

PROTECTIVE AGREEMENT AND NON-DISCLOSURE CERTIFICATE
FOR 2025 ATRR

This Protective Agreement is made and entered into as of _____ (“Effective Date”) by and between Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (collectively the “South FirstEnergy Operating Companies” or the “SFCs” or the “Companies”) and _____ (“Interested Party”).

WHEREAS the Companies’ Transmission Formula Rate Protocols (“Protocols”) provide that the SFCs may require that Interested Parties and their representative(s) execute a Protective Agreement in order to obtain access to material that the SFCs deem privileged and/or confidential or that contains Critical Energy Infrastructure Information (“CEII”) as that term is defined in 18 C.F.R. § 388.113(c)(1).

WHEREAS this Protective Agreement will apply to Interested Parties’ request for any information from the Companies that contains privileged and/or confidential information (“Privileged Material”) or CEII and other access to Privileged Material or CEII as part of the process set forth in the Companies’ Protocols regarding the Companies’ Annual Update and Projected Transmission Revenue Requirement.

NOW, THEREFORE, the Companies and Interested Parties agree as follows:

1. The SFCs and Interested Parties (collectively, “Participants”) may exchange documents or materials that are deemed to contain Privileged Material and/or CEII, as those terms are defined herein.
2. This Protective Agreement provides that the Companies:
 - A. *may* designate as Privileged Material any material which customarily is treated by the Companies as commercially sensitive or proprietary or material subject to a legal privilege, which is not otherwise available to the public, and which, if disclosed, would subject the Companies or their customers to risk of competitive disadvantage or other business injury; and
 - B. *must* designate as CEII, any material that meets the definition of that term as provided by 18 C.F.R. §§ 388.113(a), (c).
3. For the purposes of this Protective Agreement, the listed terms are defined as follows:
 - A. Privileged Material:¹

¹ The Federal Energy Regulatory Commission’s (“FERC” or “Commission”)

- i. Material provided by the Companies in response to information requests, that is designated as Privileged Material by the Companies;²
- ii. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Privileged Material by the Companies;
- iii. Any information contained in or obtained from such designated material;
- iv. Any other material which is made subject to this Protective Agreement by agreement of the Participants;
- v. Notes of Privileged Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Privileged Material);³ or
- vi. Copies of Privileged Material.
- vii. Privileged Material does not include:
 - a. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court;

regulations state that “[f]or the purposes of the Commission’s filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA will be referred to as privileged material.” 18 C.F.R. § 388.112(a). The regulations further state that “[f]or material filed in proceedings set for trial-type hearing or settlement judge proceedings, a participant’s access to material for which privileged treatment is claimed is governed by the presiding official’s protective order.” 18 C.F.R. § 388.112(b)(2)(v).

² See *infra* P 11 for the procedures governing the labeling of this designation.

³ Notes of Privileged Material are subject to the same restrictions for Privileged Material except as specifically provided in this Protective Agreement.

- b. Information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Agreement.
 - B. Critical Energy/Electric Infrastructure Information (CEII): As defined at 18 C.F.R. §§ 388.113(a), (c).
 - C. Non-Disclosure Certificate: The certificate attached to this Protective Agreement, by which the Companies grant access to Privileged Material and/or CEII, and by which Interested Parties granted access to Privileged Material and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Protective Agreement, and that Interested Parties have read the Protective Agreement and agree to be bound by it. All executed Non-Disclosure Certificates must be provided to the Companies.
 - D. Reviewing Representative: A person who has signed a Non-Disclosure Certificate and who is:
 - i. An attorney who is participating on behalf of an Interested Party;
 - ii. Attorneys, paralegals, and other employees associated with an attorney who is participating on behalf of an Interested Party;
 - iii. An expert or an employee of an expert retained by the Companies or by an Interested Party for the purpose of advising, preparing for, or otherwise assisting in review or preparation of the SFCs' Annual Update or Projected Transmission Revenue Requirement; or
 - iv. Employees or other representatives of an Interested Party with significant responsibility for matters addressed in the SFCs' Annual Update or Projected Transmission Revenue Requirement.
4. Privileged Material and/or CEII shall be made available under the terms of this Protective Agreement only to Interested Parties' and/or the Companies' Reviewing Representatives as provided in Paragraphs 6-10 of this Protective Agreement. The contents of Privileged Material, CEII or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with this Protective Agreement and shall be used only in connection with the procedures applicable to the Companies' Annual Update or Projected Transmission Revenue Requirement and in accordance with the Protocols.

