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March 12, 2014

Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE.  
Washington, D.C. 20426-0001

Re: *PJM Interconnection, L.L.C.*; ER14-\_\_\_\_-000  
**Transmittal Letter and Request for Waiver of Prior Notice Requirements**

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.13 of the regulations of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 C.F.R. Part 35, PJM Interconnection, L.L.C. (“PJM”) hereby submits for filing revised sheets of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”),<sup>1</sup> to amend PJM’s confidentiality rules to allow PJM to share non-public, operational information with natural gas pipeline operators, consistent with the Commission’s regulations adopted in Order No. 787.<sup>2</sup> As discussed herein, PJM respectfully requests a waiver of the Commission’s prior notice requirements as specified at 18 C.F.R. § 35.3 so as to permit an effective date on one-day notice, or March 13, 2014.

## **I. Background**

On November 15, 2013, the Commission issued a final rule in Order No. 787 adopting regulations to provide explicit authority to interstate natural gas pipeline operators and public utilities that own, operate or control facilities used for the transmission electric energy in interstate commerce to share non-public, operational information with each other to promote reliable service or operational planning on either system. In doing so, the Commission recognized that permitting transmission operators to share information with each other they deem necessary reflects sound policy as it will promote the reliability and integrity of their respective systems. Nevertheless, while the Commission explicitly authorized, through the adoption of new regulations, sharing of such operational information, it declined to supersede any existing tariff provisions that any transmission providers may have to the contrary which limited the sharing of

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning specified in the PJM Operating Agreement or the PJM Open Access Transmission Tariff, as appropriate.

<sup>2</sup> *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, 145 FERC ¶ 61,134 (2013) (“Order No. 787”).

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such information, thereby requiring transmission providers to make filings under Section 205 of the Federal Power Act to revise their tariffs to allow the exchange of information permitted by the final regulations.<sup>3</sup>

Section 18.17.1 of PJM's Operating Agreement establishes PJM's rules relating to the receipt and release of confidential information. As drafted, Section 18.17 prohibits PJM from disclosing, without prior authorization, to its Members or third parties, any confidential, or market sensitive, documents, data or other information of a Member. This prohibition, in its breadth, limits PJM's ability to review with pipeline operators the unit specific information and relevant pipeline conditions that could enhance PJM's ability to manage operational information. Consequently, after the issuance of Order No. 787, but before PJM could initiate its stakeholder process, in early January, 2014, PJM sought, and received, Commission approval through the filing of two companion waivers to temporarily suspend the data sharing prohibitions so as to permit PJM to utilize, during the extreme weather conditions present at the time of filing, and through the winter heating months, the additional communication tools provided for in Order No. 787.<sup>4</sup>

Since the approval of the Waiver Requests, PJM has broadly utilized the enhanced communications provisions to share operational information with gas pipeline operators, including generator specific reviews, which have helped to ensure transmission system reliability, especially in light of the extreme weather conditions that have beset the PJM Region in January and February. Generally, this enhanced exchange of information has been viewed positively by affected natural gas transmission system operators and PJM. In the interim, PJM, with the collaboration of its stakeholders, developed the broader, permanent changes to PJM's confidentiality rules which are offered for filing here.

## II. The Proposed Revisions

Specifically, PJM is proposing the addition of a new subsection to Section 18.17.1 of the PJM Operating Agreement to explicitly permit PJM to share non-public, operational information with interstate natural gas pipeline operators for the purpose of promoting reliable service and operational planning as permitted by the Commission's regulations adopted in Order No. 787. PJM submits that this revision is consistent with the Commission's regulations and promotes the Commission's stated policy of promoting enhanced coordination among gas and electric transmission system operators.

The proposed revisions offered by PJM in this filing further extend the allowance of sharing non-public operational information with Local Distribution Companies ("LDCs" and intrastate natural gas pipeline operators, provided that such party or parties have acknowledged, in writing, that they are prohibited from disclosing, or using anyone as a conduit for disclosure of, non-public, operational information received from PJM to a third party or to its "marketing

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<sup>3</sup> Order No. 787 at P. 17.

<sup>4</sup> *PJM Interconnection, L.L.C.*, 146 FERC 61,003 (2014); *PJM Interconnection, L.L.C.*, 146 FERC 61,033 (2014) (collectively, "Waiver Requests")

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function employees” (as that term is defined by Commission regulations). The Commission declined to extend the broad communication tools adopted in Order No. 787 to LDCs and intrastate natural gas pipeline operators generally because the Commission understood that it had limited jurisdiction with respect to such entities.<sup>5</sup> However, at the same time, the Commission recognized that LDCs and other parties have a significant role to play in maintaining the reliability of both interstate natural gas pipeline transportation systems and electric transmission systems and, as such, encouraged electric transmission operators that could benefit from sharing such information with these entities to offer tariff provisions that establish acceptable procedures for handling and protection from inappropriate disclosure or use of such information.<sup>6</sup>

Here, PJM and its stakeholders have determined that because much of its member generation may be connected at the LDC or intrastate pipeline level, there is significant value to PJM and its Members to extend the same information sharing protocols with those entities to ensure the highest level of cooperation and coordination to ensure the reliable operation of the transmission system. PJM intends to ensure that this information is appropriately protected by requiring such entities to acknowledge, in writing, that they intend to hold such information in confidence and that they are prohibited from sharing such information with third parties or any marketing employees (consistent with how that term is defined by FERC regulations). In turn, PJM will hold any such data received from a LDC or intrastate natural gas pipeline operator consistent with the confidentiality provisions established in the PJM Operating Agreement.

Taken together, PJM maintains that the Operating Agreement revisions offered are consistent with the Commission’s regulations as adopted in Order No. 787 and appropriately expand those same information sharing provisions to LDCs and intrastate natural gas pipeline operators, as appropriate, to ensure that all affected stakeholders receive critical operational and reliability information needed to maintain their respective transmission systems.

### **III. Stakeholder Support**

On February 27, 2014, the Members Committee met and approved the proposed revisions by acclamation with no objections and no abstentions.

### **IV. Effective Date**

Pursuant to 18 C.F.R. § 35.11, PJM requests waiver of the 60-day notice requirement so that information sharing revisions offered here may be effective on March 13, 2014; one day after the date of this filing. Waiver is appropriate for the proposed revisions because, pursuant to the Waiver Requests, PJM has already implemented the information sharing provisions adopted in Order No. 787, which is set to expire on March 31, 2014, and, accordingly, no stakeholders will be further affected by the proposed revisions included with this filing. Further, there is broad stakeholder support for the changes proposed in this filing as indicated by the unanimous support for the changes received in the stakeholder process.

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<sup>5</sup> Order No. 787 at P.56-57.

<sup>6</sup> *Id.*

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## V. Documents Submitted

Along with this transmittal letter, PJM submits electronic versions of the revisions to the Operating Agreement in both marked (showing the changes) and clean forms.

## VI. Correspondence and Communication

The following individuals are designated for inclusion on the official service list in this proceeding and for receipt of any communication regarding this filing:

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## VII. Service

PJM has served a copy of this filing on all PJM Members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. Electronic service is permitted as of November 3, 2008, under the Commission's regulations<sup>7</sup> pursuant to Order No. 714<sup>8</sup> and the Commission's Notice of Effectiveness of Regulations issued on October 28, 2008, in Docket No. RM01-5-000. In compliance with those regulations, PJM will post a copy of this filing to the FERC filings section of the its internet site, located at the following link: <http://www.pjm.com/documents/ferc-manuals/ferc-filings.aspx> with a specific link to the newly filed document, and will send an e-mail on the same date as this filing to all PJM Members and all state utility regulatory commissions in the PJM Region<sup>9</sup> alerting them that this filing has been made by PJM today and available by following such link. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing. Also, a copy of this filing will be available on the Commission's eLibrary website located at the following link: <http://www.ferc.gov/docs-filing/elibrary.asp> in accordance with the Commission's regulations and Order No. 714.

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<sup>7</sup> See, 18 C.F.R. §§ 35.2, 154.2, 154.208 and 341.2.

<sup>8</sup> *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270

<sup>9</sup> PJM already maintains updates and regularly uses e-mail lists for all PJM Members and affected commissions.

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Respectfully submitted,



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# **Attachment A**

Revisions to the PJM Operating Agreement

(Marked/Redline Format)

## **18.17 Confidentiality.**

### **18.17.1 Party Access.**

(a) No Member shall have a right hereunder to receive or review any documents, data or other information of another Member, including documents, data or other information provided to the Office of the Interconnection, to the extent such documents, data or information have been designated as confidential pursuant to the procedures adopted by the Office of the Interconnection and/or the PJM Market Monitor or to the extent that they have been designated as confidential by such other Member; provided, however, a Member may receive and review any composite documents, data and other information that may be developed based on such confidential documents, data or information if the composite does not disclose any individual Member's confidential data or information.

(b) Except as may be provided in this Agreement or in the PJM Open Access Transmission Tariff, the Office of the Interconnection shall not disclose to its Members or to third parties, any documents, data, or other information of a Member or entity applying for Membership, to the extent such documents, data, or other information has been designated confidential pursuant to the procedures adopted by the Office of the Interconnection or by such Member or entity applying for membership; provided that nothing contained herein shall prohibit the Office of the Interconnection from providing any such confidential information to its agents, representatives, or contractors to the extent that such person or entity is bound by an obligation to maintain such confidentiality; provided further that nothing contained herein shall prohibit the Office of the Interconnection from providing Member confidential information to the NERC, any Applicable Regional Entity, or to any reliability coordinator, to the extent that (i) the Office of the Interconnection determines in its reasonable discretion that the exchange of such information is required to enhance and/or maintain reliability within the Members' Applicable Regional Entities and their neighboring Regional Entities, or within the region of any reliability coordinator, (ii) such entity is bound by a written agreement to maintain such confidentiality, and (iii) the Office of the Interconnection has notified the affected party of its intention to release such information no less than five business days prior to the release. The Office of the Interconnection, its designated agents, representatives, and contractors shall maintain as confidential the electronic tag ("e-Tag") data of an e-Tag Author or Balancing Authority (defined as those terms are used in FERC Order No. 771) to the same extent as Member data under this Section 18.17. Nothing contained herein shall prohibit the Office of the Interconnection or its designated agents, representatives, or contractors from providing to another Regional Transmission Organization ("RTO") or Independent System Operator ("ISO"), upon their request, the e-Tags of an e-Tag Author or Balancing Authority for intra-PJM Region transactions and interchange transactions scheduled to flow into, out of or through the PJM Region, to the extent such RTO or ISO has requested such information as part of its investigation of possible market violations or market design flaws, and to the extent that such RTO or ISO is bound by a tariff provision requiring that the e-Tag data be maintained as confidential or, in the absence of a tariff requirement governing confidentiality, a written agreement with the Office of the Interconnection consistent with FERC Order No. 771 and any clarifying orders and implementing regulations. The Office of the Interconnection shall collect and use confidential information only in connection with its authority under this Agreement and the Open Access

Transmission Tariff and the retention of such information shall be in accordance with the Office of the Interconnection's data retention policies.

