraph number 2, is designated public and is hereby ordered to be published as part of the Hearing record. The nonredacted version of the confidential session Transcript Volume No. 57, Pages 8883, Line 13-8888, Line 2, dated September

25, 2012, remains protected as CEII and is to be sealed, pursuant to the Protective Order in place in this matter.

END OF DOCUMENT

APPENDIX

C

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In re: Petition to determine need for Polk 2-5 combined
cycle conversion, by Tampa Electric Company.
Docket No. 120234-EI
Order No. PSC-12-0544-CFO-EI

Florida Public Service Commission
October 15, 2012

ORDER GRANTING TAMPA ELECTRIC COMPA-
NY'S REQUEST FOR CONFIDENTIAL CLASSIFICA-
TION AND MOTIONS FOR TEMPORARY PROTEC-
TIVE ORDERS (DOCUMENT NOS. 06139-12 &
06141-12)

BY THE COMMISSION.

On September 12, 2012, pursuant to Section 366.093, Florida Statutes, and Rule 2522.006, Florida Administrative Code, Tampa Electric Company (TECO or Company) filed two Requests for Confidential Classification and Motions for Temporary Protective Orders regarding portions of its witnesses' R. James Rocha's Exhibit (RJR-1) and Alan S. Taylor's Exhibit (AST-1) (Document No. 06139-12) and portions of its Need Determination and witness S. Beth Young's Testimony and Exhibit (SBY-1) (Document No. 06141-12).

TECO asserted that the confidential information contained in Document Nos. 06139-12 and 06141-12 meets the statutory definition of and constitutes proprietary confidential business information entitled to protection as outlined in Section 366.093, Florida Statutes, and Rule 2522.006, Florida Administrative Code. TECO stated that (1) the information pertains to bids, contractual data, security measures, systems, or procedures, the disclosure of which would impair TECO's efforts to contract favorably; and (2) the information has been treated by TECO as private and has not been publicly disclosed. TECO requested confidential classification for the information for a period of at least 18 months. The justification for the confidential classification and temporary protective orders is attached hereto and incorporated herein as Attachment A.

Pursuant to Section 366.093(1), F.S., information that this Commission finds to be proprietary confidential business

information must be kept confidential and exempt from Section 119.07(1), Florida Statutes, [the Public Records Act]. Proprietary confidential business information is defined as information that; (1) is intended to be and is treated by the company as private, in that disclosure of the information would cause harm to the company's ratepayers or business operations; and (2) has not been voluntarily disclosed to the public. Pursuant to Section 366.093 F.S., proprietary confidential business information includes, but is not limited to, information relating to bids, other contractual data, or competitive interests, the disclosure of which will prove detrimental to the utility's business operations or ratepayers.

I find that the information contained in Document Nos. 06139-12 and 06141-12 satisfies the criteria set forth in Section 366.093, F.S., for classification as proprietary confidential business information. The information relates to bids, contractual data, security measures, systems, or procedures, and public disclosure of this information will be detrimental to TECO, its affiliates' business operations and ratepayers. Therefore, I find it appropriate to grant TECO's request for confidential classification and motions for temporary protective orders of the information as justified in Attachment A, which is attached hereto and incorporated herein.

Based on the foregoing, it is

ORDERED by Commissioner Art Graham, as Prehearing Officer, that Tampa Electric Company's Request for Confidential Classification of information contained in Document Nos. 06139-12 and 06141-12, is granted. It is further

ORDERED that Tampa Electric Company's Motions for a Temporary Protective Orders for the information contained in Document Nos. 06139-12 and 06141-12, are granted. It is further

ORDERED that the information contained in Document Nos. 06139-12 and 06141-12 for which confidential classification and temporary protective orders have been granted shall, subject to the requirements of Rule 25-22.006(6)(c), Florida Administrative Code, shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. It is further

ORDERED that at the conclusion of the 18-month period, the confidential information will no longer be exempt from Section 119.07(1), Florida Statutes, unless Tampa Electric Company or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 15th day of October, 2012

ART GRAHAM

Commissioner and Prehearing Officer

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850)413-6770

www.floridapsc.com

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commis-

<u>Page</u>	<u>Description</u>	<u>Rationale</u>
Exhibit No. (RJR-1) Document No, 10 (Bates stamp p. 59)	The highlighted information	(1)
Exhibit No. (AST-1) Document 2, pages 2 of 15, 3 of 15, 4 of 15, 5 of 15, 11 of 15 and 14 of 15 (Bates stamp pp. 33-36, 42 and 45)	The highlighted information	(1)

(1) The highlighted information discloses the company name, plant name, capacity or heat rate and other confidential terms and conditions contained in proposals that were solicited and received by Tampa Electric under a commitment to maintain the confidentiality of the proposals' terms and conditions. Public disclosure of this information would discourage these entities from making future bids on Tampa Electric projects, for fear that their competitively bid

sion orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 2522.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ATTACHMENT A

JUSTIFICATION FOR DOCUMENT NO. 06139-12

JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF HIGHLIGHTED PORTIONS OF WITNESS R, JAMES ROCHA'S EXHIBIT (RJR-1) AND WITNESS ALAN S. TAYLOR'S EXHIBIT (AST-1)

information would be made public. This would reduce the number of bidders on Tampa Electric's future projects and lessen the robustness of competitive bids to be received on those future projects. Such public disclosure would also arm other competitive bidders on future Tampa Electric projects with information to help them fashion bids that are more to the bidders' advantage than might be the case if they did not have the information, which could work to disadvantage Tampa Electric and its customers in these future projects. Section 366.093(3)(d), Florida Statutes, states that confidential information entitled to protection from public disclosure includes;

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliate to contract for goods or services on favorable terms.