5. All Privileged Material and/or CEII must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to Paragraphs 7-9 of this Protective Agreement.

6. Privileged Material and/or CEII must be handled by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this Protective Agreement. Privileged Material and/or CEII shall not be used except as necessary for the conduct of this proceeding, nor shall they (or the substance of their contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Privileged Material and/or CEII, but such copies automatically become Privileged Material and/or CEII. Reviewing Representatives may make notes of Privileged Material, which shall be treated as Notes of Privileged Material if they reflect the contents of Privileged Material.

7. If a Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph 7, such Reviewing Representative may not use information contained in any Privileged Material and/or CEII obtained in the Companies' Annual Update or Projected Transmission Revenue Requirement review process for a commercial purpose (e.g. to give a Participant or competitor of any Participant a commercial advantage):

- A. Energy marketing;
- B. Direct supervision of any employee or employees whose duties include energy marketing; or
- C. The provision of consulting services to any person whose duties include energy marketing.

8. In the event that an Interested Party wishes to designate a person not described in Paragraph 3.D above as a Reviewing Representative, the Interested Party must seek agreement from the Interested Party providing the Privileged Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3.D of this Protective Agreement with respect to those materials.

9. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Privileged Material and/or CEII pursuant to this Protective Agreement until after that Reviewing Representative first has executed and provided to the SFCs a Non-Disclosure Certificate. However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure

Certificate, any participating paralegal, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Agreement, and must take all reasonable precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons. All executed Non-Disclosure Certificates must be provided to the SFCs.

10. Any Reviewing Representative may disclose Privileged Material and/or CEII to any other Reviewing Representative as long as both Reviewing Representatives have executed a Non-Disclosure Certificate. In the event any Reviewing Representative to whom Privileged Material and/or CEII are disclosed ceases to participate in the Companies' Annual Update or Projected Transmission Revenue Requirement process, or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative under Paragraph 3.D of this Protective Agreement, access to such materials by that person shall be terminated. Even if no longer engaged in the Companies' Annual Update or Projected Transmission Revenue Requirement process, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the Non-Disclosure Certificate for as long as the Protective Agreement is in effect.⁴

11. All Privileged Material and/or CEII in the Companies' Annual Update or Projected Transmission Revenue Requirement review process must comply with the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*.⁵ Consistent with those requirements:

- A. Documents that contain Privileged Material must include a top center header on each page of the document with the following text: CUI//PRIV. Any corresponding electronic files must also include this text in the file name.
- B. Documents that contain CEII must include a top center header on each page of the document with the following text: CUI//CEII. Any corresponding electronic files must also include this text in the file name.
- C. Documents that contain both Privileged Material and CEII must include a top center header on each page of the document with the following text:

⁴ See *infra* P 19.

⁵ 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

CUI//CEII/PRIV. Any corresponding electronic files must also include this text in the file name.

- D. The specific content on each page of the document that constitutes Privileged Material and/or CEII must also be clearly identified. For example, lines or individual words or numbers that include both Privileged Material and CEII shall be prefaced and end with “BEGIN CUI//CEII/PRIV” and “END CUI//CEII/PRIV”.

12. If any Interested Party desires to include, utilize, or refer to Privileged Material or information derived from Privileged Material in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, that Interested Party first must notify counsel for the Companies, and identify all such Privileged Material. Thereafter, use of such Privileged Material will be governed by procedures determined by agreement of the Interested Party and the Companies.