(c) Nothing contained herein shall prevent the Office of the Interconnection from releasing a Member's confidential data or information to a third party provided that the Member has delivered to the Office of the Interconnection and/or the PJM Market Monitor specific, written authorization for such release setting forth the data or information to be released, to whom such release is authorized, and the period of time for which such release shall be authorized. The Office of the Interconnection shall limit the release of a Member's confidential data or information to that specific authorization received from the Member. Nothing herein shall prohibit a Member from withdrawing such authorization upon written notice to the Office of the Interconnection, who shall cease such release as soon as practicable after receipt of such withdrawal notice.

(d) Reciprocal provisions to Sections 18.17.1, 18.17.2, 18.17.3, 18.17.4 and 18.17.5 hereof, delineating the confidentiality requirements of PJM's Market Monitoring Unit, are set forth in Attachment M – Appendix, section I.

(e) Notwithstanding anything to the contrary in this Agreement or in the PJM Tariff, to allow the tracking of Market Participants' non-aggregated bids and offers over time as required by FERC Order No. 719, the Office of the Interconnection shall post on its Web site the non-aggregated bid data and Offer Data submitted by Market Participants (for participation on the PJM Interchange Energy Market) approximately four months after the bid or offer was submitted to the Office of the Interconnection. However, to protect the confidential, market sensitive and/or proprietary bidding strategies of Market Participants as well as the identity of Market Participants from being discernible from the published data, the posted information will not reveal the (a) name of the resource, (b) characteristics of a specific resource, (c) identity of the load, (d) name of the individual or entity submitting the data, (e) identity of the resource owner, or (f) location of the resource at a level lower than its Zone. The Office of the Interconnection also reserves the right to take any other precautionary measures that it deems appropriate to preserve the confidential, market sensitive and/or proprietary bidding strategies of Market Participants to the extent not specifically set forth herein.

(f) To the extent permitted pursuant to 18 C.F.R. § 38.2 (or successor provisions), nothing contained herein shall prohibit the Office of the Interconnection from sharing non-public, operational information with an interstate natural gas pipeline operator for the purpose of promoting reliable service or operational planning. Further, the Office of the Interconnection shall be permitted to share non-public, operational information with natural gas local distribution companies and/or intrastate natural gas pipeline operators, as appropriate, for the purpose of promoting reliable service or operational planning, provided that such party has acknowledged, in writing, that it is prohibited from disclosing, or using anyone as a conduit for disclosure of, non-public, operational information received from the Office of Interconnection to a third party or to its marketing function employees as that term is defined by FERC regulations at 18 C.F.R. § 358.3(d). Such non-public, operational information received from natural gas local distribution companies and/or intrastate natural gas pipeline operators pursuant to this section will be subject to the confidentiality provisions set forth in this Section 18.17 of the Operating Agreement.



### **18.17.2 Required Disclosure.**

(a) Notwithstanding anything in the foregoing Section to the contrary, and subject to the provisions of Section 18.17.3, if the Office of the Interconnection is required by applicable law, order, or in the course of administrative or judicial proceedings, to disclose to third parties, information that is otherwise required to be maintained in confidence pursuant to this Agreement, the Office of the Interconnection or its designated agents, representatives, or contractors may make disclosure of such information; provided, however, that as soon as the Office of the Interconnection learns of the disclosure requirement and prior to it or its designated agents, representatives, or contractors making disclosure, the Office of the Interconnection shall notify the affected Member or Members of the requirement and the terms thereof and the affected Member or Members may direct, at their sole discretion and cost, any challenge to or defense against the disclosure requirement. The Office of the Interconnection shall cooperate with such affected Members to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The Office of the Interconnection shall cooperate with the affected Members to obtain proprietary or confidential treatment of such information by the person to whom such information is disclosed prior to any such disclosure.

(b) Nothing in this Section 18.17 shall prohibit or otherwise limit the Office of the Interconnection's use of information covered herein if such information was: (i) previously known to the Office of the Interconnection without an obligation of confidentiality; (ii) independently developed by or for the Office of the Interconnection using non-confidential information; (iii) acquired by the Office of the Interconnection from a third party which is not, to the Office of the Interconnection's knowledge, under an obligation of confidence with respect to such information; (iv) which is or becomes publicly available other than through a manner inconsistent with this Section 18.17.

(c) The Office of the Interconnection shall impose on any contractors retained to provide technical support or otherwise to assist with the implementation or administration of this Agreement or of the Open Access Transmission Tariff a contractual duty of confidentiality consistent with this Agreement. A Member shall not be obligated to provide confidential or proprietary information to any contractor that does not assume such a duty of confidentiality, and the Office of the Interconnection shall not provide any such information to any such contractor without the express written permission of the Member providing the information.

### **18.17.3 Disclosure to FERC and CFTC.**

(a) Notwithstanding anything in this Section to the contrary, if the FERC, the Commodity Futures Trading Commission ("CFTC"), or the staff of those commissions, during the course of an investigation or otherwise, requests information from the Office of the Interconnection that is otherwise required to be maintained in confidence pursuant to this Agreement, the Office of the Interconnection shall provide the requested information to the FERC, CFTC or their respective staff, within the time provided for in the request for information. In providing the information to the FERC or its staff, the Office of the Interconnection may request, consistent with 18 C.F.R. §§ 1b.20 and 388.112, or to the CFTC or its staff, the Office of the Interconnection may request,

consistent with 17 C.F.R. §§ 11.3 and 145.9, that the information be treated as confidential and non-public by the respective commission and its staff and that the information be withheld from public disclosure. The Office of the Interconnection shall promptly notify any affected Member(s) if the Office of the Interconnection receives from the FERC, CFTC or their staff written notice that the commission has decided to release publicly, or has asked for comment on whether such commission should release publicly, confidential information previously provided to a commission by the Office of the Interconnection.

(b) Section 18.17.3(a) shall not apply to requests for production of information under Subpart D of the FERC's Rules of Practice and Procedure (18 CFR Part 385) in proceedings before FERC and its administrative law judges. In all such proceedings, the Office of the Interconnection shall follow the procedures in Section 18.17.2.

(c) Pursuant to the FERC Order No. 760, as codified under 18 C.F.R. § 35.28(g)(4), to the extent that the Office of the Interconnection already collects such data described in Order No. 760, the Office of the Interconnection shall electronically deliver to the FERC, on an ongoing basis and in a form and manner consistent with its own collection of data and in a form and manner acceptable to the FERC, data related to the markets that the Office of the Interconnection administers. Section 18.17.3(a) shall not apply to data supplied to the FERC under this subsection (c) to satisfy the FERC Order No. 760 requirements.

(d) Pursuant to the FERC Order No. 771 and any clarifying orders, as codified under 18 C.F.R. § 366.2(d), the Office of the Interconnection shall ensure that FERC is included as an addressee on all e-Tags for transactions that sink within the PJM Region.

#### **18.17.4 Disclosure to Authorized Commissions.**

(a) Notwithstanding anything in this section to the contrary, the Office of the Interconnection shall disclose confidential information, otherwise required to be maintained in confidence pursuant to this Agreement, to an Authorized Commission under the following conditions:

- (i) The Authorized Commission has provided the FERC with a properly-executed Certification in the form attached hereto as Schedule 10A. Upon receipt of the Authorized Commission's Certification, the FERC shall provide public notice of the Authorized Commission's filing pursuant to 18 C.F.R. § 385.2009. If any interested party disputes the accuracy and adequacy of the representations contained in the Authorized Commission's Certification, that party may file a protest with the Commission within 14 days of the date of such notice, pursuant to 18 C.F.R. § 385.211. The Authorized Commission may file a response to any such protest within seven days. Each party shall bear its own costs in connection with such a FERC protest proceeding. If there are material changes in law that affect the accuracy and adequacy of the representations in the Certification filed with the Commission, the Authorized Commission shall, within thirty (30) days, submit an amended Certification identifying such changes. Any such amended Certification

shall be subject to the same procedures for comment and review by the Commission as set forth above in this paragraph.

The Office of the Interconnection may not disclose data to an Authorized Commission during the Commission's consideration of the Certification and any filed protests. If the Commission does not act upon an Authorized Commission's Certification within 90 days of the date of filing, the Certification shall be deemed approved and the Authorized Commission shall be permitted to receive confidential information pursuant to this section. In the event that an interested party protests the Authorized Commission's Certification and the Commission approves the Certification, that party may not challenge any Information Request made by the Authorized Commission on the grounds that the Authorized Commission is unable to protect the confidentiality of the information requested, in the absence of a showing of changed circumstances.

- (ii) Any confidential information provided to an Authorized Commission pursuant to this section shall not be further disclosed by the recipient Authorized Commission except by order of the Commission.
- (iii) The Office of the Interconnection shall be expressly entitled to rely upon such Authorized Commission Certifications in providing confidential information to the Authorized Commission, and shall in no event be liable, or subject to damages or claims of any kind or nature hereunder, due to the ineffectiveness or inaccuracy of such Authorized Commission Certifications.
- (iv) The Authorized Commission may provide confidential information obtained from the Office of the Interconnection to such of its employees, attorneys and contractors as needed to examine or handle that information in the course and scope of their work on behalf of the Authorized Commission, provided that (a) the Authorized Commission has internal procedures in place, pursuant to the Certification, to ensure that each person receiving such information agrees to protect the confidentiality of such information (such employees, attorneys or contractors to be defined hereinafter as "Authorized Persons"); (b) the Authorized Commission provides, pursuant to the Certification, a list of such Authorized Persons to the Office of the Interconnection and the PJM Market Monitor and updates such list, as necessary, every ninety (90) days; and (c) any third-party contractors provided access to confidential information sign a non-disclosure agreement in the form attached hereto as Schedule 10 before being provided access to any such confidential information.
- (v) The Office of the Interconnection shall maintain a schedule of all Authorized Persons and the Authorized Commissions they represent, which shall be made publicly available on its website, or by written

request. Such schedule shall be compiled by the Office of the Interconnection, based on information provided by any Authorized Commission. The Office of the Interconnection shall update the schedule promptly upon receipt of information from an Authorized Commission, but shall have no obligation to verify or corroborate any such information, and shall not be liable or otherwise responsible for any inaccuracies in the schedule due to incomplete or erroneous information conveyed to and relied upon by the Office of the Interconnection in the compilation and/or maintenance of the schedule.