The highlighted information in question directly relates to bids and proposed contractual data solicited and received by Tampa Electric and, thus, is entitled to confidential treatment

JUSTIFICATION FOR DOCUMENT NO. 06141-12

TERMINATION OF NEED FOR ELECTRICAL POWER: POLK 2-5 COMBINED CYCLE CONVERSION AND PORTIONS OF WITNESS S. BETH YOUNG'S TESTIMONY AND EXHIBIT (SBY-1)

JUSTIFICATION FOR CONFIDENTIAL TREATMENT OF HIGHLIGHTED PORTIONS OF DE-

<u>Pages</u>	<u>Description</u>	<u>Rationale</u>
Determination for Need for Electrical Power: Polk 2-5 Combined Cycle Conversion, Pages 84 through 86	The highlighted information	(1)
Witness S. Beth Young's Exhibit (SBY-1) Document No. 1 Bates stamp pages 21 and 22	The highlighted information	(1)
Witness S. Beth Young's Exhibit No. (SBY-1) Document No. 2 Bate stamp page 25	The highlighted information	(1)
S. Beth Young's testimony at page 8	The highlighted information	(1)

(1) The highlighted information on the pages in question constitutes Critical Energy Infrastructure Information or CEII, defined by the Federal Energy Regulatory Commission as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act; and (4) does not simply give the general location of the critical infrastructure." CEII includes, among other things, connectivity or switching maps or diagrams, which is the type of information contained in the above-referenced pages. In addition, Section 366.093(3)(c), Florida Statutes, identifies security measures, systems or procedures as the type of information entitled to confidential protection. Public disclosure of the information in question could compromise the security interests of Tampa Electric and adversely affect the company and its customers. As such, the information is entitled to confidential protection and exemption from the Public Records Law pursuant to Section 366.093, Florida Statutes, and the referenced provisions of the FERC's CEII policy.

END OF DOCUMENT

APPENDIX

D

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In the Matter of the Application of American Transmission Systems, Incorporated for a Certificate of Environmental Compatibility and Public Need for the Construction of the Knox Transmission Substation.
No. 12-864-EL-BSB

Ohio Power Sitting Board
August 10, 2012

ENTRY

BY THE COMMISSION.

The administrative law judge finds:

- (1) On August 3, 2012, American Transmission Systems, Incorporated (ATSI), a wholly-owned subsidiary of FirstEnergy Corp., filed an application seeking to upgrade the existing Knox Substation and convert the current substation from a distribution substation to a distribution and transmission switching substation by adding two transmission line connections and associated equipment within the Knox Substation.
- (2) On August 6, 2012, ATSI filed a motion seeking to protect nine diagrams containing confidential load-flow data that qualifies for protection as both confidential trade secret information and critical energy infrastructure information (CEII). ATSI submits that, for purposes of the application, the alleged confidential information has been generally discussed in the Need Section of the application.
- (3) Rule 4906-7-07(H)(4), Ohio Administrative Code (O.A.C.), provides that, upon motion of any party or person filing a document with the Board's docketing division relative to a case before the Board, the Board or administrative law judge (ALJ) may issue any order which is necessary to protect the confidentiality of information contained in the document, to the extent that state or federal law prohibits release of the information.
- (4) The ALJ has reviewed the information covered by ATSI's motion for protective order, as well as the assertions set forth in the supportive memorandum and finds that the information filed under seal contains raw load-flow data, as well as diagrams detailing load-modeling information for the Knox Substation

upgrade, and recognizes that, as such, the information constitutes CEII, as defined in 18 CFR 388.113(C)(2). In addition, applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to Section 1333.61(D), Revised Code, as well as the six-factor test set forth by the Ohio Supreme Court,^{FN1} the ALJ finds that the information covered by the motion contains trade secret information and CEII. Its release is, therefore, prohibited under state law. The ALJ finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Moreover, the ALJ concludes that these documents could not be reasonably redacted to remove the confidential information contained therein. Therefore, the ALJ finds that ATSI's motion for protective order regarding documents filed on August 6, 2012, should be granted.

FN1. See *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 687 N.E.2d 661 (1997).

- (5) Rule 4906-7-07(H)(6), O.A.C., provides that, unless otherwise ordered, protective orders under Chapter 4906-7-07, O.A.C., automatically expire after 18 months. ATSI requested that the ALJ grant the request for protective order for an indefinite time frame and not limit the period to 18 months, due to the fact that the information qualifies as CEII. As previously recognized by the Board in *In the Matter of the Application of Columbus Southern Power Company for a Certificate of Environmental Compatibility and Public Need to Construct the Don Marquis 138-Kilovolt Transmission Line Project*, Case No. 07-715-EL-BTX (07-715), transmission network information of an electric utility is not as dynamic as an entity's financial information and CEII is granted protective treatment for security purposes. Therefore, the Board found it reasonable to waive the standard 18-month protective order period in 07-715 and extend protective treatment for a period of 36 months. Therefore, confidential treatment shall be afforded in this case for a period of 36 months until August 10, 2015. Until that date, the docketing division should maintain, under seal, the information filed confidentially on August 6, 2012.
- (6) Rule 4906-7-07(H)(6), O.A.C., requires a party

wishing to extend a protective order to file an appropriate motion in advance of the expiration date, including a detailed discussion of the need for continued protection from disclosure. If ATSI wishes to extend this confidential treatment, ATSI should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Board may release this information without prior notice to ATSI.

It is, therefore,

ORDERED, That the motion for protective treatment of information filed on August 6, 2012, be granted for a period of 36 months until August 10, 2015. It is, further,

ORDERED, That the Board's docketing division shall maintain, under seal, the unredacted documents filed on August 6, 2012, for a period of 36 months, ending August 10, 2015. It is, further,

ORDERED, That a copy of this entry be served upon ATSI and all other interested persons of record.

This foregoing document was electronically filed with the Public Utilities Commission of Ohio Docketing Information System on 8/10/2012 1:49:05 PM in Case No(s). 12-0864-EL-BSB

Summary: Attorney Examiner Entry granting a motion for protective order filed by American Transmission Systems, Incorporated electronically filed by Vesta R Miller on behalf of Jeffrey R. Jones, Administrative Law Judge, Ohio Power Siting Board

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APPENDIX

E

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Joint Petition of Vermont Transco LLC, Vermont Electric Power Company, Inc., and Central Vermont Public Service Corporation for a certificate of public good, pursuant to 30 V.S.A. s 248, authorizing the construction of the "Ascutney Substation Project" consisting of a new 115 kV substation and associated tie line located in the Town of Weathersfield, Vermont.
Docket No. 7751.

Vermont Public Service Board
Order entered: March 7, 2012.

