



NORTHEAST POWER COORDINATING COUNCIL, INC.
1040 AVE. OF THE AMERICAS, NEW YORK, NY 10018 (212) 840-1070 FAX (212) 302-2782

CEII NON-DISCLOSURE AGREEMENT

This CEII NON-DISCLOSURE AGREEMENT (the “Agreement”) is made in duplicate this _____ between the undersigned NPCC Member Recipient of Critical Energy Infrastructure Information (the “Member Recipient”) and Northeast Power Coordinating Council, Inc. (“NPCC”) with its business address located at 1040 Avenue of the Americas – 10th Floor, New York, New York 10018.

WHEREAS, the Member Recipient has requested that NPCC provide certain information, all or a portion of which may be classified by Members as Critical Energy Infrastructure Information (“CEII”), as a necessary condition for the Members to fulfill their NPCC Membership obligations; and

WHEREAS, Member Recipient represents that it has a legitimate purpose for requesting the CEII pursuant to this Agreement; and

WHEREAS, NPCC and Member Recipient desire to set forth in writing the terms and conditions of their agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, NPCC and Member Recipient agree as follows:

1. Definition of CEII. For purposes of this Agreement, “Critical Energy Infrastructure Information” or “CEII” shall mean specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure. CEII shall also include all such information, whether furnished before or after the date hereof, whether oral, written or recorded/electronic, and regardless of the manner in which it is furnished, and all reports, summaries, compilations, analyses, notes or other information which contain such information. “Critical Energy Infrastructure Information” or “CEII” shall not include information which:

(a) is previously known to or lawfully in the possession of the Member Recipient prior to the date of disclosure as evidenced by the Member Recipient’s written record;

(b) is independently known to or discovered by the Member Recipient, without any reference to the CEII;

(c) is obtained by the Member Recipient from an arm’s length third party having a bona fide right to disclose same and who was or is not otherwise under an obligation of confidence or fiduciary duty to NPCC; or

(d) lawfully is or becomes public knowledge through no fault or omission of, or breach of this Agreement by, the Member Recipient.

2. Use and Protection of CEII.

(a) All CEII received by the Member Recipient from NPCC shall be maintained by the Member Recipient in a secure manner. Member Recipient may make copies of CEII, but such copies become CEII and subject to the provisions of this Agreement. Member Recipient may make notes of CEII, which shall be treated as CEII if they contain CEII.

(b) In addition to the rights granted to the Member Recipient in Section 8 below, Member Recipient may only discuss CEII with or disclose CEII to another Member recipient of the identical CEII.

(c) A Member Recipient will not knowingly use CEII directly or indirectly for an illegal purpose or for a purpose other than that for which the Member Recipient has requested the CEII.

(d) In the event that the Member Recipient is directed or legally required or obligated, either directly or indirectly, to disclose CEII by subpoena, law, a directive of a court, administrative agency or arbitration panel or other legal requirement, the Member Recipient hereby agrees to provide NPCC with prompt notice of said directive, requirement or obligation in order to enable NPCC to (i) seek an appropriate protective order or other remedy, (ii) consult with the Member Recipient with respect to taking steps to resist or narrow the scope of such directive, requirement or obligation, or (iii) waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or NPCC waives compliance with the provisions hereof, the Member Recipient hereby agrees to furnish only that portion of the CEII which the Member Recipient's counsel advises is legally required and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such CEII.

3. Return of CEII. Member Recipient must return CEII it receives pursuant to this Agreement to NPCC within seven days of a written request by NPCC to do so. Within such time period, the Member Recipient, if requested to do so, shall also submit to NPCC an affidavit stating that to the best of its knowledge, all CEII has been returned to NPCC.

4. Change in Status. If there is a change in status of the Member Recipient or any of Member Recipient's employees, subcontractors and agents who have agreed to be bound by the terms of this Agreement (e.g., employee of the Member Recipient leaves his or her employ, the Member Recipient's subcontractor or agent engagement is terminated or the Member Recipient is no longer a NPCC Member, etc.) the Member Recipient must inform NPCC immediately in writing at the address first given above (Attention: President, NPCC). NPCC may require the return of the CEII or its destruction.

5. CEII "On Loan". Information provided pursuant to this Agreement is deemed to be on loan and must be returned to NPCC upon request.
6. No Warranty. The CEII is provided "as is" with all faults. In no event shall NPCC be liable for the accuracy or completeness of the CEII. NPCC shall not have liability to the Member Recipient, or any other person or entity, for the Member Recipient's use of any CEII disclosed to it by NPCC pursuant to this Agreement.
7. Audit; Violation. NPCC may audit the Member Recipient's compliance with this Agreement. Without prejudice to the rights and remedies otherwise available to NPCC, NPCC shall be entitled to seek equitable relief by way of injunction or otherwise if the Member Recipient breaches or threatens to breach this Agreement. Violation of this Agreement may result in criminal or civil sanctions against the Member Recipient.
8. Survival. The Member Recipient remains bound by these provisions unless NPCC rescinds the CEII designation or a court of competent jurisdiction finds that the information does not qualify as CEII. The Member Recipient may share, disclose, discuss or copy any of the CEII with, to and/or for its employees, subcontractors and agents who need to know such information for the purpose for which the Member Recipient has requested the CEII and who have agreed, for the benefit of NPCC, to be bound (in the same manner as the Member Recipient) by the terms of this Agreement.
9. No Waiver. The Member Recipient understands and agrees that no failure or delay by NPCC in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of New York State without regard to its conflicts of laws principles.
11. Assignment Prohibited. Any assignment of the Member Recipient's rights, obligations or duties under this Agreement without NPCC's prior written consent shall be void.
12. Entire Agreement. This Agreement contains the entire agreement between the parties concerning the protection of the CEII, and no modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon the parties, unless approved in writing by each of them. Each party represents that its signatory below is authorized to enter into this Agreement on behalf of such party.

13. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have caused this CEII Non-Disclosure Agreement to be executed by the signatures of their proper representatives duly authorized in that behalf.

[_____] (MEMBER RECIPIENT)

Name (please print): _____

Title: _____

I have the authority to bind the corporation.

Address:

[_____] (NPCC REPRESENTATIVE)

Name (please print): _____

Title: _____

I have the authority to bind the corporation.

Date: _____