(b) The Office of the Interconnection may, in the course of discussions with an Authorized Person, orally disclose information otherwise required to be maintained in confidence, without the need for a prior Information Request. Such oral disclosures shall provide enough information to enable the Authorized Person or the Authorized Commission with which that Authorized Person is associated to determine whether additional Information Requests are appropriate. The Office of the Interconnection will not make any written or electronic disclosures of confidential information to the Authorized Person pursuant to this Section 18.17.4(b). In any such discussions, the Office of the Interconnection shall ensure that the individual or individuals receiving such confidential information are Authorized Persons as defined herein, orally designate confidential information that is disclosed, and refrain from identifying any specific Affected Member whose information is disclosed. The Office of the Interconnection shall also be authorized to assist Authorized Persons in interpreting confidential information that is disclosed. The Office of the Interconnection shall provide any Affected Member with oral notice of any oral disclosure immediately, but not later than one (1) business day after the oral disclosure. Such oral notice to the Affected Member shall include the substance of the oral disclosure, but shall not reveal any confidential information of any other Member and must be received by the Affected Member before the name of the Affected Member is released to the Authorized Person; provided however, disclosure of the identity of the Affected Party must be made to the Authorized Commission with which the Authorized Person is associated within two (2) business days of the initial oral disclosure.

(c) As regards Information Requests:

- (i) Information Requests to the Office of the Interconnection and/or PJM Market Monitor by an Authorized Commission shall be in writing, which shall include electronic communications, addressed to the Office of the Interconnection, and shall: (a) describe the information sought in sufficient detail to allow a response to the Information Request; (b) provide a general description of the purpose of the Information Request; (c) state the time period for which confidential information is requested; and (d) re-affirm that only Authorized Persons shall have access to the confidential information requested. The Office of the Interconnection shall provide an Affected Member with written notice, which shall include electronic communication, of an Information Request by an Authorized Commission as soon as possible, but not later than two (2) business days after the receipt of the Information Request.

- (ii) Subject to the provisions of section (c)(iii), the Office of the Interconnection shall supply confidential information to the Authorized Commission in response to any Information Request within five (5) business days of the receipt of the Information Request, to the extent that the requested confidential information can be made available within such period; provided however, that in no event shall confidential information be released prior to the end of the fourth (4th) business day without the express consent of the Affected Member. To the extent that the Office of the Interconnection cannot reasonably prepare and deliver the requested confidential information within such five (5) day period, it shall, within such period, provide the Authorized Commission with a written schedule for the provision of such remaining confidential information. Upon providing confidential information to the Authorized Commission, the Office of the Interconnection shall either provide a copy of the confidential information to the Affected Member(s), or provide a listing of the confidential information disclosed; provided, however, that the Office of the Interconnection shall not reveal any Member's confidential information to any other Member.
- (iii) Notwithstanding section (c)(ii), above, should the Office of the Interconnection or an Affected Member object to an Information Request or any portion thereof, any of them may, within four (4) business days following the Office of the Interconnection's receipt of the Information Request, request, in writing, a conference with the Authorized Commission to resolve differences concerning the scope or timing of the Information Request; provided, however, nothing herein shall require the Authorized Commission to participate in any conference. Any party to the conference may seek assistance from FERC staff in resolution of the dispute or terminate the conference process at any time. Should such conference be refused or terminated by any participant or should such conference not resolve the dispute, then the Office of the Interconnection or the Affected Member may file a complaint with the Commission pursuant to Rule 206 objecting to the Information Request within ten (10) business days following receipt of written notice from any conference participant terminating such conference. Any complaints filed at FERC objecting to a particular Information Request shall be designated by the party as a "fast track" complaint and each party shall bear its own costs in connection with such FERC proceeding. The grounds for such a complaint shall be limited to the following: (a) the Authorized Commission is no longer able to preserve the confidentiality of the requested information due to changed circumstances relating to the Authorized Commission's ability to protect confidential information arising since the filing of or rejection of a protest directed to the Authorized Commission's Certification; (b) complying with the Information Request would be unduly burdensome to the complainant, and the complainant has made a good faith effort to

negotiate limitations in the scope of the requested information; or (c) other exceptional circumstances exist such that complying with the Information Request would result in harm to the complainant. There shall be a presumption that “exceptional circumstances,” as used in the prior sentence, does not include circumstances in which an Authorized Commission has requested wholesale market data (or PJM Market Monitor workpapers that support or explain conclusions or analyses) generated in the ordinary course and scope of the operations of the Office of the Interconnection and/or the PJM Market Monitor. There shall be a presumption that circumstances in which an Authorized Commission has requested personnel files, internal emails and internal company memos, analyses and related work product constitute “exceptional circumstances” as used in the prior sentence. If no complaint challenging the Information Request is filed within the ten (10) day period defined above, the Office of the Interconnection shall utilize its best efforts to respond to the Information Request promptly. If a complaint is filed, and the Commission does not act on that complaint within ninety (90) days, the complaint shall be deemed denied and the Office of Interconnection shall use its best efforts to respond to the Information Request promptly.

- (iv) Any Authorized Commission may initiate appropriate legal action at FERC within ten (10) business days following receipt of information designated as “Confidential,” challenging such designation. Any complaints filed at FERC objecting to the designation of information as “Confidential” shall be designated by the party as a “fast track” complaint and each party shall bear its own costs in connection with such FERC proceeding. The party filing such a complaint shall be required to prove that the material disclosed does not merit “Confidential” status because it is publicly available from other sources or contains no trade secret or other sensitive commercial information (with “publicly available” not being deemed to include unauthorized disclosures of otherwise confidential data).

(d) In the event of any breach of confidentiality of information disclosed pursuant to an Information Request by an Authorized Commission or Authorized Person:

- (i) The Authorized Commission or Authorized Person shall promptly notify the Office of the Interconnection, who shall, in turn, promptly notify any Affected Member of any inadvertent or intentional release, or possible release, of confidential information provided pursuant to this section.
- (ii) The Office of the Interconnection shall terminate the right of such Authorized Commission to receive confidential information under this section upon written notice to such Authorized Commission unless: (i) there was no harm or damage suffered by the Affected Member; or (ii) similar good cause is shown. Any appeal of the Office of the

Interconnection's and/or the PJM Market Monitor's actions under this section shall be to FERC. An Authorized Commission shall be entitled to reestablish its certification as set forth in Section 18.17.4(a) by submitting a filing with the Commission showing that it has taken appropriate corrective action. If the Commission does not act upon an Authorized Commission's re-certification filing with sixty (60) days of the date of the filing, the re-certification shall be deemed approved and the Authorized Commission shall be permitted to receive confidential information pursuant to this section.

- (iii) The Office of the Interconnection and/or the Affected Member shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (c) the immediate return of all confidential information to the Office of the Interconnection.
- (iv) No Authorized Person or Authorized Commission shall have responsibility or liability whatsoever under this section for any and all liabilities, losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with the release of confidential information to persons not authorized to receive it, provided that such Authorized Person is an agent, servant, employee or member of an Authorized Commission at the time of such unauthorized release. Nothing in this Section (d)(iv) is intended to limit the liability of any person who is not an agent, servant, employee or member of an Authorized Commission at the time of such unauthorized release for any and all economic losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with such unauthorized release.
- (v) Any dispute or conflict requesting the relief in section (d)(ii) or (d)(iii)(a) above, shall be submitted to FERC for hearing and resolution. Any dispute or conflict requesting the relief in section (d)(iii)(c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution.

**18.17.5 Disclosure to New York ISO and New York ISO Market Advisor Concerning Facilities in PSE&G Zone.**

(a) Subject to the requirements of section 18.17.5(b), the Office of the Interconnection may release confidential information of Public Service Electric & Gas Company ("PSE&G"), Consolidated Edison Company of New York ("ConEd"), and their affiliates, and the confidential information of any Member regarding generation and/or transmission facilities located within the PSE&G Zone to the New York Independent System Operator, Inc. ("New York ISO"), the market monitoring unit of the New York ISO and the New York ISO Market Advisor to the

limited extent that the Office of the Interconnection or its Market Monitoring Unit determines necessary to carry out the responsibilities of the Office of the Interconnection, the New York ISO and the market monitoring units of the Office of the Interconnection and the New York ISO under FERC Opinion No. 476 (see *Consolidated Edison Company v. Public Service Electric and Gas Company, et al.*, 108 FERC ¶ 61,120, at P 215 (2004)) to conduct joint investigations to ensure that gaming, abuse of market power, or similar activities do not take place with regard to power transfers under the contracts that are the subject of FERC Opinion No. 476.

(b) The Office of the Interconnection may release a Member's confidential information pursuant to section 18.17.5(a) to the New York ISO, the market monitoring unit of the New York ISO and the New York ISO Market Advisor only if the New York ISO, the market monitoring unit of the New York ISO and the New York ISO Market Advisor are subject to obligations limiting the disclosure of such information that are equivalent to or greater than the limitations on disclosure specified in this section 18.17. Information received from the New York ISO, the market monitoring unit of the New York ISO, or the New York ISO Market Advisor under section 18.17.5(a) that is designated as confidential shall be protected from disclosure in accordance with this section 18.17.

#### **18.17.6 Disclosure of EMS Data to Transmission Owners**

(a) While the Office of the Interconnection has overall power system reliability in the Office of the Interconnection region, Transmission Owners within the Office of the Interconnection region perform certain reliability functions with respect to their individual Transmission Facilities and distribution systems. In order to facilitate reliable operations between the Office of the Interconnection and the Transmission Owners, the Office of the Interconnection may, without written authorization from any Member, install a read-only terminal in any Transmission Owner's secure control room facility, with access to Office of the Interconnection's Energy Management System (EMS) and its associated data transmission and generation data under the terms and conditions set forth in this section 18.17.6.

(b) The data and information produced by the Office of the Interconnection's EMS are confidential and/or commercially sensitive because it will display the real-time status of electric transmission lines and generation facilities, the disclosure of which could impact the market and the commercial interests of its participants. In addition, the responsive information will contain detailed information about real-time grid conditions, transmission lines, power flows, and outages, which may fall within the definition of Critical Energy Infrastructure Information (CEII) as set forth in 18 CFR § 388.112. The Office of the Interconnection shall not release any generator cost, price or other market information without written authorization pursuant to section § 18.17.1 (c) supra. The only generator information that will be made available is real-time MW/MVAR output and Minimum/Maximum MW Range.

(c) The confidential or CEII information provided to the Transmission Owner on a read-only PJM EMS terminal shall only be held in the secure control room facility of the Transmission Owner. Such data shall be used for informational and operational purposes within the control room by Transmission Function employees as defined in the FERC's rules and regulations, 18 C.F.R. § 358.3 (j). No "screen-scraping" or other data transfer of information from the read-only



terminal to other Transmission Owner systems or databases shall be permitted. No storage of information from the read-only terminal shall be permitted. The data shall be held confidential within the transmission function environment and not be disclosed to other personnel within the Transmission Owners' company, subsidiaries, marketing organizations, energy affiliates or independent third parties. The Transmission Owner may use the confidential or CEII information only for the purpose of performing Transmission Owner's Reliability Function and shall not otherwise use the confidential information for its own benefit or for the benefit of any other person.