PROTECTIVE ORDER RE CRITICAL ENERGY INFRASTRUCTURE INFORMATION

Edward McNamara, Esq., Hearing Officer.

I. INTRODUCTION

On July 22, 2011, Vermont Electric Power Company, Inc. and Vermont Transco LLC (collectively, "VELCO"), and Central Vermont Public Service Corporation ("CVPS") (together, the "Petitioners") filed a Motion for Confidential Treatment of certain exhibits that it alleges constitute Critical Energy Infrastructure Information ("CEII").^{FN1} The Petitioners' also submitted an averment log to support the request for a protective order. No party opposed the motion.

^{FN1}. The Federal Energy Regulatory Commission ("FERC") defines CEII as: Specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) does not simply give the general location of the critical infrastructure.
18 C.F.R. § 388.113(c)(1).

II. DISCUSSION

I have reviewed the motion and supporting materials, and conclude that the Petitioners have made a *prima facie* showing that confidential treatment is warranted for the information contained in the exhibits identified in the Petitioners' motion and supporting averment log. Therefore, I hereby grant the Petitioners' motion for a protective order.

To promote full public understanding of the basis for its decisions, the Vermont Public Service Board ("Board") has actively taken steps to limit the amount of information subject to protective orders. The Board has encouraged parties to remove material from that protection to the extent possible. Since 2001, the Board has required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.^{FN2} Generally, the Board only resolves disputes about information when there is a genuine disagreement about its confidential nature.^{FN3} However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

^{FN2}. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("Entergy Docket"), Order of 11/9/01 at 5-6.

^{FN3}. *Id.* at 6.

In determining whether to protect confidential information, we consider four issues:

(1) Is the matter sought to be protected a trade secret or

other confidential research, development, or commercial information which should be protected?

(2) Does the matter sought to be protected contain CEII?

(3) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?

(4) Has the party seeking protection shown "good cause" for invoking the Board's protection?^{FN4}

^{FN4}. See, e.g., Entergy Docket, Order of 3/29/02 at 2.

The Petitioners maintain that the exhibits in question fall within the Federal Energy Regulatory Commission ("FERC") definition of CEII because they relate to the bulk transmission system's exposure to system contingencies and contain specific details about certain transmission facilities. The Petitioners also maintain that the information in the exhibits could be used by a third party wishing to do harm to or severely damage critical electric system assets. In particular, Exhibit Pet. HP-3 is an analysis of generation alternatives that examines in detail the impacts on the bulk transmission system by adding generation rather than transmission to address a reliability deficiency specifically identified in the analysis. Exhibit Pet. HP-2 is a system study that examines in detail the impacts of the proposed project on the bulk transmission system under various contingencies. Exhibits Pet. MB-4 and 6 are site plans and Exhibit Pet. MB-7 is a oneline diagram, which together contain specific circuit identifiers, engineering notes, voltage levels, and component information, as well as other elements of the transmission system. I have reviewed the motion and supporting materials, and I have applied the existing standard. With respect to the alleged CEII, I conclude that the Petitioners have made a *prima facie* showing that the redacted information falls within the FERC definition of CEII. FERC began limiting public access to CEII in October of 2001, in response to the terrorist attacks of September 11, 2001, with the issuance of Treatment of Previously Public Documents, Docket No. PL02-1-000, 97 F.E.R.C. 61,030 (2001). FERC has since issued a series of subsequent orders that establish formal procedures for the management and consistent treatment of, and restrictions on access to, CEII (including but not limited to Orders No. 630, 630-A, 643, 662, 702 and 890).^{FN5}

^{FN5}. FERC procedures for the management

of CEII are also found at 18 C.F.R. §§ 388.112 and 388.113.

Because VELCO has made a *prima facie* showing that the redacted information contained in the exhibits detailed above is CEII, the information warrants confidential treatment. Therefore, I grant the Petitioners' motion for confidential treatment of the specific exhibits detailed above, i.e., Exhibits Pet. HP-2 and 3 and Pet. MB-4, 6, and 7.

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by VELCO and CVPS (as described in VELCO and CVPS's Motion) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (e.g., exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of October 28, 2011, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential

information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

5. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont this 7th day of March, 2012.

OFFICE OF THE CLERK FILED: March 7, 2012
ATTEST: Susan M. Hudson Clerk of the Board.

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APPENDIX

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PETITION OF SOUTHERN INDIANA GAS AND ELECTRIC COMPANY D/B/A VECTREN ENERGY DELIVERY OF INDIANA, INC ("VECTREN SOUTH") FOR DETERMINATION THAT CERTAIN INFORMATION CONTAINED IN ITS 2011 INTEGRATED RESOURCE PLAN IS CONFIDENTIAL AND EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO 170 IAC 4-7-3(f), 170 IAC 1-1.1-4, IND. CODE § 8-1-2-29 AND IND. CODE § 5-14-3-4.
Cause No. 44108

Indiana Utility Regulatory Commission
February 22, 2012

ORDER OF THE COMMISSION

Presiding Officers:

Kari A.E. Bennett, Commissioner

Gregory R. Ellis, Administrative Law Judge

On October 31, 2011, Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren South" or "Petitioner"), pursuant to 170 IAC 4-73(f), filed its *Request for Finding of Confidentiality* ("Petition") in this Cause seeking a determination by the Indiana Utility Regulatory Commission ("Commission") that certain information contained in its biennial Integrated Resource Plan ("2011 IRP") submitted on November 1, 2011, is confidential, and therefore exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. Pursuant to 170 IAC 4-7-3(f), Petitioner filed along with its Petition those parts of its 2011 IRP for which it seeks confidential treatment. The claimed confidential documents, in accordance with 170 IAC 4-7-3(f), have been treated by the Commission as confidential pending the determination on the issue of confidentiality made in this Order. Also accompanying Vectren South's Petition was the affidavit of James H. Cox, Petitioner's Chief Engineer. This affidavit was filed in support of Petitioner's request for confidential treatment of certain parts of its 2011 IRP.