13. Nothing in this Protective Agreement shall be construed as precluding any Interested Party from objecting to the production or use of Privileged Material and/or CEII on any appropriate ground.

14. Nothing in this Protective Agreement shall preclude any Interested Party from requesting a Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority, to find this Protective Agreement should not apply to all or any materials previously designated Privileged Material pursuant to this Protective Agreement. The Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority may alter or amend this Protective Agreement as circumstances warrant at any time during the course of this proceeding.

15. The SFCs and each Interested Party governed by this Protective Agreement has the right to seek changes in it as appropriate from a Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), the Commission, or any other body having appropriate authority.

16. Subject to Paragraph 18, a Presiding Judge (or the Chief Judge in the Presiding Judge’s absence or where no presiding judge is designated), or the Commission shall resolve any disputes arising under this Protective Agreement pertaining to Privileged Material according to the following procedures. Prior to presenting any such dispute to the Presiding Judge, the Chief Judge or the Commission, the parties to the dispute shall employ good faith best efforts to resolve it.

- A. Any Interested Party that contests the designation of material as Privileged Material shall notify the party that provided the Privileged Material by specifying in writing the material for which the designation is contested.
- B. In any challenge to the designation of material as Privileged Material, the burden of proof shall be on the SFCs. If the Presiding Judge, the Chief Judge, or the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 18 shall apply.
- C. The procedures described above shall not apply to material designated by the SFCs as CEII. Material so designated shall remain subject to the provisions of this Protective Agreement, unless an Interested Party requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

17. The designator will have five (5) days in which to respond to any pleading requesting disclosure of Privileged Material. Should a Presiding Judge, the Chief Judge, or the Commission, as appropriate, determine that the information should be made public, a Presiding Judge, the Chief Judge, or the Commission will provide notice to the SFCs no less than five (5) days prior to the date on which the material will become public. This Protective Agreement shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made unless the SFCs file a motion with a Presiding Judge, the Chief Judge, or the Commission, as appropriate, with supporting affidavits, demonstrating why the material should continue to be privileged. Should such a motion be filed, the material will remain confidential until such time as the interlocutory appeal or certified question has been addressed by the Motions Commissioner or Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714, .715. No party waives its rights to seek additional administrative or judicial remedies after a Presiding Judge or Chief Judge decision regarding Privileged Material or the Commission's denial of any appeal thereof or determination in response to any certified question. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Privileged Material and/or CEII in the files of the Commission.

18. Privileged Material and/or CEII shall remain available to Participants until the later of 1) the date an order terminating any Commission proceeding regarding the Companies' Annual Update or Projected Transmission Revenue Requirement no longer is subject to judicial review, 2) the date any other Commission proceeding relating to the Privileged Material and/or CEII is concluded and no longer subject to judicial review; or 3) three years after the Privileged Material and/or CEII has been provided to the Participant(s). After this time, the Participant that produced the Privileged Material

and/or CEII may request (in writing) that all other Participants return or destroy the Privileged Material and/or CEII. This request must be satisfied with within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts and exhibits in this proceeding containing Privileged Material, or Notes of Privileged Material, may be retained if they are maintained in accordance with Paragraph 5 of this Protective Agreement. If requested, each Participant also must submit to the Participant making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Privileged Material and/or CEII. To the extent Privileged Material and/or CEII are not returned or destroyed, they shall remain subject to this Protective Agreement.

19. Regardless of any order terminating a Commission proceeding regarding the Companies' Annual Update or Projected Transmission Revenue Requirement, this Protective Agreement shall remain in effect until specifically modified or terminated by a Presiding Judge, the Chief Judge, or the Commission. All CEII designations shall be subject to the "[d]uration of the CEII designation" provisions of 18 C.F.R. § 388.113(e).

NON-DISCLOSURE CERTIFICATE FOR 2025 ATRR

I hereby certify my understanding that access to Privileged Material and/or Critical Energy/Electric Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the Protective Agreement regarding the SFCs' Annual Update or Projected Transmission Revenue Requirement, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of Privileged Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Agreement.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____