

SCHEDULE 10 -

FORM OF NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the "Agreement") is made this ____ day of _____, 2004, by and between _____, an Authorized Person, as defined below, of _____ (the "State Commission") having jurisdiction within the State of _____, with offices at _____ and PJM Interconnection, L.L.C., a Delaware limited liability company, with offices at 955 Jefferson Avenue, Valley Forge Corporate Center, Norristown, PA 10403 ("PJM"). The State Commission and PJM shall be referred to herein individually as a "Party," or collectively as the "Parties."

RECITALS

Whereas , PJM serves as the Regional Transmission Organization with reliability and/or functional control responsibilities over transmission systems involving fourteen states including the District of Columbia, and operates and oversees wholesale markets for electricity pursuant to the requirements of the PJM Tariff and the Operating Agreement, as defined below; and

Whereas, the PJM Market Monitor serves as the monitor for PJM's wholesale markets for electricity, and

Whereas , the Operating Agreement requires that PJM and the PJM Market Monitor maintain the confidentiality of Confidential Information; and

Whereas , the Operating Agreement requires PJM and the PJM Market Monitor to disclose Confidential Information to Authorized Persons upon satisfaction of conditions stated in the Operating Agreement, including, but not limited to, the execution of this Agreement by the Authorized Person and the maintenance of the confidentiality of such information pursuant to the terms of this Agreement; and

Whereas , PJM desires to provide Authorized Persons with the broadest possible access to Confidential Information, consistent with PJM's and the PJM Market Monitor's obligations and duties under the PJM Operating Agreement, the PJM Tariff and other applicable FERC directives; and

Whereas , this Agreement is a statement of the conditions and requirements, consistent with the requirements of the Operating Agreement, whereby PJM or the PJM Market Monitor may provide Confidential Information to the Authorized Person.

NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS.

- 1.1 Affected Member.** A Member of PJM which as a result of its participation in PJM's markets or its membership in PJM provided Confidential Information to PJM, which Confidential Information is requested by, or is disclosed to an Authorized Person under this Agreement.
- 1.2 Authorized Commission.** (i) A State (which shall include the District of Columbia) public utility commission within the geographic limits of the PJM Region (as that term is defined in the Operating Agreement) that regulates the distribution or supply of electricity to retail customers and is legally charged with monitoring the operation of wholesale or retail markets serving retail suppliers or customers within its State or (ii) an association or organization comprised exclusively of State public utility commissions described in the immediately preceding clause (i).
- 1.3 Authorized Person.** A person, including the undersigned, which has executed this Agreement and is authorized in writing by an Authorized Commission to receive and discuss Confidential Information. Authorized Persons may include attorneys representing an Authorized Commission, consultants and/or contractors directly employed or retained by an Authorized Commission, provided however that consultants or contractors may not initiate requests for Confidential Information from PJM or the PJM Market Monitor
- 1.4 Confidential Information.** Any information that would be considered non-public or confidential under the Operating Agreement.
- 1.5 FERC.** The Federal Energy Regulatory Commission.
- 1.6 Information Request.** A written request, in accordance with the terms of this Agreement for disclosure of Confidential Information pursuant to Section 18.17.4 of the Operating Agreement.
- 1.7 Operating Agreement.** The Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., as it may be further amended or restated from time to time.
- 1.8 PJM Market Monitor.** The Market Monitoring Unit established under Attachment M to the PJM Tariff.
- 1.9 PJM Tariff.** The PJM Open Access Transmission Tariff, as it may be amended from time to time.
- 1.10 Third Party Request.** Any request or demand by any entity upon an Authorized Person or an Authorized Commission for release or disclosure of Confidential Information. A Third Party Request shall include, but shall not be limited to, any subpoena, discovery request, or other request for Confidential Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court, or (ii) arbitration panel, business, company, entity or individual.