Based upon the Petition and affidavit filed herein, a review of the information filed as confidential, and application of relevant law, the Commission now finds:

1. Commission Jurisdiction and Notice. Proper notice in this Cause was given as required by law. Petitioner is a public utility within the meaning of the Public Service Commission Act as amended, Ind. Code § 8-1-2-1, and as such, is subject to the jurisdiction of the Commission, in the manner and to the extent provided by law. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics. Vectren South is a public utility corporation organized and existing under the laws of the State of Indiana and having its principal office at One Vectren Square, 211 N.W. Riverside Drive, Evansville, Indiana. Vectren South is engaged in rendering electric public utility service in the State of Indiana and owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used for the production, transmission, delivery and furnishing of electric power to the public.

3. Relief Requested. On October 31, 2011, Petitioner filed the Petition initiating this Cause. On November 1, 2011, and pursuant to 170 IAC 4-7, Petitioner submitted its 2011 IRP to the Commission with designated portions redacted therefrom. Petitioner requests a determination by the Commission, pursuant to 170 IAC 4-7-3(f), that designated portions of its 2011 IRP contain confidential information and, therefore, are exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3.

4. Petitioner's Evidence. Vectren South's Petition states that certain information filed in this Cause includes infrastructure information and that public disclosure of the information would be harmful to Vectren South and other parties. Vectren South states on page 151 of their 2011 IRP that maps of Vectren South's Electric Transmission System confidentially submitted to the Commission in the Technical Appendix are Critical Electric Infrastructure Information

("CEII"), as defined in guidelines of Homeland Security, the Federal Energy Regulatory Commission ("FERC") and other agencies requirements. Mr. Cox states in his affidavit that Vectren South designated its Transmission System Map as confidential and FERC protects similar information designated as CEII and does not post it publicly. Mr. Cox further states Vectren South has maintained the confidentiality of the Transmission System Map by taking all reasonable steps in order to protect it, including sharing such information internally on a need to know basis and limiting the public availability of the Designated Information.

5. Discussion and Findings. Under Ind. Code § 8-1-2-29, all information submitted to the Commission is open to the public, subject to the provisions of the Indiana Access to Public Records Act ("APRA") found at Ind. Code ch. 5-14-3. The APRA sets out a broad policy in favor of disclosure of information and generally mandates that government agencies make public records available for inspection and copying. The purpose behind Indiana's APRA is codified at Ind. Code § 5-14-3-1, which states, in part, as follows:

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.

The APRA also provides mandatory and discretionary exemptions from public disclosure for certain categories of information. See Ind. Code § 5-14-3-4. The Indiana Court of Appeals, in interpreting this statute, stated "liberal construction of the statute requires narrow construction of its exceptions." Robinson v. Indiana University, 659 N.E.2d 153, 156 (Ind.Ct.App. 1995).

We, therefore, must balance the purpose of the APRA against the protections provided to confidential information. Our analysis begins with the rules pertaining to IRP filing requirements, which authorize a utility to request confidential treatment of certain

information submitted as part of the IRP process. See 170 IAC 4-7-3(f).

FERC has determined that the portions of its Form 715 containing CEII should have limited public availability. See 18 C.F.R. § 141.300 and FERC Order 630, Final Rule on Critical Energy Infrastructure Information, 102 FERC ¶ 61, 190 (2003). Vectren South's Transmission System Map contains the same information that FERC has determined to be CEII in Form 715. Ind. Code § 5-14-3-4(a)(3) requires the Commission to keep confidential those public records which are required to be kept confidential under federal law. Therefore, based upon the evidence submitted in this Cause, the Commission finds that Petitioner's Transmission System Map is CEII and included in Petitioner's 2011 IRP, qualifies for an exemption from public disclosure pursuant to 170 IAC 4-7-3(f) and Ind. Code § 5-14-3-4(a)(3), and is therefore exempt from the public access requirements of Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

6. Method of Protection. In order to protect the confidentiality of the documents designated as confidential by this Order, we find that the following procedures are reasonably necessary and consistent with past Commission practice, and should be implemented consistent with Ind. Code ch. 5-14-3:

- a. The confidential information should be made available solely for inspection by members or employees of the Commission as necessary to review and decide the issues presented by Petitioner's 2011 IRP.
- b. Any Commission member or employee who receives access to the confidential information should be under an obligation to secure and maintain exclusive control of the information, and should refrain from and prohibit any direct or indirect public disclosure of the information in any form.
- c. Any documents, materials or reports prepared by Commission members or employees should not have the effect of disclosing the confidential information.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:

1. Those portions of Vectren South's 2011 Integrated Resource Plan which are specifically described in Finding Paragraph No. 4 of this Order are entitled to confidential treatment and shall be exempt from disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch.

5-14-3.

2. The Commission and its employees shall follow the procedures set forth in Finding Paragraph No. 6 of this Order when handling the materials specifically described in Finding Paragraph No. 4 of this Order.

3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS AND ZIEGNER CONCUR; MAYS NOT PARTICIPATING:

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APPENDIX

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BANGOR HYDRO ELECTRIC COMPANY,
 MAINE PUBLIC SERVICE COMPANY, MAINE
 ELECTRIC POWER COMPANY, INC., PROTEC-
 TIVE ORDER NO. 3 AND CHESTER SVC
 PARTNERSHIP, (Critical Energy Infrastructure
 REQUEST FOR APPROVAL OF REORGANIZA-
 TION Information) (35-A M.R.S.A. ss 708 AND
 1103)
 Docket No. 2010-89

Maine Public Utilities Commission
 May 14, 2010

PROTECTIVE ORDER NO. 3

BY THE COMMISSION.

(Critical Energy Infrastructure Information)

By Motion dated May 14, 2010, Bangor Hydro Elec-
 tric Company ("Bangor Hydro") and Maine Public
 Service Company ("Maine Public") jointly requested
 Protective Order No. 3 to protect the confidentiality of
 Critical Energy Infrastructure Information ("CEII").

In support of their request, the Companies state that
 Bangor Hydro has received a data request, OPA
 06-01, requesting an unredacted version of BHE
 Holdings Inc.'s and Maine & Maritimes Corporation's
 "Application for Approval Pursuant to Section 203 of
 the Federal Power Act and Request for Expedited
 Consideration" ("Section 203 Application") filed with
 the Federal Energy Regulatory Commission
 ("FERC") on May 11, 2010. Portions of the Section
 203 Application should be treated confidentially be-
 cause they contain CEII.