(d) In the event of any breach:

- (i) The Transmission Owners shall promptly notify the Office of the Interconnection, which shall, in turn, promptly notify FERC and any Affected Member(s) of any inadvertent or intentional release, or possible release, of confidential or CEII information disclosed as provided above.
- (ii) The Office of the Interconnection shall terminate all rights of the Transmission Owner to receive confidential or CEII information as provided in this section 18.17.6; provided, however, that the Office of the Interconnection may restore a Transmission Owners' status after consulting with the Affected Member(s) and to the extent that: (a) the Office of the Interconnection determines that the disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Person; (b) there were no harm or damages suffered by the Affected Member(s); or (c) similar good cause shown. Any appeal of the Office of the Interconnection's actions under this section shall be to FERC.
- (iii) The Office of the Interconnection and/or the Affected Member(s) shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief and/or damages with respect to any breach; and (c) the immediate return of all confidential or CEII information to the Office of the Interconnection.
- (iv) Any dispute or conflict requesting the relief in section (d)(ii) or (d)(iii)(a) above, shall be submitted to FERC for hearing and resolution. Any dispute or conflict requesting the relief in section (d)(iii)(b) and (c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution.

# **Attachment B**

Revisions to the PJM Operating Agreement

(Clean Format)

## **18.17 Confidentiality.**

### **18.17.1 Party Access.**

(a) No Member shall have a right hereunder to receive or review any documents, data or other information of another Member, including documents, data or other information provided to the Office of the Interconnection, to the extent such documents, data or information have been designated as confidential pursuant to the procedures adopted by the Office of the Interconnection and/or the PJM Market Monitor or to the extent that they have been designated as confidential by such other Member; provided, however, a Member may receive and review any composite documents, data and other information that may be developed based on such confidential documents, data or information if the composite does not disclose any individual Member's confidential data or information.

(b) Except as may be provided in this Agreement or in the PJM Open Access Transmission Tariff, the Office of the Interconnection shall not disclose to its Members or to third parties, any documents, data, or other information of a Member or entity applying for Membership, to the extent such documents, data, or other information has been designated confidential pursuant to the procedures adopted by the Office of the Interconnection or by such Member or entity applying for membership; provided that nothing contained herein shall prohibit the Office of the Interconnection from providing any such confidential information to its agents, representatives, or contractors to the extent that such person or entity is bound by an obligation to maintain such confidentiality; provided further that nothing contained herein shall prohibit the Office of the Interconnection from providing Member confidential information to the NERC, any Applicable Regional Entity, or to any reliability coordinator, to the extent that (i) the Office of the Interconnection determines in its reasonable discretion that the exchange of such information is required to enhance and/or maintain reliability within the Members' Applicable Regional Entities and their neighboring Regional Entities, or within the region of any reliability coordinator, (ii) such entity is bound by a written agreement to maintain such confidentiality, and (iii) the Office of the Interconnection has notified the affected party of its intention to release such information no less than five business days prior to the release. The Office of the Interconnection, its designated agents, representatives, and contractors shall maintain as confidential the electronic tag ("e-Tag") data of an e-Tag Author or Balancing Authority (defined as those terms are used in FERC Order No. 771) to the same extent as Member data under this Section 18.17. Nothing contained herein shall prohibit the Office of the Interconnection or its designated agents, representatives, or contractors from providing to another Regional Transmission Organization ("RTO") or Independent System Operator ("ISO"), upon their request, the e-Tags of an e-Tag Author or Balancing Authority for intra-PJM Region transactions and interchange transactions scheduled to flow into, out of or through the PJM Region, to the extent such RTO or ISO has requested such information as part of its investigation of possible market violations or market design flaws, and to the extent that such RTO or ISO is bound by a tariff provision requiring that the e-Tag data be maintained as confidential or, in the absence of a tariff requirement governing confidentiality, a written agreement with the Office of the Interconnection consistent with FERC Order No. 771 and any clarifying orders and implementing regulations. The Office of the Interconnection shall collect and use confidential information only in connection with its authority under this Agreement and the Open Access

Transmission Tariff and the retention of such information shall be in accordance with the Office of the Interconnection's data retention policies.

(c) Nothing contained herein shall prevent the Office of the Interconnection from releasing a Member's confidential data or information to a third party provided that the Member has delivered to the Office of the Interconnection and/or the PJM Market Monitor specific, written authorization for such release setting forth the data or information to be released, to whom such release is authorized, and the period of time for which such release shall be authorized. The Office of the Interconnection shall limit the release of a Member's confidential data or information to that specific authorization received from the Member. Nothing herein shall prohibit a Member from withdrawing such authorization upon written notice to the Office of the Interconnection, who shall cease such release as soon as practicable after receipt of such withdrawal notice.

(d) Reciprocal provisions to Sections 18.17.1, 18.17.2, 18.17.3, 18.17.4 and 18.17.5 hereof, delineating the confidentiality requirements of PJM's Market Monitoring Unit, are set forth in Attachment M – Appendix, section I.

(e) Notwithstanding anything to the contrary in this Agreement or in the PJM Tariff, to allow the tracking of Market Participants' non-aggregated bids and offers over time as required by FERC Order No. 719, the Office of the Interconnection shall post on its Web site the non-aggregated bid data and Offer Data submitted by Market Participants (for participation on the PJM Interchange Energy Market) approximately four months after the bid or offer was submitted to the Office of the Interconnection. However, to protect the confidential, market sensitive and/or proprietary bidding strategies of Market Participants as well as the identity of Market Participants from being discernible from the published data, the posted information will not reveal the (a) name of the resource, (b) characteristics of a specific resource, (c) identity of the load, (d) name of the individual or entity submitting the data, (e) identity of the resource owner, or (f) location of the resource at a level lower than its Zone. The Office of the Interconnection also reserves the right to take any other precautionary measures that it deems appropriate to preserve the confidential, market sensitive and/or proprietary bidding strategies of Market Participants to the extent not specifically set forth herein.

(f) To the extent permitted pursuant to 18 C.F.R. § 38.2 (or successor provisions), nothing contained herein shall prohibit the Office of the Interconnection from sharing non-public, operational information with an interstate natural gas pipeline operator for the purpose of promoting reliable service or operational planning. Further, the Office of the Interconnection shall be permitted to share non-public, operational information with natural gas local distribution companies and/or intrastate natural gas pipeline operators, as appropriate, for the purpose of promoting reliable service or operational planning, provided that such party has acknowledged, in writing, that it is prohibited from disclosing, or using anyone as a conduit for disclosure of, non-public, operational information received from the Office of Interconnection to a third party or to its marketing function employees as that term is defined by FERC regulations at 18 C.F.R. § 358.3(d). Such non-public, operational information received from natural gas local distribution companies and/or intrastate natural gas pipeline operators pursuant to this section will be subject to the confidentiality provisions set forth in this Section 18.17 of the Operating Agreement.

### **18.17.2 Required Disclosure.**

(a) Notwithstanding anything in the foregoing Section to the contrary, and subject to the provisions of Section 18.17.3, if the Office of the Interconnection is required by applicable law, order, or in the course of administrative or judicial proceedings, to disclose to third parties, information that is otherwise required to be maintained in confidence pursuant to this Agreement, the Office of the Interconnection or its designated agents, representatives, or contractors may make disclosure of such information; provided, however, that as soon as the Office of the Interconnection learns of the disclosure requirement and prior to it or its designated agents, representatives, or contractors making disclosure, the Office of the Interconnection shall notify the affected Member or Members of the requirement and the terms thereof and the affected Member or Members may direct, at their sole discretion and cost, any challenge to or defense against the disclosure requirement. The Office of the Interconnection shall cooperate with such affected Members to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The Office of the Interconnection shall cooperate with the affected Members to obtain proprietary or confidential treatment of such information by the person to whom such information is disclosed prior to any such disclosure.

(b) Nothing in this Section 18.17 shall prohibit or otherwise limit the Office of the Interconnection's use of information covered herein if such information was: (i) previously known to the Office of the Interconnection without an obligation of confidentiality; (ii) independently developed by or for the Office of the Interconnection using non-confidential information; (iii) acquired by the Office of the Interconnection from a third party which is not, to the Office of the Interconnection's knowledge, under an obligation of confidence with respect to such information; (iv) which is or becomes publicly available other than through a manner inconsistent with this Section 18.17.

(c) The Office of the Interconnection shall impose on any contractors retained to provide technical support or otherwise to assist with the implementation or administration of this Agreement or of the Open Access Transmission Tariff a contractual duty of confidentiality consistent with this Agreement. A Member shall not be obligated to provide confidential or proprietary information to any contractor that does not assume such a duty of confidentiality, and the Office of the Interconnection shall not provide any such information to any such contractor without the express written permission of the Member providing the information.

### **18.17.3 Disclosure to FERC and CFTC.**

(a) Notwithstanding anything in this Section to the contrary, if the FERC, the Commodity Futures Trading Commission ("CFTC"), or the staff of those commissions, during the course of an investigation or otherwise, requests information from the Office of the Interconnection that is otherwise required to be maintained in confidence pursuant to this Agreement, the Office of the Interconnection shall provide the requested information to the FERC, CFTC or their respective staff, within the time provided for in the request for information. In providing the information to the FERC or its staff, the Office of the Interconnection may request, consistent with 18 C.F.R. §§ 1b.20 and 388.112, or to the CFTC or its staff, the Office of the Interconnection may request, consistent with 17 C.F.R. §§ 11.3 and 145.9, that the information be treated as confidential and

non-public by the respective commission and its staff and that the information be withheld from public disclosure. The Office of the Interconnection shall promptly notify any affected Member(s) if the Office of the Interconnection receives from the FERC, CFTC or their staff written notice that the commission has decided to release publicly, or has asked for comment on whether such commission should release publicly, confidential information previously provided to a commission by the Office of the Interconnection.

(b) Section 18.17.3(a) shall not apply to requests for production of information under Subpart D of the FERC's Rules of Practice and Procedure (18 CFR Part 385) in proceedings before FERC and its administrative law judges. In all such proceedings, the Office of the Interconnection shall follow the procedures in Section 18.17.2.