2. **Protection of Confidentiality.**

- 2.1 Duty to Not Disclose.** The Authorized Person represents and warrants that he or she: (i) is presently an Authorized Person as defined herein; (ii) is duly authorized to enter into and perform this Agreement; (iii) has adequate procedures to protect against the release of Confidential Information, and (iv) is familiar with, and will comply with, all such applicable State Commission procedures. The Authorized Person hereby covenants and agrees on behalf of himself or herself to deny any Third Party Request and defend against any legal process which seeks the release of Confidential Information in contravention of the terms of this Agreement.
- 2.2 Conditions Precedent.** As a condition of the execution, delivery and effectiveness of this Agreement by PJM and the continued provision of Confidential Information pursuant to the terms of this Agreement, the Authorized Commission shall, prior to the initial oral or written request for Confidential Information by an Authorized Person on its behalf, provide PJM with: (a) a final order of FERC prohibiting the release by the Authorized Person or the State Commission of Confidential Information in accordance with the terms of the Operating Agreement and this Agreement; and (b) either an order of the State Commission or a certification from counsel to the State Commission, confirming that the State Commission has statutory authority to protect the confidentiality of the Confidential Information from public release or disclosure and from release or disclosure to any other entity, and that it has adequate procedures to protect against the release of Confidential Information; and (c) confirmation in writing that the Authorized Person is authorized by the State Commission to enter into this Agreement and to receive Confidential Information under the Operating Agreement. PJM and the PJM Market Monitor shall be expressly entitled to rely upon such FERC and State Commission orders and/or certifications of counsel in providing Confidential Information to the Authorized Person, and shall in no event be liable, or subject to damages or claims of any kind or nature hereunder or pursuant to the Operating Agreement, due to the ineffectiveness of the FERC and/or State Commission orders, or the inaccuracy of such certification of counsel.
- 2.3 Discussion of Confidential Information with other Authorized Persons .** The Authorized Person may discuss Confidential Information with other Authorized Persons who have executed non-disclosure agreements with PJM containing the same terms and conditions as this Agreement; provided, however, that PJM shall have confirmed in advance and in writing that PJM has previously released the Confidential Information in question to such Authorized Persons. PJM shall respond to any written request for confirmation within two (2) business days of its receipt.

2.4 Defense Against Third Party Requests. The Authorized Person shall defend against any disclosure of Confidential Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders. The Authorized Person shall provide PJM, and PJM shall provide each Affected Member, with prompt notice of any such Third Party Request or legal proceedings, and shall consult with PJM and/or any Affected Member in its efforts to deny the request or defend against such legal process. In the event a protective order or other remedy is denied, the Authorized Person agrees to furnish only that portion of the Confidential Information which their legal counsel advises PJM (and of which PJM shall, in turn, advise any Affected Members) in writing is legally required to be furnished, and to exercise their best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information.

2.5 Care and Use of Confidential Information.

2.5.1 Control of Confidential Information. The Authorized Person(s) shall be the custodian(s) of any and all Confidential Information received pursuant to the terms of this Agreement from PJM or the PJM Market Monitor.

2.5.2 Access to Confidential Information. The Authorized Person shall ensure that Confidential Information received by that Authorized Person is disseminated only to those persons publicly identified as Authorized Persons on Exhibit "A" to the certification provided by the State Commission to PJM pursuant to the procedures contained in section 2.3 of this Agreement.

2.5.3 Schedule of Authorized Persons.

- (i) The Authorized Person shall promptly notify PJM of any change that would affect the Authorized Person's status as an Authorized Person, and in such event shall request, in writing, deletion from the schedule referred to in section (ii), below.
- (ii) PJM shall maintain a schedule of all Authorized Persons and the Authorized Commissions they represent, which shall be made publicly available on the PJM website and/or by written request. Such schedule shall be compiled by PJM, based on information provided by any Authorized Person and/or Authorized Commission. PJM shall update the schedule promptly upon receipt of information from an Authorized Person or 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 PJM in the compilation and/or maintenance of the schedule.