The Commission may protect the security of "specific
 information about public utility technical operations"
 in Maine that "could compromise the security of pub-
 lic utility systems to the detriment of the public in-
 terest." 35-AM.R.S.A., § 1311-B(1), If released to the

public the confidential information contained in the
 Section 203 Application, such as maps depicting
 transmission infrastructure, could compromise the
 security of the Bangor Hydro and Maine Public sys-
 tems. FERC has maintained the confidentiality of this
 information. Public release of this CEII and any other
 CEII produced during the course of this proceeding
 would be harmful to Bangor Hydro's and Maine Pub-
 lic's interests, including security interests, and those of
 their customers.

Accordingly, the Companies request confidential
 treatment of CEII, including the CEII requested in
 OPA 06-01.

Based on the foregoing, the Hearing Examiner finds
 that the confidential information for which protection
 is being sought is properly subject to protection.

Accordingly, it is

ORDERED

1. That the CEII, including the redacted portions of the
 Section 203 Application produced in response to OPA
 06-01, shall constitute confidential information, and
 such information shall be considered "Designated
 Confidential Information" for purposes of this Order.

2. That any other CEII that Bangor Hydro or Maine
 Public produces during this proceeding in written or in
 an electronic form shall constitute confidential in-
 formation, and such information shall be considered
 "Designated Confidential Information" for purposes
 of this Order.

3. That all Designated Confidential Information shall,
 unless removed from the coverage of the Order as
 provided in Paragraph 4 below, be and remain confi-
 dential. Such Designated Confidential Information
 shall neither be used nor disclosed for any purpose
 other than the purposes of preparation and conduct of
 these proceedings, and then solely in accordance with
 this Order. No person to whom access to Designated
 Confidential Information is accorded pursuant to
 Paragraph 5 of this Order shall disclose or reveal,
 directly or indirectly, the content of the Designated

Confidential Information to others except as provided in Paragraph 5.

4. That the parties to whom such Designated Confidential Information is furnished may challenge designation of such documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the parties and an opportunity for hearing. In considering such motion, the usual burdens of proof and production shall apply and no additional presumption shall be given as a result of the prior designation of material as Confidential Information. Upon the entry to an order granting such a motion, the provisions and restrictions of this Order shall cease to bind any party or other person with respect to such documents or information as the Order granting the motion shall expressly and clearly remove from the coverage of this Order.

5. That, unless the Order is modified, access to Designated Confidential Information shall be limited to (i) Commission members, members of the Commission Staff and their consultants; (ii) the Public Advocate, counsel and their consultants; (iii) a stenographer or reporter recording any hearing in connection with this proceeding; (iv) counsel for or any other representative of Bangor Hydro and Maine Public; (v) all parties, counsel and their consultants, provided that such parties, counsel and consultants shall agree to use the Designated Confidential Information solely for purposes of this proceeding and not disclose the information to any other person and provided further, the attorney does not have "a personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information." 35-A M.R.S.A. § 1311-A(1)(D)(2).

6. That all materials claimed by Bangor Hydro or Maine Public to be Designated Confidential Information under the terms of this Order shall be clearly marked "confidential" by either Bangor Hydro or Maine Public. In the case of documents, each page of any such document shall be marked "confidential" in bold lettering in the upper right hand corner of each page, including the cover letter. Any document or portion thereof not clearly and conspicuously marked "confidential" in bold lettering shall not be protected under the terms of this Order. Faxed materials should be marked as any other document. With regard to other media, diskettes should be marked "confiden-

tial" on the outside and, to the extent possible, each file on the diskette should be similarly identified. Any person or party subject to the terms of this Order who receives unmarked documents or materials which he/she believes Bangor Hydro or Maine Public intended to be protected by the terms of this Order, and that would have been protected if marked in accordance with this paragraph, shall make a good faith effort to notify Bangor Hydro or Maine Public of this fact and to avoid use of such documents or materials in a manner inconsistent with protection of such material under this Order.

7. That no copies of Designated Confidential Information shall be circulated to persons other than those persons who are authorized under Paragraph 5 of this Order to obtain Designated Confidential Information. Documents offered in evidence may be copied as necessary for that purpose. Persons authorized under Paragraph 5 also may take such notes with regard to the Designated Confidential Information as may be necessary solely for the purposes of these proceedings. Such notes shall also be treated as Designated Confidential Information and shall not be used for any purposes other than the preparation and conduct of these proceedings.

8. That the restrictions upon, and obligations accruing to, persons who become subject to this Order shall not apply to any Designated Confidential Information, if the Commission rules, after reasonable notice and hearing, that such Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.

9. That where any party wishes to introduce any Designated Confidential Information into the record, it shall give Bangor Hydro and Maine Public sufficient notice so that Bangor Hydro and/or Maine Public can move that any reference to Designated Confidential Information be made in camera, attended only by persons authorized to have access to such information under Paragraph 5, above. Where reference to Designated Confidential Information is required in pleadings, briefs, other legal documents, or argument, such reference shall be by citation of title or exhibit number only or by some other non-confidential description. In such circumstances, counsel shall preserve the confidentiality of material in the sealed record. If counsel shall include Designated Confidential

Information in pleadings, briefs, other legal documents, or arguments, that portion of such documents or that portion of the transcript of such argument containing Designated Confidential Information shall be maintained under seal.

10. This Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Designated Confidential Information or (b) objecting, on any substantive or procedural ground, to any subsequent data request or other request for information.

11. That a Party providing Designated Confidential Information may provide to each person having access to Designated Confidential Information a copy of this Order and require each person to agree in writing to the terms hereof prior to obtaining access to the Designated Confidential Information,

12. That any Designated Confidential Information made part of the record in any proceeding before the Commission, including portions of the transcript of any hearing containing the content of the Designated Confidential Information, shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this Order, unless the Commission or its authorized presiding officer shall otherwise order.

13. That the Commission may draw upon all Designated Confidential Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid public disclosure or the reproduction in its decision of any Designated Confidential Information,

14. That should any appeal of or other challenge to the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with Paragraph 9 above shall be forwarded to the courts of this State in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.