(c) Pursuant to the FERC Order No. 760, as codified under 18 C.F.R. § 35.28(g)(4), to the extent that the Office of the Interconnection already collects such data described in Order No. 760, the Office of the Interconnection shall electronically deliver to the FERC, on an ongoing basis and in a form and manner consistent with its own collection of data and in a form and manner acceptable to the FERC, data related to the markets that the Office of the Interconnection administers. Section 18.17.3(a) shall not apply to data supplied to the FERC under this subsection (c) to satisfy the FERC Order No. 760 requirements.

(d) Pursuant to the FERC Order No. 771 and any clarifying orders, as codified under 18 C.F.R. § 366.2(d), the Office of the Interconnection shall ensure that FERC is included as an addressee on all e-Tags for transactions that sink within the PJM Region.

#### **18.17.4 Disclosure to Authorized Commissions.**

(a) Notwithstanding anything in this section to the contrary, the Office of the Interconnection shall disclose confidential information, otherwise required to be maintained in confidence pursuant to this Agreement, to an Authorized Commission under the following conditions:

- (i) The Authorized Commission has provided the FERC with a properly-executed Certification in the form attached hereto as Schedule 10A. Upon receipt of the Authorized Commission's Certification, the FERC shall provide public notice of the Authorized Commission's filing pursuant to 18 C.F.R. § 385.2009. If any interested party disputes the accuracy and adequacy of the representations contained in the Authorized Commission's Certification, that party may file a protest with the Commission within 14 days of the date of such notice, pursuant to 18 C.F.R. § 385.211. The Authorized Commission may file a response to any such protest within seven days. Each party shall bear its own costs in connection with such a FERC protest proceeding. If there are material changes in law that affect the accuracy and adequacy of the representations in the Certification filed with the Commission, the Authorized Commission shall, within thirty (30) days, submit an amended Certification identifying such changes. Any such amended Certification

shall be subject to the same procedures for comment and review by the Commission as set forth above in this paragraph.

The Office of the Interconnection may not disclose data to an Authorized Commission during the Commission's consideration of the Certification and any filed protests. If the Commission does not act upon an Authorized Commission's Certification within 90 days of the date of filing, the Certification shall be deemed approved and the Authorized Commission shall be permitted to receive confidential information pursuant to this section. In the event that an interested party protests the Authorized Commission's Certification and the Commission approves the Certification, that party may not challenge any Information Request made by the Authorized Commission on the grounds that the Authorized Commission is unable to protect the confidentiality of the information requested, in the absence of a showing of changed circumstances.

- (ii) Any confidential information provided to an Authorized Commission pursuant to this section shall not be further disclosed by the recipient Authorized Commission except by order of the Commission.
- (iii) The Office of the Interconnection shall be expressly entitled to rely upon such Authorized Commission Certifications in providing confidential information to the Authorized Commission, and shall in no event be liable, or subject to damages or claims of any kind or nature hereunder, due to the ineffectiveness or inaccuracy of such Authorized Commission Certifications.
- (iv) The Authorized Commission may provide confidential information obtained from the Office of the Interconnection to such of its employees, attorneys and contractors as needed to examine or handle that information in the course and scope of their work on behalf of the Authorized Commission, provided that (a) the Authorized Commission has internal procedures in place, pursuant to the Certification, to ensure that each person receiving such information agrees to protect the confidentiality of such information (such employees, attorneys or contractors to be defined hereinafter as "Authorized Persons"); (b) the Authorized Commission provides, pursuant to the Certification, a list of such Authorized Persons to the Office of the Interconnection and the PJM Market Monitor and updates such list, as necessary, every ninety (90) days; and (c) any third-party contractors provided access to confidential information sign a non-disclosure agreement in the form attached hereto as Schedule 10 before being provided access to any such confidential information.
- (v) The Office of the Interconnection shall maintain a schedule of all Authorized Persons and the Authorized Commissions they represent, which shall be made publicly available on its website, or by written

request. Such schedule shall be compiled by the Office of the Interconnection, based on information provided by any Authorized Commission. The Office of the Interconnection shall update the schedule promptly upon receipt of information from an Authorized Commission, but shall have no obligation to verify or corroborate any such information, and shall not be liable or otherwise responsible for any inaccuracies in the schedule due to incomplete or erroneous information conveyed to and relied upon by the Office of the Interconnection in the compilation and/or maintenance of the schedule.

(b) The Office of the Interconnection may, in the course of discussions with an Authorized Person, orally disclose information otherwise required to be maintained in confidence, without the need for a prior Information Request. Such oral disclosures shall provide enough information to enable the Authorized Person or the Authorized Commission with which that Authorized Person is associated to determine whether additional Information Requests are appropriate. The Office of the Interconnection will not make any written or electronic disclosures of confidential information to the Authorized Person pursuant to this Section 18.17.4(b). In any such discussions, the Office of the Interconnection shall ensure that the individual or individuals receiving such confidential information are Authorized Persons as defined herein, orally designate confidential information that is disclosed, and refrain from identifying any specific Affected Member whose information is disclosed. The Office of the Interconnection shall also be authorized to assist Authorized Persons in interpreting confidential information that is disclosed. The Office of the Interconnection shall provide any Affected Member with oral notice of any oral disclosure immediately, but not later than one (1) business day after the oral disclosure. Such oral notice to the Affected Member shall include the substance of the oral disclosure, but shall not reveal any confidential information of any other Member and must be received by the Affected Member before the name of the Affected Member is released to the Authorized Person; provided however, disclosure of the identity of the Affected Party must be made to the Authorized Commission with which the Authorized Person is associated within two (2) business days of the initial oral disclosure.

(c) As regards Information Requests:

- (i) Information Requests to the Office of the Interconnection and/or PJM Market Monitor by an Authorized Commission shall be in writing, which shall include electronic communications, addressed to the Office of the Interconnection, and shall: (a) describe the information sought in sufficient detail to allow a response to the Information Request; (b) provide a general description of the purpose of the Information Request; (c) state the time period for which confidential information is requested; and (d) re-affirm that only Authorized Persons shall have access to the confidential information requested. The Office of the Interconnection shall provide an Affected Member with written notice, which shall include electronic communication, of an Information Request by an Authorized Commission as soon as possible, but not later than two (2) business days after the receipt of the Information Request.



- (ii) Subject to the provisions of section (c)(iii), the Office of the Interconnection shall supply confidential information to the Authorized Commission in response to any Information Request within five (5) business days of the receipt of the Information Request, to the extent that the requested confidential information can be made available within such period; provided however, that in no event shall confidential information be released prior to the end of the fourth (4th) business day without the express consent of the Affected Member. To the extent that the Office of the Interconnection cannot reasonably prepare and deliver the requested confidential information within such five (5) day period, it shall, within such period, provide the Authorized Commission with a written schedule for the provision of such remaining confidential information. Upon providing confidential information to the Authorized Commission, the Office of the Interconnection shall either provide a copy of the confidential information to the Affected Member(s), or provide a listing of the confidential information disclosed; provided, however, that the Office of the Interconnection shall not reveal any Member's confidential information to any other Member.
- (iii) Notwithstanding section (c)(ii), above, should the Office of the Interconnection or an Affected Member object to an Information Request or any portion thereof, any of them may, within four (4) business days following the Office of the Interconnection's receipt of the Information Request, request, in writing, a conference with the Authorized Commission to resolve differences concerning the scope or timing of the Information Request; provided, however, nothing herein shall require the Authorized Commission to participate in any conference. Any party to the conference may seek assistance from FERC staff in resolution of the dispute or terminate the conference process at any time. Should such conference be refused or terminated by any participant or should such conference not resolve the dispute, then the Office of the Interconnection or the Affected Member may file a complaint with the Commission pursuant to Rule 206 objecting to the Information Request within ten (10) business days following receipt of written notice from any conference participant terminating such conference. Any complaints filed at FERC objecting to a particular Information Request shall be designated by the party as a "fast track" complaint and each party shall bear its own costs in connection with such FERC proceeding. The grounds for such a complaint shall be limited to the following: (a) the Authorized Commission is no longer able to preserve the confidentiality of the requested information due to changed circumstances relating to the Authorized Commission's ability to protect confidential information arising since the filing of or rejection of a protest directed to the Authorized Commission's Certification; (b) complying with the Information Request would be unduly burdensome to the complainant, and the complainant has made a good faith effort to

negotiate limitations in the scope of the requested information; or (c) other exceptional circumstances exist such that complying with the Information Request would result in harm to the complainant. There shall be a presumption that “exceptional circumstances,” as used in the prior sentence, does not include circumstances in which an Authorized Commission has requested wholesale market data (or PJM Market Monitor workpapers that support or explain conclusions or analyses) generated in the ordinary course and scope of the operations of the Office of the Interconnection and/or the PJM Market Monitor. There shall be a presumption that circumstances in which an Authorized Commission has requested personnel files, internal emails and internal company memos, analyses and related work product constitute “exceptional circumstances” as used in the prior sentence. If no complaint challenging the Information Request is filed within the ten (10) day period defined above, the Office of the Interconnection shall utilize its best efforts to respond to the Information Request promptly. If a complaint is filed, and the Commission does not act on that complaint within ninety (90) days, the complaint shall be deemed denied and the Office of Interconnection shall use its best efforts to respond to the Information Request promptly.

- (iv) Any Authorized Commission may initiate appropriate legal action at FERC within ten (10) business days following receipt of information designated as “Confidential,” challenging such designation. Any complaints filed at FERC objecting to the designation of information as “Confidential” shall be designated by the party as a “fast track” complaint and each party shall bear its own costs in connection with such FERC proceeding. The party filing such a complaint shall be required to prove that the material disclosed does not merit “Confidential” status because it is publicly available from other sources or contains no trade secret or other sensitive commercial information (with “publicly available” not being deemed to include unauthorized disclosures of otherwise confidential data).

(d) In the event of any breach of confidentiality of information disclosed pursuant to an Information Request by an Authorized Commission or Authorized Person:

- (i) The Authorized Commission or Authorized Person shall promptly notify the Office of the Interconnection, who shall, in turn, promptly notify any Affected Member of any inadvertent or intentional release, or possible release, of confidential information provided pursuant to this section.
- (ii) The Office of the Interconnection shall terminate the right of such Authorized Commission to receive confidential information under this section upon written notice to such Authorized Commission unless: (i) there was no harm or damage suffered by the Affected Member; or (ii) similar good cause is shown. Any appeal of the Office of the

Interconnection's and/or the PJM Market Monitor's actions under this section shall be to FERC. An Authorized Commission shall be entitled to reestablish its certification as set forth in Section 18.17.4(a) by submitting a filing with the Commission showing that it has taken appropriate corrective action. If the Commission does not act upon an Authorized Commission's re-certification filing with sixty (60) days of the date of the filing, the re-certification shall be deemed approved and the Authorized Commission shall be permitted to receive confidential information pursuant to this section.