- 2.5.4 Use of Confidential Information.** The Authorized Person shall use the Confidential Information solely for the purpose of assisting the State Commission in discharging its legal responsibility to monitor the wholesale and retail electricity markets, operations, transmission planning and siting and generation planning and siting materially affecting retail customers within the State, and for no other purpose.
- 2.5.5 Return of Confidential Information.** Upon completion of the inquiry or investigation referred to in the Information Request, or for any reason the Authorized Person is, or will no longer be an Authorized Person, the Authorized Person shall (a) return the Confidential Information and all copies thereof to PJM, or (b) provide a certification that the Authorized Person has destroyed all paper copies and deleted all electronic copies of the Confidential Information. PJM may waive this condition in writing if such Confidential Information has become publicly available or non-confidential in the course of business or pursuant to the PJM Tariff, PJM rule or order of the FERC.
- 2.5.6 Notice of Disclosures.** The Authorized Person, directly or through the Authorized Commission, shall promptly notify PJM, and PJM shall promptly notify any Affected Member, of any inadvertent or intentional release or possible release of the Confidential Information provided pursuant to this Agreement. The Authorized Person shall take all steps to minimize any further release of Confidential Information, and shall take reasonable steps to attempt to retrieve any Confidential Information that may have been released.
- 2.6 Ownership and Privilege.** Nothing in this Agreement, or incident to the provision of Confidential Information to the Authorized Person pursuant to any Information Request, is intended, nor shall it be deemed, to be a waiver or abandonment of any legal privilege that may be asserted against subsequent disclosure or discovery in any formal proceeding or investigation. Moreover, no transfer or creation of ownership rights in any intellectual property comprising Confidential Information is intended or shall be inferred by the disclosure of Confidential Information by PJM, and any and all intellectual property comprising Confidential Information disclosed and any derivations thereof shall continue to be the exclusive intellectual property of PJM and/or the Affected Member.

3. Procedure for Information Requests

- 3.1 Written Requests.** Information Requests to PJM shall be in writing, which shall include electronic communications, addressed to the PJM Market Monitor or other PJM representatives as specified by PJM, with a concurrent copy to PJM's General Counsel, and shall: (a) describe with particularity the information sought; (b) provide a description of the purpose of the Information Request; (c) state the time period for which information is requested; and (d) re-affirm that only the Authorized Person shall have access to the Confidential Information requested. PJM shall provide an Affected Member with written notice, which shall include electronic communication, of an Information Request of the Authorized Person as soon as possible, but not later than two (2) business days after the receipt of the Information Request.
- 3.2 Oral Disclosures by the PJM Market Monitor.** The PJM Market Monitor or other PJM representatives as specified by PJM 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 State Commission to determine whether additional Information Requests for information are appropriate. The PJM Market Monitor or other PJM representative will not make any written or electronic disclosures of Confidential Information to the Authorized Person pursuant to this section. In any such discussions, the PJM Market Monitor or other PJM representative shall ensure that the individual or individuals receiving such Confidential Information are Authorized Persons under this Agreement, orally designate Confidential Information that is disclosed, and refrain from identifying any specific Affected Member whose information is disclosed. The PJM Market Monitor or other PJM representative shall also be authorized to assist Authorized Persons in interpreting Confidential Information that is disclosed. PJM or the PJM Market Monitor shall (i) maintain a written record of oral disclosures pursuant to this section, which shall include the date of each oral disclosure and the Confidential Information disclosed in each such oral disclosure, and (ii) 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, the identity of the Affected Party must be made available to the Authorized Person within two (2) business days of the initial oral disclosure.