15. That this Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.

16. Copies of Designated Confidential Information and documents, notes, and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information, that are in the possession of Commission members, counsel or staff of the Commission may be retained by those persons for the purpose of performing those persons' duties and obligations. If retained, the Designated Confidential Information shall be subject to this Protective Order or to a protective order issued in another proceeding in which the Designated Confidential Information is used. If a Commission member, counsel or staff of the Commission does not retain the Designated Confidential Information, that person shall destroy it as provided in this paragraph. Within forty (40) days after the Commission reaches a final decision (i.e., unappealable) in this proceeding, each other party and Commission independent consultants and experts retained by the Commission to whom Designated Confidential Information has been made available shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, Designated Confidential Information. Audio, video or other such magnetically recorded materials shall be electronically erased before disposal. Documents shall be shredded.

Dated: May 14, 2010

By Order of the Hearing Examiner

END OF DOCUMENT

APPENDIX

H

C

114 FERC P 62246, 2006 WL 626229 (F.E.R.C.)

FEDERAL ENERGY REGULATORY COMMISSION

*1 Office Director Orders
George Mavros

Docket No. CE06-52-000

ORDER GRANTING REQUEST FOR CRITICAL ENERGY INFRASTRUCTURE INFORMATION

(Issued March 14, 2006)

1. On September 22, 2005, George Mavros, President of St. Michael the Archangel Greek Orthodox Church, submitted a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2004), for detailed maps of a proposed pipeline and compression facility detailing the location of the proposed pipeline in Lecanto, Florida. Upon receipt of the FOIA request, the request was reviewed and determined to be better suited for consideration under the Federal Energy Regulatory Commission's (Commission) Critical Energy Infrastructure Information (CEII) regulations at 18 C.F.R. § 388.113(d) (2005). The requester withdrew his FOIA request by electronic mail dated December 12, 2005, and submitted his request under CEII that same date.
2. By letter dated December 29, 2005, Lawrence D. Crocker, III, Associate General Counsel for General and Administrative Law, gave notice of the request to the submitter of the CEII, and provided the submitter with five (5) business days in which to comment on the request. To date no response was received from the Florida Gas Transmission Company concerning Docket No. CP06-1.
3. CEII is defined in 18 C.F.R. § 388.113(c)(1) as "information about proposed or existing critical infrastructure that (i) Relates to the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act [FOIA], 5 U.S.C. 552; and (iv) Does not simply give the location of the critical infrastructure." The detailed maps of the proposed pipeline and compression facility could aid terrorists in endangering the lives or safety of citizens living in the vicinity of the facility. These documents qualify as CEII because they contain information that could be useful to someone planning an attack on the energy infrastructure; are exempt from mandatory disclosure under FOIA Exemption 7(F), and does not merely reveal the location of the facility. FOIA Exemption 7(F) protects law enforcement records where release of the information "could reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C. § 552 (b)(7)(F). These documents could aid terrorists in endangering the lives or safety of citizens living in the vicinity of these facilities.
4. Although the information requested is CEII, it may be released to a requester with a legitimate need for the information. For this reason, the requester's need for the information must be balanced against the sensitivity of the information. While the Commission's regulation at 18 C.F.R. § 388.113(d)(2)(i) requires that requesters assert a particular need and intended use of the information, the primary purpose of the rule is to ensure that information deemed CEII stays out of the possession of terrorists. Accordingly, assessing a requester's legitimacy and securing an executed

non-disclosure agreement are paramount factors in determining whether or not to grant a request for CEII.

*2 5. In this case, George Mavros' employment was verified by Commission staff. Mr. Mavros, who is the president of St. Michael the Archangel Greek Orthodox Church, has agreed to adhere to the terms of the attached non-disclosure agreement.

6. I conclude that George Mavros is a legitimate requester with a demonstrated need for the information requested. Notwithstanding the fact that this information is CEII and could be harmful in the wrong hands, I conclude that release to the requester, in accordance with the terms of the attached non-disclosure agreement, is appropriate. Thus, in adhering to the individual non-disclosure agreement, the requester is prohibited from either disclosing or sharing the CEII with any person not otherwise covered by a Commission non-disclosure agreement covering this same information.

7. This order provides notice to the submitter of the requested data that this material will be released no sooner than five calendar days after the date this order is issued. [FN1] Authority to act on this matter is delegated to the Critical Energy Infrastructure Information Coordinator pursuant to 18 C.F.R. § 375.313. The CEII Coordinator has delegated this authority to me.

The Critical Energy Infrastructure Information Coordinator orders:

The request of George Mavros for access to CEII is granted. This order is subject to rehearing pursuant to 18 C.F.R. § 385.713.

Marshall E. Whitenton
Deputy Director
Office of External Affairs

FN1. *See* 18 C.F.R. § 388.112(e).

ATTACHMENT

CRITICAL ENERGY INFRASTRUCTURE INFORMATION GENERAL NON-DISCLOSURE AGREEMENT

1. These provisions govern the use of Critical Energy Infrastructure Information (CEII) provided to an individual who files a request for access to CEII pursuant to 18 C.F.R. § 388.113.

2. Definitions B For purposes of these provisions:

- a. The term "CEII Coordinator" refers to the Federal Energy Regulatory Commission official designated as Critical Energy Infrastructure Information Coordinator, with delegated authority under 18 C.F.R. § 375.313 to make determinations with respect to requests for CEII.
- b. The terms "non-disclosure agreement" and "NDA" mean this agreement by which requesters certify their understanding that access to CEII is provided pursuant to the terms and restrictions of these provisions, and that such requesters have read the provisions and agree to be bound by them.
- c. The term "Recipient" means someone who is approved to receive CEII in accordance with the provisions of 18 C.F.R. § 388.113.

3. A Recipient may only discuss CEII with another Recipient of the identical CEII. A Recipient may check with the CEII Coordinator to determine whether another individual is a Recipient of the identical CEII.

4. If any Recipient submits information to the Commission that includes CEII obtained under these provisions, portions of the filing containing CEII must be submitted in accordance with 18 C.F.R. § 388.112(b).

5. A Recipient of CEII may use CEII as foundation for advice provided to others, but may not disclose CEII to another individual unless that individual is an approved Recipient of the same CEII.

6. A Recipient will not knowingly use CEII for an illegal or non-legitimate purpose.

7. All CEII shall be maintained by Recipient in a secure place. Access to those materials shall be limited to other Recipients of the identical material. Recipients may make copies of CEII, but such copies become CEII and subject to these same procedures. Recipients may make notes of CEII, which shall be treated as CEII notes if they contain CEII.

8. Recipients must return CEII to the CEII Coordinator or destroy CEII within fifteen days of a written request by the CEII Coordinator to do so, except that CEII notes may be retained in accordance with Paragraph 7, above. Within such time period, each Recipient, if requested to do so, shall also submit to the CEII Coordinator an affidavit stating that, to the best of his or her knowledge, all CEII has been returned or destroyed and that CEII notes have either been returned, destroyed or are being maintained by Recipient in accordance with Paragraph 7.

9. The Recipient remains bound by these provisions unless the CEII Coordinator or the Commission rescinds the provisions or a court of competent jurisdiction finds that the information does not qualify as CEII.

10. The Commission may audit the Recipient's compliance with this non-disclosure agreement.

11. Violation of this non-disclosure agreement may result in criminal or civil sanctions against the Recipient.

12. I hereby certify my understanding that access to Critical Energy Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the above CEII provisions, that I have been given a copy of and have read the provisions, and that I agree to be bound by them. I understand that the contents of the CEII, any notes or other memoranda, or any other form of information that copies or discloses CEII shall not be disclosed to anyone other than another person who has been granted access to these same materials by the Federal Energy Regulatory Commission. I acknowledge that a violation of this agreement may result in criminal or civil sanctions, including the suspension of my ability to appear before the Commission pursuant to 18 C.F.R. § 385.2102. I agree that my compliance with this agreement is subject to audit by the Federal Energy Regulatory Commission.

Signature

Print Name:

Title:

Representing:

Date: December 20, 2005

Docket No.: CE05-52-000

END OF DOCUMENT

APPENDIX

I

Slip Copy

APPLICATION OF WIND ENERGY TRANSMISSION TEXAS, LLC TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE PROPOSED LONG DRAW TO SAND BLUFF, SAND BLUFF TO DIVIDE, AND SAND BLUFF TO BEARKAT 345-KV CREZ TRANSMISSION LINES IN BORDEN, COKE, GLASSCOCK, HOWARD, MITCHELL AND STERLING COUNTIES
PUC Docket No. 38825

Texas Public Utility Commission
November 10, 2010

MOTION FOR PROTECTIVE ORDER

BY THE COMMISSION:

COMES NOW, Wind Energy Transmission Texas, LLC (the "Applicant") and hereby files this Motion for Protective Order prohibiting any disclosure to the general public of any portion of the documents provided in Exhibit MS-2 of the Direct Testimony of Mandhir Sahni. This highly sensitive confidential information has been filed with the filing clerk of the Commission in a sealed envelope.

A protective order is necessary to protect the interests of the parties in the provision of confidential information during the pendency of this docket. Such an order will establish procedures for handling and dealing with confidential information or highly sensitive confidential information that are not subject to public disclosure.

Accordingly, the Applicant requests entry of a protective order similar to the protective order adopted in Docket No. 37530, *Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for the Bluff Creek - Brown 345-kV CREZ Transmission Line in Taylor, Runnels, Coleman, and Brown Counties, Texas*; Order No. 5, Adopting Proposed Protective Order (Jan. 5, 2010), pg. 1. Attached to this motion as Exhibit A is a copy of the Commission's standard protective order.

As grounds for this motion, Exhibit MS-2 of the Direct Testimony of Mandhir Sahni contains information that should be treated as Critical Energy Infrastructure Infor-

mation ("CEII") in accordance with 18 CFR §388.113. That federal regulation provides that CEII includes information about "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552" See §388.113(c)(1). Exhibit MS-2 contains information regarding critical infrastructure. Accordingly, this information constitutes CEII and is confidential and exempt from public disclosure under the Freedom of Information Act and 18 CFR §388.113. For these reasons, the Applicant has filed Exhibit MS-2 under seal and has filed this Motion for Protective Order and accompanying Affidavit (attached as Exhibit B) contemporaneously with its CCN application.

WHEREFORE, PREMISES CONSIDERED, Wind Energy Transmission Texas, LLC respectfully prays that the Commission grant the request for the entry of the Commission's standard Protective Order containing the terms and conditions set forth above, and for all other appropriate relief to which the Applicant may be entitled.

Respectfully submitted,

Naman, Howell, Smith & Lee, PLLC

8310 N. Capital of Texas Highway, Suite 490

Austin, Texas 78731

(512)479-0300

(512)474-1901 (Facsimile)

By Dennis W. Donley, Jr.

State Bar No. 24004620

Stephen F. Morris

State Bar No. 14501600

Stephanie S. Potter

State Bar No. 24065923

ATTORNEYS FOR WIND ENERGY TRANSMISSION TEXAS, LLC

AFFIDAVIT

BEFORE ME, the undersigned authority, on this 10th day of November, 2010 personally appeared Stephen F. Morris, who being by me duly sworn on oath deposed and said:

1. "My name is Stephen F. Morris, I am an attorney with Naman, Howell, Smith & Lee, PLLC. I represent Wind Energy Transmission Texas, LLC regarding this Docket. I have personal knowledge of the facts stated herein. Such facts are true and correct.

2. "I have reviewed the documents filed as part of the Direct Testimony of Mandhir Sahni.

3. "I can state, in good faith, that the Exhibit MS-2 of Mr. Sahni's testimony merits highly sensitive confidential designation and should be exempt from public disclosure pursuant to 18 CFR §388.113, which exempts Critical Energy Infrastructure Information from disclosure under the Freedom of Information Act.

FURTHER AFFIANT SAYETH NOT.

Stephen F. Morris

SUBSCRIBED AND SWORN TO BEFORE ME on this 10th day of November, 2010, to certify which witness my hand and seal of office.

Notary Public in and for the State of Texas

EXHIBIT A

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (Commission) or to

any other party to this proceeding.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 38484" (or words to this effect) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.

2. **Materials Excluded from Protected Materials Designation.** Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act.^{FNI} Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

FNI.TEX. GOV'T CODE ANN. §§ 552.001-552.353 (Vernon 2004).

3. **Reviewing Party.** For the purposes of this Protective Order, a "Reviewing Party" is any party to this docket.

4. **Procedures for Designation of Protected Materials.** On or before the date the Protected materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party's claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.

5. **Persons Permitted Access to Protected Materials.**

Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its "Reviewing Representatives" who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.

6. **Highly Sensitive Protected Material Described.** The term "Highly Sensitive Protected Materials" is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act;^{FN2} (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; or (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 38484" (or words to this effect) and shall be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party's designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

^{FN2}. Public Utility Regulatory Act, TEX. UTIL. CODE ANN., § 32.101(c) (Vernon 1998 & Supp. 2006) (PURA). document and a general characterization of its subject matter in a manner that

does not state any substantive information contained in the document.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.** Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party shall maintain a record of all copies made of Highly Sensitive Protected Material and shall send a duplicate of the record to the producing party when the copy or copies are made. The record shall specify the location and the person possessing the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.** With the exception of Commission Staff, The Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are (a) outside counsel for the Reviewing Party, (b) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel or, (c) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review Highly Sensitive Protected Materials to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff, OAG, and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

9. **Copies Provided of Highly Sensitive Protected Material.** A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the

Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. Representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is representing a party to the proceeding.

10. Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict. The procedures in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.

11. Copy of Highly Sensitive Protected Material to be Provided to Commission Staff OPC and the OAG.

When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC, and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC, and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.

12. Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.

The Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of

Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.

13. Restriction on Copying by Commission Staff, OPC and the OAG. Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

14. Public Information Requests. In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.

15. Required Certification. Each person who inspects the Protected Materials shall, before such inspection; agree in writing to the following certification found in Attachment A to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 38484. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certifica-

tion found in Attachment A to this Protective Order: I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

The Reviewing Party shall provide a copy of each signed certification to Counsel for the producing party and serve a copy upon all parties of record. **16. Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding.** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.

17. Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials. Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant to Paragraphs 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.

18. Procedures Regarding Voluminous Protected Materials. P.U.C. PROC. R. 22.144(h) will govern production

of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.

19. Reviewing Period Defined. The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.

20. Procedures for Making Copies of Voluminous Protected Materials. Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.

21. Protected Materials to be Used Solely for the Purposes of These Proceedings. All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.

22. Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials. Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information

derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.

23. Procedures for Submission of Protected Materials.

If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) shall notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) shall otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.

24. Maintenance of Protected Status of Materials during Pendency of Appeal of Order Holding Materials are not Protected Materials. In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days

from notice, the Protected Materials shall be afforded the confidential Treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

25. Notice of Intent to Use Protected Materials or Change Materials Designation. Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. 38484 at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. Procedures to Contest Disclosure or Change in Designation. In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.

27. Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designa-

tion. If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.

28. Maintenance of Protected Status during Periods Specified for Challenging Various Orders. Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period often (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period often (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period often (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.

29. Other Grounds for Objection to Use of Protected Materials Remain Applicable. Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.

30. Protection of Materials from Unauthorized Dis-

closure. All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.

31. Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials. Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the "conclusion of these proceedings" is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. Applicability of Other Law. This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,^{FN3} the Texas Securities Act^{FN4} and any other applicable law, provided that parties subject to those acts will notify the party asserting confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the govern-

mental entity involved will maintain the confidentiality of the Protected Materials.

FN3.TEX. GOV'T CODE ANN. § 551.001-551.146 (Vernon 2004 & Supp. 2006).

FN4.TEX. REV. CIV. STAT. ANN. arts. 581-1 to 581-43 (Vernon 1964 & Supp. 2005).

33. Procedures for Release of Information under Order. If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (a) the Reviewing Party shall notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party shall notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

34. Best Efforts Defined. The term "best efforts" as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to

comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

35. Notify Defined. "Notify" for purposes of Paragraphs 32, 33 and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission, OAG, or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.

36. Requests for Non-Disclosure. If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party shall tender the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of nondisclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. Sanctions Available for Abuse of Designation. If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to P.U.C. PROC. R. 22.161.

38. **Modification of Protective Order.** Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.

39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 38484. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here shall not apply.

Signature

Party Represented

Printed Name

Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

Signature

Party Represented

Printed Name

Date

ATTACHMENT B

I request to view/copy the following documents:

Document Requested	# of Copies	Non-Confidential	Protected Materials and/or Highly Sensitive Protected Materials
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Signature

Party Represented

Printed Name

Date

tive Protected Material under the terms of the Protective Order in this docket.

Signature: _____

Party Represented: _____

Printed Name: _____

Date: _____

END OF DOCUMENT

ATTACHMENT A

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 38825. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here shall not apply.

Signature: _____

Party Represented: _____

Printed Name: _____

Date: _____

I certify that I am eligible to have access to Highly Sensi-

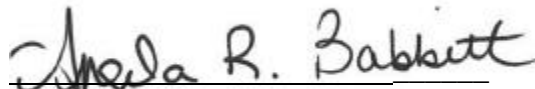
**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

**IN RE ENBRIDGE ENERGY, LIMITED)
PARTNERSHIP)
)
APPLICATION PURSUANT TO 1929 PA)
16; MCL 483.1 *et seq.* and Rule 601 of the)
Michigan Public Service Commission's)
Rules of Practice and Procedure, R)
460.17601 to Replace, Construct and)
Operate Certain Pipeline Segments for the)
Transportation of Crude Oil and)
Petroleum in Berrien, Cass, St. Joseph,)
Kalamazoo, Calhoun, Jackson, Ingham,)
Oakland, Macomb, St. Clair Counties,)
Michigan)**

Case No. U-17020

PROOF OF SERVICE

Angela R. Babbitt certifies that on the 6th day of November, 2012, she served a copy of *Enbridge Energy, Limited Partnership's Response to Motion For Entry of a Protective Order and to Compel Discovery*, and this *Proof of Service* in the above docket on the persons identified on the attached service list by electronic mail.



Angela R. Babbitt

Service List for U-17020

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