- (iii) The Office of the Interconnection and/or the Affected Member shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (c) the immediate return of all confidential information to the Office of the Interconnection.
- (iv) No Authorized Person or Authorized Commission shall have responsibility or liability whatsoever under this section for any and all liabilities, losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with the release of confidential information to persons not authorized to receive it, provided that such Authorized Person is an agent, servant, employee or member of an Authorized Commission at the time of such unauthorized release. Nothing in this Section (d)(iv) is intended to limit the liability of any person who is not an agent, servant, employee or member of an Authorized Commission at the time of such unauthorized release for any and all economic losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with such unauthorized release.
- (v) Any dispute or conflict requesting the relief in section (d)(ii) or (d)(iii)(a) above, shall be submitted to FERC for hearing and resolution. Any dispute or conflict requesting the relief in section (d)(iii)(c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution.

**18.17.5 Disclosure to New York ISO and New York ISO Market Advisor Concerning Facilities in PSE&G Zone.**

(a) Subject to the requirements of section 18.17.5(b), the Office of the Interconnection may release confidential information of Public Service Electric & Gas Company ("PSE&G"), Consolidated Edison Company of New York ("ConEd"), and their affiliates, and the confidential information of any Member regarding generation and/or transmission facilities located within the PSE&G Zone to the New York Independent System Operator, Inc. ("New York ISO"), the market monitoring unit of the New York ISO and the New York ISO Market Advisor to the

limited extent that the Office of the Interconnection or its Market Monitoring Unit determines necessary to carry out the responsibilities of the Office of the Interconnection, the New York ISO and the market monitoring units of the Office of the Interconnection and the New York ISO under FERC Opinion No. 476 (see *Consolidated Edison Company v. Public Service Electric and Gas Company, et al.*, 108 FERC ¶ 61,120, at P 215 (2004)) to conduct joint investigations to ensure that gaming, abuse of market power, or similar activities do not take place with regard to power transfers under the contracts that are the subject of FERC Opinion No. 476.

(b) The Office of the Interconnection may release a Member's confidential information pursuant to section 18.17.5(a) to the New York ISO, the market monitoring unit of the New York ISO and the New York ISO Market Advisor only if the New York ISO, the market monitoring unit of the New York ISO and the New York ISO Market Advisor are subject to obligations limiting the disclosure of such information that are equivalent to or greater than the limitations on disclosure specified in this section 18.17. Information received from the New York ISO, the market monitoring unit of the New York ISO, or the New York ISO Market Advisor under section 18.17.5(a) that is designated as confidential shall be protected from disclosure in accordance with this section 18.17.

#### **18.17.6 Disclosure of EMS Data to Transmission Owners**

(a) While the Office of the Interconnection has overall power system reliability in the Office of the Interconnection region, Transmission Owners within the Office of the Interconnection region perform certain reliability functions with respect to their individual Transmission Facilities and distribution systems. In order to facilitate reliable operations between the Office of the Interconnection and the Transmission Owners, the Office of the Interconnection may, without written authorization from any Member, install a read-only terminal in any Transmission Owner's secure control room facility, with access to Office of the Interconnection's Energy Management System (EMS) and its associated data transmission and generation data under the terms and conditions set forth in this section 18.17.6.

(b) The data and information produced by the Office of the Interconnection's EMS are confidential and/or commercially sensitive because it will display the real-time status of electric transmission lines and generation facilities, the disclosure of which could impact the market and the commercial interests of its participants. In addition, the responsive information will contain detailed information about real-time grid conditions, transmission lines, power flows, and outages, which may fall within the definition of Critical Energy Infrastructure Information (CEII) as set forth in 18 CFR § 388.112. The Office of the Interconnection shall not release any generator cost, price or other market information without written authorization pursuant to section § 18.17.1 (c) supra. The only generator information that will be made available is real-time MW/MVAR output and Minimum/Maximum MW Range.

(c) The confidential or CEII information provided to the Transmission Owner on a read-only PJM EMS terminal shall only be held in the secure control room facility of the Transmission Owner. Such data shall be used for informational and operational purposes within the control room by Transmission Function employees as defined in the FERC's rules and regulations, 18 C.F.R. § 358.3 (j). No "screen-scraping" or other data transfer of information from the read-only

terminal to other Transmission Owner systems or databases shall be permitted. No storage of information from the read-only terminal shall be permitted. The data shall be held confidential within the transmission function environment and not be disclosed to other personnel within the Transmission Owners' company, subsidiaries, marketing organizations, energy affiliates or independent third parties. The Transmission Owner may use the confidential or CEII information only for the purpose of performing Transmission Owner's Reliability Function and shall not otherwise use the confidential information for its own benefit or for the benefit of any other person.

(d) In the event of any breach:

- (i) The Transmission Owners shall promptly notify the Office of the Interconnection, which shall, in turn, promptly notify FERC and any Affected Member(s) of any inadvertent or intentional release, or possible release, of confidential or CEII information disclosed as provided above.
- (ii) The Office of the Interconnection shall terminate all rights of the Transmission Owner to receive confidential or CEII information as provided in this section 18.17.6; provided, however, that the Office of the Interconnection may restore a Transmission Owners' status after consulting with the Affected Member(s) and to the extent that: (a) the Office of the Interconnection determines that the disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Person; (b) there were no harm or damages suffered by the Affected Member(s); or (c) similar good cause shown. Any appeal of the Office of the Interconnection's actions under this section shall be to FERC.
- (iii) The Office of the Interconnection and/or the Affected Member(s) shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief and/or damages with respect to any breach; and (c) the immediate return of all confidential or CEII information to the Office of the Interconnection.
- (iv) Any dispute or conflict requesting the relief in section (d)(ii) or (d)(iii)(a) above, shall be submitted to FERC for hearing and resolution. Any dispute or conflict requesting the relief in section (d)(iii)(b) and (c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution.

FERC rendition of the electronically filed tariff records in Docket No. ER14-01469-000

Filing Data:

CID: C000030

Filing Title: Revisions to OA Sec 18.17 Permitting Sharing of Data with Gas Pipeline Operators

Company Filing Identifier: 1229

Type of Filing Code: 10

Associated Filing Identifier:

Tariff Title: Intra-PJM Tariffs

Tariff ID: 23

Payment Confirmation:

Suspension Motion:

Tariff Record Data:

Record Content Description, Tariff Record Title, Record Version Number, Option Code:

18.17, OA 18.17 Confidentiality, 5.0.0, A

Record Narrative Name: 18.17 Confidentiality.

Tariff Record ID: 754

Tariff Record Collation Value: 788328403 Tariff Record Parent Identifier: 737

Proposed Date: 2014-03-13

Priority Order: 500

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier:

## **18.17 Confidentiality.**

### **18.17.1 Party Access.**

(a) No Member shall have a right hereunder to receive or review any documents, data or other information of another Member, including documents, data or other information provided to the Office of the Interconnection, to the extent such documents, data or information have been designated as confidential pursuant to the procedures adopted by the Office of the Interconnection and/or the PJM Market Monitor or to the extent that they have been designated as confidential by such other Member; provided, however, a Member may receive and review any composite documents, data and other information that may be developed based on such confidential documents, data or information if the composite does not disclose any individual Member's confidential data or information.

(b) Except as may be provided in this Agreement or in the PJM Open Access Transmission Tariff, the Office of the Interconnection shall not disclose to its Members or to third parties, any documents, data, or other information of a Member or entity applying for Membership, to the extent such documents, data, or other information has been designated confidential pursuant to the procedures adopted by the Office of the Interconnection or by such Member or entity applying for membership; provided that nothing contained herein shall prohibit the Office of the Interconnection from providing any such confidential information to its agents, representatives, or contractors to the extent that such person or entity is bound by an obligation to maintain such confidentiality; provided further that nothing contained herein shall prohibit the Office of the Interconnection from providing Member confidential information to the NERC, any Applicable Regional Entity, or to any reliability coordinator, to the extent that (i) the Office of the Interconnection determines in its reasonable discretion that the exchange of such information is required to enhance and/or maintain reliability within the Members' Applicable Regional Entities and their neighboring Regional Entities, or within the region

of any reliability coordinator, (ii) such entity is bound by a written agreement to maintain such confidentiality, and (iii) the Office of the Interconnection has notified the affected party of its intention to release such information no less than five business days prior to the release. The Office of the Interconnection, its designated agents, representatives, and contractors shall maintain as confidential the electronic tag (“e-Tag”) data of an e-Tag Author or Balancing Authority (defined as those terms are used in FERC Order No. 771) to the same extent as Member data under this Section 18.17. Nothing contained herein shall prohibit the Office of the Interconnection or its designated agents, representatives, or contractors from providing to another Regional Transmission Organization (“RTO”) or Independent System Operator (“ISO”), upon their request, the e-Tags of an e-Tag Author or Balancing Authority for intra-PJM Region transactions and interchange transactions scheduled to flow into, out of or through the PJM Region, to the extent such RTO or ISO has requested such information as part of its investigation of possible market violations or market design flaws, and to the extent that such RTO or ISO is bound by a tariff provision requiring that the e-Tag data be maintained as confidential or, in the absence of a tariff requirement governing confidentiality, a written agreement with the Office of the Interconnection consistent with FERC Order No. 771 and any clarifying orders and implementing regulations. The Office of the Interconnection shall collect and use confidential information only in connection with its authority under this Agreement and the Open Access Transmission Tariff and the retention of such information shall be in accordance with the Office of the Interconnection’s data retention policies.

(c) Nothing contained herein shall prevent the Office of the Interconnection from releasing a Member’s confidential data or information to a third party provided that the Member has delivered to the Office of the Interconnection and/or the PJM Market Monitor specific, written authorization for such release setting forth the data or information to be released, to whom such release is authorized, and the period of time for which such release shall be authorized. The Office of the Interconnection shall limit the release of a Member’s confidential data or information to that specific authorization received from the Member. Nothing herein shall prohibit a Member from withdrawing such authorization upon written notice to the Office of the Interconnection, who shall cease such release as soon as practicable after receipt of such withdrawal notice.

(d) Reciprocal provisions to Sections 18.17.1, 18.17.2, 18.17.3, 18.17.4 and 18.17.5 hereof, delineating the confidentiality requirements of PJM’s Market Monitoring Unit, are set forth in Attachment M – Appendix, section I.

(e) Notwithstanding anything to the contrary in this Agreement or in the PJM Tariff, to allow the tracking of Market Participants’ non-aggregated bids and offers over time as required by FERC Order No. 719, the Office of the Interconnection shall post on its Web site the non-aggregated bid data and Offer Data submitted by Market Participants (for participation on the PJM Interchange Energy Market) approximately four months after the bid or offer was submitted to the Office of the Interconnection. However, to protect the confidential, market sensitive and/or proprietary bidding strategies of Market Participants as well as the identity of Market Participants from being discernible from the published data, the posted information will not reveal the (a) name of the resource, (b)

characteristics of a specific resource, (c) identity of the load, (d) name of the individual or entity submitting the data, (e) identity of the resource owner, or (f) location of the resource at a level lower than its Zone. The Office of the Interconnection also reserves the right to take any other precautionary measures that it deems appropriate to preserve the confidential, market sensitive and/or proprietary bidding strategies of Market Participants to the extent not specifically set forth herein.

(f) To the extent permitted pursuant to 18 C.F.R. §38.2 (or successor provisions), nothing contained herein shall prohibit the Office of the Interconnection from sharing non-public, operational information with an interstate natural gas pipeline operator for the purpose of promoting reliable service or operational planning. Further, the Office of the Interconnection shall be permitted to share non-public, operational information with natural gas local distribution companies and/or intrastate natural gas pipeline operators, as appropriate, for the purpose of promoting reliable service or operational planning, provided that such party has acknowledged, in writing, that it is prohibited from disclosing, or using anyone as a conduit for disclosure of, non-public, operational information received from the Office of Interconnection to a third party or to its marketing function employees as that term is defined by FERC regulations at 18 C.F.R. § 358.3(d). Such non-public, operational information received from natural gas local distribution companies and/or intrastate natural gas pipeline operators pursuant to this section will be subject to the confidentiality provisions set forth in this Section 18.17 of the Operating Agreement.

**18.17.2 Required Disclosure.**

(a) Notwithstanding anything in the foregoing Section to the contrary, and subject to the provisions of Section 18.17.3, if the Office of the Interconnection is required by applicable law, order, or in the course of administrative or judicial proceedings, to disclose to third parties, information that is otherwise required to be maintained in confidence pursuant to this Agreement, the Office of the Interconnection or its designated agents, representatives, or contractors may make disclosure of such information; provided, however, that as soon as the Office of the Interconnection learns of the disclosure requirement and prior to it or its designated agents, representatives, or contractors making disclosure, the Office of the Interconnection shall notify the affected Member or Members of the requirement and the terms thereof and the affected Member or Members may direct, at their sole discretion and cost, any challenge to or defense against the disclosure requirement. The Office of the Interconnection shall cooperate with such affected Members to the maximum extent practicable to minimize the disclosure of the information consistent with applicable law. The Office of the Interconnection shall cooperate with the affected Members to obtain proprietary or confidential treatment of such information by the person to whom such information is disclosed prior to any such disclosure.

(b) Nothing in this Section 18.17 shall prohibit or otherwise limit the Office of the Interconnection's use of information covered herein if such information was: (i) previously known to the Office of the Interconnection without an obligation of confidentiality; (ii) independently developed by or for the Office of the Interconnection



using non-confidential information; (iii) acquired by the Office of the Interconnection from a third party which is not, to the Office of the Interconnection's knowledge, under an obligation of confidence with respect to such information; (iv) which is or becomes publicly available other than through a manner inconsistent with this Section 18.17.

(c) The Office of the Interconnection shall impose on any contractors retained to provide technical support or otherwise to assist with the implementation or administration of this Agreement or of the Open Access Transmission Tariff a contractual duty of confidentiality consistent with this Agreement. A Member shall not be obligated to provide confidential or proprietary information to any contractor that does not assume such a duty of confidentiality, and the Office of the Interconnection shall not provide any such information to any such contractor without the express written permission of the Member providing the information.

### **18.17.3 Disclosure to FERC and CFTC.**

(a) Notwithstanding anything in this Section to the contrary, if the FERC, the Commodity Futures Trading Commission ("CFTC"), or the staff of those commissions, during the course of an investigation or otherwise, requests information from the Office of the Interconnection that is otherwise required to be maintained in confidence pursuant to this Agreement, the Office of the Interconnection shall provide the requested information to the FERC, CFTC or their respective staff, within the time provided for in the request for information. In providing the information to the FERC or its staff, the Office of the Interconnection may request, consistent with 18 C.F.R. §§ 1b.20 and 388.112, or to the CFTC or its staff, the Office of the Interconnection may request, consistent with 17 C.F.R. §§ 11.3 and 145.9, that the information be treated as confidential and non-public by the respective commission and its staff and that the information be withheld from public disclosure. The Office of the Interconnection shall promptly notify any affected Member(s) if the Office of the Interconnection receives from the FERC, CFTC or their staff written notice that the commission has decided to release publicly, or has asked for comment on whether such commission should release publicly, confidential information previously provided to a commission by the Office of the Interconnection.

(b) Section 18.17.3(a) shall not apply to requests for production of information under Subpart D of the FERC's Rules of Practice and Procedure (18 CFR Part 385) in proceedings before FERC and its administrative law judges. In all such proceedings, the Office of the Interconnection shall follow the procedures in Section 18.17.2.

(c) Pursuant to the FERC Order No. 760, as codified under 18 C.F.R. § 35.28(g)(4), to the extent that the Office of the Interconnection already collects such data described in Order No. 760, the Office of the Interconnection shall electronically deliver to the FERC, on an ongoing basis and in a form and manner consistent with its own collection of data and in a form and manner acceptable to the FERC, data related to the markets that the Office of the Interconnection administers. Section 18.17.3(a) shall not apply to data supplied to the FERC under this subsection (c) to satisfy the FERC Order No. 760

requirements.

(d) Pursuant to the FERC Order No. 771 and any clarifying orders, as codified under 18 C.F.R. § 366.2(d), the Office of the Interconnection shall ensure that FERC is included as an addressee on all e-Tags for transactions that sink within the PJM Region.

#### **18.17.4 Disclosure to Authorized Commissions.**

(a) Notwithstanding anything in this section to the contrary, the Office of the Interconnection shall disclose confidential information, otherwise required to be maintained in confidence pursuant to this Agreement, to an Authorized Commission under the following conditions:

- (i) The Authorized Commission has provided the FERC with a properly-executed Certification in the form attached hereto as Schedule 10A. Upon receipt of the Authorized Commission's Certification, the FERC shall provide public notice of the Authorized Commission's filing pursuant to 18 C.F.R. § 385.2009. If any interested party disputes the accuracy and adequacy of the representations contained in the Authorized Commission's Certification, that party may file a protest with the Commission within 14 days of the date of such notice, pursuant to 18 C.F.R. § 385.211. The Authorized Commission may file a response to any such protest within seven days. Each party shall bear its own costs in connection with such a FERC protest proceeding. If there are material changes in law that affect the accuracy and adequacy of the representations in the Certification filed with the Commission, the Authorized Commission shall, within thirty (30) days, submit an amended Certification identifying such changes. Any such amended Certification shall be subject to the same procedures for comment and review by the Commission as set forth above in this paragraph.

The Office of the Interconnection may not disclose data to an Authorized Commission during the Commission's consideration of the Certification and any filed protests. If the Commission does not act upon an Authorized Commission's Certification within 90 days of the date of filing, the Certification shall be deemed approved and the Authorized Commission shall be permitted to receive confidential information pursuant to this section. In the event that an interested party protests the Authorized Commission's Certification and the Commission approves the Certification, that party may not challenge any Information Request made by the Authorized Commission on the grounds that the Authorized Commission is unable to protect the confidentiality of the information requested, in the absence of a showing of

changed circumstances.

- (ii) Any confidential information provided to an Authorized Commission pursuant to this section shall not be further disclosed by the recipient Authorized Commission except by order of the Commission.
- (iii) The Office of the Interconnection shall be expressly entitled to rely upon such Authorized Commission Certifications in providing confidential information to the Authorized Commission, and shall in no event be liable, or subject to damages or claims of any kind or nature hereunder, due to the ineffectiveness or inaccuracy of such Authorized Commission Certifications.
- (iv) The Authorized Commission may provide confidential information obtained from the Office of the Interconnection to such of its employees, attorneys and contractors as needed to examine or handle that information in the course and scope of their work on behalf of the Authorized Commission, provided that (a) the Authorized Commission has internal procedures in place, pursuant to the Certification, to ensure that each person receiving such information agrees to protect the confidentiality of such information (such employees, attorneys or contractors to be defined hereinafter as “Authorized Persons”); (b) the Authorized Commission provides, pursuant to the Certification, a list of such Authorized Persons to the Office of the Interconnection and the PJM Market Monitor and updates such list, as necessary, every ninety (90) days; and (c) any third-party contractors provided access to confidential information sign a non-disclosure agreement in the form attached hereto as Schedule 10 before being provided access to any such confidential information.
- (v) The Office of the Interconnection shall maintain a schedule of all Authorized Persons and the Authorized Commissions they represent, which shall be made publicly available on its website, or by written request. Such schedule shall be compiled by the Office of the Interconnection, based on information provided by any Authorized Commission. The Office of the Interconnection shall update the schedule promptly upon receipt of information from an Authorized Commission, but shall have no obligation to verify or corroborate any such information, and shall not be liable or otherwise responsible for any inaccuracies in the schedule due to incomplete or erroneous information conveyed to and relied upon by the Office of the Interconnection in the compilation and/or maintenance of the schedule.

(b) The Office of the Interconnection may, in the course of discussions with an Authorized Person, orally disclose information otherwise required to be maintained in confidence, without the need for a prior Information Request. Such oral disclosures shall provide enough information to enable the Authorized Person or the Authorized Commission with which that Authorized Person is associated to determine whether additional Information Requests are appropriate. The Office of the Interconnection will not make any written or electronic disclosures of confidential information to the Authorized Person pursuant to this Section 18.17.4(b). In any such discussions, the Office of the Interconnection shall ensure that the individual or individuals receiving such confidential information are Authorized Persons as defined herein, orally designate confidential information that is disclosed, and refrain from identifying any specific Affected Member whose information is disclosed. The Office of the Interconnection shall also be authorized to assist Authorized Persons in interpreting confidential information that is disclosed. The Office of the Interconnection shall provide any Affected Member with oral notice of any oral disclosure immediately, but not later than one (1) business day after the oral disclosure. Such oral notice to the Affected Member shall include the substance of the oral disclosure, but shall not reveal any confidential information of any other Member and must be received by the Affected Member before the name of the Affected Member is released to the Authorized Person; provided however, disclosure of the identity of the Affected Party must be made to the Authorized Commission with which the Authorized Person is associated within two (2) business days of the initial oral disclosure.