3.3 Response to Information Requests.

- 3.3.1** Subject to the provisions of Section 3.3.2 below, PJM shall supply Confidential Information to the Authorized Person 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 PJM can not reasonably prepare and deliver the requested Confidential Information within such five (5) day period, PJM shall, within such period, provide the Authorized Person with a written schedule for the provision of such remaining Confidential Information. Upon providing Confidential Information to the Authorized Person, PJM 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 PJM shall not reveal any Member's Confidential Information to any other Member.
- 3.3.2** Notwithstanding section 3.3.1, above, should PJM or an Affected Member object to an Information Request or any portion thereof, PJM or the Affected Member may, within four (4) business days following PJM's receipt of the Information Request, request, in writing (which shall include electronic communication) addressed to the State Commission with a copy to either the Affected Party or PJM, as the case may be, a conference with the State Commission or the State Commission's authorized designee to resolve differences concerning the scope or timing of the Information Request; provided, however, nothing herein shall require the State Commission to participate in any conference. Any party to the conference may seek assistance from FERC staff in resolution of the dispute. Should such conference be refused by any participant, or not resolve the dispute, then PJM, the Affected Member or the State Commission may initiate appropriate legal action at FERC within three (3) 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. If no FERC proceeding regarding the Information Request is commenced by PJM, the Affected Member or the State Commission within such three day period, PJM shall utilize its best efforts to respond to the Information Request promptly.
- 3.3.3** To the extent that a response to any Information Request requires disclosure of Confidential Information of two or more Affected Parties, PJM shall, to the extent possible, segregate such information and respond to the Information Request separately for each Affected Member.

4. Remedies.

- 4.1 Material Breach.** The Authorized Person agrees that release of Confidential Information to persons not authorized to receive it constitutes a breach of this Agreement and may cause irreparable harm to PJM and/or the Affected Member. In the event of a breach of this Agreement by the Authorized Person, PJM shall terminate this Agreement upon written notice to the Authorized Person and his or her Authorized Commission, and all rights of the Authorized Person hereunder shall thereupon terminate; provided, however, that PJM may restore an individual's status as an Authorized Person after consulting with the Affected Member and to the extent that: (i) PJM determines that the disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Person; (ii) there were no harm or damages suffered by the Affected Member; or (iii) similar good cause shown. Any appeal of PJM's actions under this section shall be to FERC.
- 4.2 Judicial Recourse.** In the event of any breach of this Agreement, PJM 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 PJM. The Authorized Person expressly agrees that in the event of a breach of this Agreement, any relief sought properly includes, but shall not be limited to, the immediate return of all Confidential Information to PJM.
- 4.3 Waiver of Monetary Damages.** No Authorized Person shall have responsibility or liability whatsoever under this Agreement 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 employee or member of an Authorized Commission at the time of such unauthorized release. Nothing in this Section 4.3 is intended to limit the liability of any person who is not an employee of or a 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.
- 5. Jurisdiction.** The Parties agree that (i) any dispute or conflict requesting the relief in sections 4.1, and 4.2(a) above shall be submitted to FERC for hearing and resolution; (ii) any dispute or conflict requesting the relief in section 4.2(c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution; and (iii) jurisdiction over all other actions and requested relief shall lie in any court of competent jurisdiction.

6. **Notices.** All notices required pursuant to the terms of this Agreement shall be in writing, and served upon the following individuals in person, or at the following addresses or email addresses:

If to the Authorized Person:

(email address)

with a copy to

(email address)

If to PJM:

Market Monitor
PJM Interconnection, LLC
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403
bowrij@pjm.com

with a copy to

General Counsel
955 Jefferson Avenue
Valley Forge Corporate Center
Norristown, PA 19403
hagelj@pjm.com

- 7. **Severability and Survival.** In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms. In the event of conflicts between the terms of this Agreement and the Operating Agreement, the terms of the Operating Agreement shall in all events be controlling. The Authorized Person acknowledges that any and all obligations of the Authorized Person hereunder shall survive the severance or termination of any employment or retention relationship between the Authorized Person and their respective Authorized Commission.
- 8. **Representations.** The undersigned represent and warrant that they are vested with all necessary corporate, statutory and/or regulatory authority to execute and deliver this Agreement, and to perform all of the obligations and duties contained herein.
- 9. **Third Party Beneficiaries.** The Parties specifically agree and acknowledge that each Member as defined in the Operating Agreement is an intended third party beneficiary of this Agreement entitled to enforce its provisions.
- 10. **Counterparts.** This Agreement may be executed in counterparts and all such counterparts together shall be deemed to constitute a single executed original.
- 11. **Amendment.** This Agreement may not be amended except by written agreement executed by authorized representatives of the Parties.

PJM INTERCONNECTION, L.L.C.

AUTHORIZED PERSON

By: _____
Name:
Title:

By: _____
Name:
Title: