

**CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement, dated \_\_\_\_\_, is entered into by and between the New York State Reliability Council, LLC, a Delaware limited liability company (the "Council"), and the disclosing party, whether an individual or entity, a Market Participant, the New York Independent System Operator (the "ISO") or an employee or contractor of a Market Participant or otherwise, as the case may be (the "Disclosing Party"). The Council and the Disclosing Party are sometimes collectively referred to herein as the "Parties". The definitions set forth in the ISO Agreement, as filed with the Federal Energy Regulatory Commission on July 2, 1999, are applicable to this Agreement, unless the term is specifically defined in this Agreement or a definition set forth in the ISO Agreement is inconsistent with the express terms of this Agreement.

**W I T N E S S E S**

**WHEREAS**, the mission of the Council is to promote and preserve the reliability of electric service on the NYS Power System by developing, maintaining, and from time-to-time, updating the Reliability Rules which shall be complied with by the ISO and all entities engaging in electric transmission,

ancillary services, energy and power transactions on the NYS Power System;

**WHEREAS**, the Council recognizes that information communicated through meetings of the Executive Committee or any subcommittee, working group or task force, distributions of materials, or other events (each, a "Council Activity" and collectively, "Council Activities") may have commercial value to participants in the regional power markets, including independent power marketers and the wholesale merchant functions and power marketers affiliated with traditional utilities;

**WHEREAS**, the Council recognizes that the disclosure information communicated through Council Activities may compromise the security of the NYS Bulk Power System;

**WHEREAS**, it is the policy of the Council to receive confidential information (including, without limitation Confidential Information as hereinafter defined) only when such confidential information is essential to Council Activities;

**WHEREAS**, the Council and the Disclosing Party desire to restrict the disclosure of Confidential Information (as hereinafter defined) to unauthorized persons, the Parties agree as follows:

1. "Confidential Information" means trade secrets, Market Information (as hereinafter defined), Security Information (as hereinafter defined), proprietary information and other

information (including all copies, extracts, summaries, or other documents containing information derived therefrom) that is confidential, privileged or of competitive value and which is being disclosed by the Disclosing Party to (i) the Council, (ii) members of the Executive Committee, and alternates to the Executive Committee, members of any NYSRC subcommittee, working group or task force, officers, employees, consultants, auditors, accountants, counsel or other representative of the Council (collectively, "Council Personnel"), pursuant to this Agreement and which is identified on Schedule "A" annexed hereto and marked as confidential by the Disclosing Party. "Market Information" means any information in written, oral, electronic or other form, whether present or future, positive or negative, concrete or potential, significant or slight, that is related to or may affect the price, quantity or any other aspect of transactions related to the purchase, sale or transmission of electricity, including but not limited to the availability of generating facilities, prices or purchases of electricity or fuel, power contract transactions or negotiations; "Disclosure Requirements" means obligations of any party to publicly disclose information, including those imposed by orders of the Federal Energy Regulatory Commission ("FERC"), ISO rules, State laws or regulations, and federal and state codes of conduct governing affiliate relations. Security Information means any

information, written or oral, electronic or other form, whether present or future, positive or negative, concrete or potential, significant or slight, the disclosure of which may compromise the security of the NYS Bulk Power System.

2. Council Personnel shall be entitled to regard all Market Information and Security Information that is communicated to them by the Disclosing Party as public information at the time of the communication unless the Disclosing Party expressly designates such Market Information or Security Information as Confidential Information on Schedule "A" annexed hereto.

3. The Disclosing Party recognizes that it is the policy of the Council to receive Confidential Information (including, without limitation, the Confidential Information disclosed pursuant to this Agreement) only when such Confidential Information is essential to Council Activities. Nevertheless, the Disclosing Party has elected to disclose the Confidential Information to the Council voluntarily in the belief that such Confidential Information is essential to Council Activities.

4. The Disclosing Party shall be solely responsible for any liability associated with unauthorized disclosure of Market Information and hereby represents and warrants that Disclosure Requirements applicable to the Confidential Information have been complied with. The Disclosing Party acknowledges that the Council does not regard the communication of Market Information

in a Council Activity to constitute public disclosure for purposes of compliance with any applicable Disclosure Requirement.

5. The Council acknowledges that execution of this Agreement creates a confidential relationship between the Council and the Disclosing Party with respect to the Confidential Information received and that this Agreement creates a duty on the Council's part to protect the Confidential Information from unauthorized disclosure; provided, however, that neither the Council nor any Council Personnel shall be liable for any damages arising out of or resulting from the disclosure of Confidential Information unless and to the extent of the Council's or such Counsel Personnel's own gross negligence or willful misconduct, in which case neither the Council nor any Council Personnel will not be liable for any incidental, consequential, exemplary, punitive, special or indirect damages.

6. The Council and the Disclosing Party agree and acknowledge that the use of the Confidential Information is for the sole and exclusive use of the Council and Council Personnel in connection with Council Activities; provided, however, that consultants shall be given access to the Confidential Information only to the extent that the Executive Committee of the Council, in its sole discretion, deems it necessary to

disclose the Confidential Information to such consultants. Notwithstanding anything else to the contrary set forth herein, the Council hereby represents and warrants that Council Personnel who are given access to the Confidential Information shall be bound by the terms of this Agreement. It is expressly understood and agreed that the Public Service Commission of the State of New York, FERC, the ISO, and any officer, director, employee, consultant, or other agent of any of them are not "Council Personnel" and are not covered by the terms of this Agreement. Subject to Paragraph 7(a) below, the Council shall not disclose Confidential Information to anyone other than Council Personnel. The Executive Committee shall, when appropriate, meet in executive session in order to preserve the confidentiality of the Confidential Information.

7. The Council and the Disclosing Party agree to be bound by the following terms and restrictions:

- a. The Council shall not use, publish, disclose or otherwise divulge any of the Confidential Information, to any person or entity other than Council Personnel without the prior written consent of the Disclosing Party; provided, however, that if the Council is required by an order of a court or administrative agency of appropriate jurisdiction to disclose Confidential Information, the Council may make such disclosure of Confidential Information. In disclosing such Confidential Information pursuant to this paragraph, the Council shall use reasonable efforts to obtain proprietary, confidential or trade secret treatment of such Confidential Information by the person to whom the Confidential Information is disclosed.

- b. Prior to delivery and/or disclosure to the Council, all Confidential Information, including computer disks and files, shall be marked by the Disclosing Party with the label "Confidential Information," (or when appropriate, the Disclosing Party shall designate on Schedule "A" annexed hereto, oral communications as "Confidential Information"). Confidential Information so marked shall be stored by the Council in a secure location.
  - c. Upon the written request of the Disclosing Party or as soon thereafter as practicable, the Council shall return to the Disclosing Party all documents, records, recordings, magnetic tapes, computer disks, cards, and any other tangible objects or materials that may contain Confidential Information, to the extent practicable.
  - d. Notwithstanding anything to contrary, the Council and Council Personnel shall be entitled to disclose Confidential Information in the event that such Confidential Information comes into the public domain through any third party or any source other than the Council and Council Personnel.
8. Paragraphs two (2) through seven (7) of this Agreement shall survive the termination of this Agreement.
9. The Parties hereby acknowledge and represent that they are fully authorized to execute this Agreement.
10. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The Parties agree to submit to the jurisdiction of either New York state courts or federal courts which are situated within New York as the exclusive forum for any legal proceeding relating to any controversy or claim arising out of the performance or non-performance of this Agreement.

11. The terms and restrictions of this Agreement cannot be modified without the express written consent of the Parties.

12. This Agreement shall terminate upon the earlier of (i) the return of all Confidential Information to the Disclosing Party, or (ii) the mutual consent of the Parties.

**IN WITNESS WHEREOF**, the Parties have entered into this Agreement as of the date first above written.

NEW YORK STATE RELIABILITY  
COUNCIL, LLC

By: \_\_\_\_\_  
Name:  
Title:

The Disclosing Party

**As Amended & Approved by the NYSRC Executive Committee  
May 9, 2003**



SCHEDULE "A"  
DESCRIPTION OF CONFIDENTIAL INFORMATION