(c) As regards Information Requests:

- (i) Information Requests to the Office of the Interconnection and/or PJM Market Monitor by an Authorized Commission shall be in writing, which shall include electronic communications, addressed to the Office of the Interconnection, and shall: (a) describe the information sought in sufficient detail to allow a response to the Information Request; (b) provide a general description of the purpose of the Information Request; (c) state the time period for which confidential information is requested; and (d) re-affirm that only Authorized Persons shall have access to the confidential information requested. The Office of the Interconnection shall provide an Affected Member with written notice, which shall include electronic communication, of an Information Request by an Authorized Commission as soon as possible, but not later than two (2) business days after the receipt of the Information Request.
- (ii) Subject to the provisions of section (c)(iii), the Office of the Interconnection shall supply confidential information to the Authorized Commission in response to any Information Request within five (5) business days of the receipt of the Information Request, to the extent that the requested confidential information can be made available within such period; provided however, that

in no event shall confidential information be released prior to the end of the fourth (4th) business day without the express consent of the Affected Member. To the extent that the Office of the Interconnection cannot reasonably prepare and deliver the requested confidential information within such five (5) day period, it shall, within such period, provide the Authorized Commission with a written schedule for the provision of such remaining confidential information. Upon providing confidential information to the Authorized Commission, the Office of the Interconnection shall either provide a copy of the confidential information to the Affected Member(s), or provide a listing of the confidential information disclosed; provided, however, that the Office of the Interconnection shall not reveal any Member's confidential information to any other Member.

- (iii) Notwithstanding section (c)(ii), above, should the Office of the Interconnection or an Affected Member object to an Information Request or any portion thereof, any of them may, within four (4) business days following the Office of the Interconnection's receipt of the Information Request, request, in writing, a conference with the Authorized Commission to resolve differences concerning the scope or timing of the Information Request; provided, however, nothing herein shall require the Authorized Commission to participate in any conference. Any party to the conference may seek assistance from FERC staff in resolution of the dispute or terminate the conference process at any time. Should such conference be refused or terminated by any participant or should such conference not resolve the dispute, then the Office of the Interconnection or the Affected Member may file a complaint with the Commission pursuant to Rule 206 objecting to the Information Request within ten (10) business days following receipt of written notice from any conference participant terminating such conference. Any complaints filed at FERC objecting to a particular Information Request shall be designated by the party as a "fast track" complaint and each party shall bear its own costs in connection with such FERC proceeding. The grounds for such a complaint shall be limited to the following: (a) the Authorized Commission is no longer able to preserve the confidentiality of the requested information due to changed circumstances relating to the Authorized Commission's ability to protect confidential information arising since the filing of or rejection of a protest directed to the Authorized Commission's Certification; (b) complying with the Information Request would be unduly burdensome to the complainant, and the complainant has made a good faith effort to negotiate limitations in the scope of the requested information; or (c) other exceptional circumstances exist

such that complying with the Information Request would result in harm to the complainant. There shall be a presumption that “exceptional circumstances,” as used in the prior sentence, does not include circumstances in which an Authorized Commission has requested wholesale market data (or PJM Market Monitor workpapers that support or explain conclusions or analyses) generated in the ordinary course and scope of the operations of the Office of the Interconnection and/or the PJM Market Monitor. There shall be a presumption that circumstances in which an Authorized Commission has requested personnel files, internal emails and internal company memos, analyses and related work product constitute “exceptional circumstances” as used in the prior sentence. If no complaint challenging the Information Request is filed within the ten (10) day period defined above, the Office of the Interconnection shall utilize its best efforts to respond to the Information Request promptly. If a complaint is filed, and the Commission does not act on that complaint within ninety (90) days, the complaint shall be deemed denied and the Office of Interconnection shall use its best efforts to respond to the Information Request promptly.

- (iv) Any Authorized Commission may initiate appropriate legal action at FERC within ten (10) business days following receipt of information designated as “Confidential,” challenging such designation. Any complaints filed at FERC objecting to the designation of information as “Confidential” shall be designated by the party as a “fast track” complaint and each party shall bear its own costs in connection with such FERC proceeding. The party filing such a complaint shall be required to prove that the material disclosed does not merit “Confidential” status because it is publicly available from other sources or contains no trade secret or other sensitive commercial information (with “publicly available” not being deemed to include unauthorized disclosures of otherwise confidential data).

(d) In the event of any breach of confidentiality of information disclosed pursuant to an Information Request by an Authorized Commission or Authorized Person:

- (i) The Authorized Commission or Authorized Person shall promptly notify the Office of the Interconnection, who shall, in turn, promptly notify any Affected Member of any inadvertent or intentional release, or possible release, of confidential information provided pursuant to this section.
- (ii) The Office of the Interconnection shall terminate the right of such Authorized Commission to receive confidential information under

this section upon written notice to such Authorized Commission unless: (i) there was no harm or damage suffered by the Affected Member; or (ii) similar good cause is shown. Any appeal of the Office of the Interconnection's and/or the PJM Market Monitor's actions under this section shall be to FERC. An Authorized Commission shall be entitled to reestablish its certification as set forth in Section 18.17.4(a) by submitting a filing with the Commission showing that it has taken appropriate corrective action. If the Commission does not act upon an Authorized Commission's re-certification filing with sixty (60) days of the date of the filing, the re-certification shall be deemed approved and the Authorized Commission shall be permitted to receive confidential information pursuant to this section.

- (iii) The Office of the Interconnection and/or the Affected Member shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (c) the immediate return of all confidential information to the Office of the Interconnection.
- (iv) No Authorized Person or Authorized Commission shall have responsibility or liability whatsoever under this section for any and all liabilities, losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with the release of confidential information to persons not authorized to receive it, provided that such Authorized Person is an agent, servant, employee or member of an Authorized Commission at the time of such unauthorized release. Nothing in this Section (d)(iv) is intended to limit the liability of any person who is not an agent, servant, employee or member of an Authorized Commission at the time of such unauthorized release for any and all economic losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with such unauthorized release.
- (v) Any dispute or conflict requesting the relief in section (d)(ii) or (d)(iii)(a) above, shall be submitted to FERC for hearing and resolution. Any dispute or conflict requesting the relief in section (d)(iii)(c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution.

#### **18.17.5**

#### **Disclosure to New York ISO and New York ISO Market Advisor Concerning Facilities in PSE&G Zone.**

(a) Subject to the requirements of section 18.17.5(b), the Office of the Interconnection may release confidential information of Public Service Electric & Gas Company (“PSE&G”), Consolidated Edison Company of New York (“ConEd”), and their affiliates, and the confidential information of any Member regarding generation and/or transmission facilities located within the PSE&G Zone to the New York Independent System Operator, Inc. (“New York ISO”), the market monitoring unit of the New York ISO and the New York ISO Market Advisor to the limited extent that the Office of the Interconnection or its Market Monitoring Unit determines necessary to carry out the responsibilities of the Office of the Interconnection, the New York ISO and the market monitoring units of the Office of the Interconnection and the New York ISO under FERC Opinion No. 476 (see *Consolidated Edison Company v. Public Service Electric and Gas Company, et al.*, 108 FERC ¶ 61,120, at P 215 (2004)) to conduct joint investigations to ensure that gaming, abuse of market power, or similar activities do not take place with regard to power transfers under the contracts that are the subject of FERC Opinion No. 476.

(b) The Office of the Interconnection may release a Member’s confidential information pursuant to section 18.17.5(a) to the New York ISO, the market monitoring unit of the New York ISO and the New York ISO Market Advisor only if the New York ISO, the market monitoring unit of the New York ISO and the New York ISO Market Advisor are subject to obligations limiting the disclosure of such information that are equivalent to or greater than the limitations on disclosure specified in this section 18.17. Information received from the New York ISO, the market monitoring unit of the New York ISO, or the New York ISO Market Advisor under section 18.17.5(a) that is designated as confidential shall be protected from disclosure in accordance with this section 18.17.

#### **18.17.6 Disclosure of EMS Data to Transmission Owners**

(a) While the Office of the Interconnection has overall power system reliability in the Office of the Interconnection region, Transmission Owners within the Office of the Interconnection region perform certain reliability functions with respect to their individual Transmission Facilities and distribution systems. In order to facilitate reliable operations between the Office of the Interconnection and the Transmission Owners, the Office of the Interconnection may, without written authorization from any Member, install a read-only terminal in any Transmission Owner’s secure control room facility, with access to Office of the Interconnection’s Energy Management System (EMS) and its associated data transmission and generation data under the terms and conditions set forth in this section 18.17.6.

(b) The data and information produced by the Office of the Interconnection’s EMS are confidential and/or commercially sensitive because it will display the real-time status of electric transmission lines and generation facilities, the disclosure of which could impact the market and the commercial interests of its participants. In addition, the responsive information will contain detailed information about real-time grid conditions,



transmission lines, power flows, and outages, which may fall within the definition of Critical Energy Infrastructure Information (CEII) as set forth in 18 CFR § 388.112. The Office of the Interconnection shall not release any generator cost, price or other market information without written authorization pursuant to section § 18.17.1 (c) supra. The only generator information that will be made available is real-time MW/MVAR output and Minimum/Maximum MW Range.

(c) The confidential or CEII information provided to the Transmission Owner on a read-only PJM EMS terminal shall only be held in the secure control room facility of the Transmission Owner. Such data shall be used for informational and operational purposes within the control room by Transmission Function employees as defined in the FERC's rules and regulations, 18 C.F.R. § 358.3 (j). No "screen-scraping" or other data transfer of information from the read-only terminal to other Transmission Owner systems or databases shall be permitted. No storage of information from the read-only terminal shall be permitted. The data shall be held confidential within the transmission function environment and not be disclosed to other personnel within the Transmission Owners' company, subsidiaries, marketing organizations, energy affiliates or independent third parties. The Transmission Owner may use the confidential or CEII information only for the purpose of performing Transmission Owner's Reliability Function and shall not otherwise use the confidential information for its own benefit or for the benefit of any other person.

(d) In the event of any breach:

- (i) The Transmission Owners shall promptly notify the Office of the Interconnection, which shall, in turn, promptly notify FERC and any Affected Member(s) of any inadvertent or intentional release, or possible release, of confidential or CEII information disclosed as provided above.
- (ii) The Office of the Interconnection shall terminate all rights of the Transmission Owner to receive confidential or CEII information as provided in this section 18.17.6; provided, however, that the Office of the Interconnection may restore a Transmission Owners' status after consulting with the Affected Member(s) and to the extent that: (a) the Office of the Interconnection determines that the disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Person; (b) there were no harm or damages suffered by the Affected Member(s); or (c) similar good cause shown. Any appeal of the Office of the Interconnection's actions under this section shall be to FERC.
- (iii) The Office of the Interconnection and/or the Affected Member(s) shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or

permanent injunctive relief and/or damages with respect to any breach; and (c) the immediate return of all confidential or CEII information to the Office of the Interconnection.

- (iv) Any dispute or conflict requesting the relief in section (d)(ii) or (d)(iii)(a) above, shall be submitted to FERC for hearing and resolution. Any dispute or conflict requesting the relief in section (d)(iii)(b) and (c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution.

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