

North American Electric Reliability Council Confidentiality Agreement for Electric System Operating Reliability Data

1.0 Parties to this Agreement.

This Operating Reliability Data Confidentiality Agreement (“ORD Agreement”) is an agreement among the signatories to this document and to the annexes to this document, and between each of the signatories and the North American Electric Reliability Council (“NERC”) (collectively, “Parties”).

2.0 Background.

To maintain the reliable operation of the bulk electric system, NERC Reliability Standards require that specific information regarding operating conditions on the bulk electric system (referred to in this ORD Agreement as “Operating Reliability Data”) be made available to balancing authorities, transmission operators, reliability coordinators, other entities responsible for real-time operating reliability, and to NERC. Because operating reliability data may contain proprietary information and because unequal access to operating reliability data may result in unfair advantages and disadvantages in the electricity markets, the availability and confidentiality of this data must be protected in order to ensure that it is available only to those responsible for maintaining bulk electric system operating reliability, and not made available in a preferential or discriminatory manner to entities engaged in merchant functions.

3.0 Definitions.

- 3.1 **In General.** Terms used in this ORD Agreement have the definitions contained in the NERC Glossary of Terms Used in Reliability Standards, as approved from time to time by the NERC Board of Trustees, unless otherwise stated.
- 3.2 **Disclosing Party.** A signatory to this ORD Agreement that supplies operating reliability data, either manually or automatically, to its reliability coordinator, other reliability coordinators, or other entities that are directly responsible for the immediate, real-time operations of the bulk electric system. The term includes NERC.
- 3.3 **Merchant Employee.** Within an organization, any employee who engages in merchant functions.
- 3.4 **Merchant Function.** The purchase or sale, at either wholesale or retail, of electric energy or capacity.

- 3.5 **Nuclear Generating Plant.** The control center for a particular nuclear generating plant that has need for real-time information regarding the status of the transmission system with which it is interconnected.
- 3.6 **Operating Reliability Data.** All system control information and metered data shared between operating entities that are signatories to this ORD Agreement. Such information and data currently include, but are not limited to voltages, line flows, interchange schedules, e-tags, load projections, planned generation and transmission outages, breaker status, and phasor measurements, regardless of the periodicity of the data being metered or exchanged. Computer applications and data exchange systems that carry operating reliability data include, but are not limited to, ICCP, the Interregional Security Network, the Reliability Coordinator Information System, the Interchange Distribution Calculator, the System Data Exchange, ACE/Frequency Monitoring tools, phasor data concentrators, and real-time phasor displays.
- 3.7 **Recipient Party.** A signatory to this ORD Agreement that (i) is directly responsible for the immediate, real-time operations of the bulk electric system, or (ii) uses operating reliability data for analyzing system performance, standards compliance, and producing value-added information for use by operating entities, and that receives operating reliability data, directly from a disclosing party or by means of data-sharing systems maintained by NERC. The term includes NERC.
- 3.8 **Small Bundled Entity.** An entity that has not unbundled its merchant function and meets the requirements established by the Federal Energy Regulatory Commission in Order No. 888 for an exemption from the requirement to unbundle its merchant function from its transmission functions.

4.0 Limitations on Exchange of Data.

- 4.1 Except as otherwise provided in this ORD Agreement, operating reliability data will be available only to those entities who are both (i) directly responsible for immediate real-time operating reliability of a portion of the bulk electric system or otherwise have a need for access to data concerning immediate, real-time operations of the bulk electric system (including NERC), and (ii) signatories to this ORD Agreement.
- 4.2 Operating reliability data that is made available to all market participants in a fair and nondiscriminatory manner through the NERC Web site or by means of tools (e.g., the

Flow Impact Study Tool) that are available on reasonable terms and conditions to all market participants shall not be covered by this ORD Agreement.

- 4.3 Operating reliability data eight days or older is exempt from the access and disclosure restrictions of this ORD Agreement. Forecast operating reliability data is exempt from the access and disclosure restrictions of this ORD Agreement beginning eight days after the forecast period has passed.
- 4.4 Nothing in this ORD Agreement restricts in any way a party's right or ability to make its own information and data that otherwise falls within the definition of operating reliability data available to third parties on such terms and conditions as that party, in its sole discretion, deems appropriate.
- 4.5 Disclosing Parties agree to the following disclosures by the recipient parties:
 - 4.5.1 Recipient parties may disclose operating reliability data to employees, agents, consultants, or attorneys ("representatives") who have a need to know for the purposes of analyzing or maintaining bulk electric system operating reliability at the recipient party's initiative. However, prior to providing operating reliability data to such representatives, the recipient party shall ensure that such representatives (i) are aware of the confidentiality obligations surrounding the operating reliability data, and (ii) are under obligations of confidentiality to the recipient party that are at least as restrictive as those contained herein. The recipient party shall be responsible for any breach of this ORD Agreement by any of its representatives.
 - 4.5.2 The parties recognize that the recipient parties may employ or otherwise engage third-party information technology individuals ("third-party IT providers") who may have access to the operating reliability data in the normal course of their development, general maintenance, and support service activities to the recipient party. Such access for the limited purposes of performing development, maintenance, and support service activities is acceptable to the parties, provided that such third-party IT providers are under obligations of confidentiality to the recipient party that are at least as restrictive as those contained herein. The recipient party shall be responsible for any breach of this ORD Agreement by any of its third-party IT providers.

5.0 Conditions for Access to Data.

As a condition to obtaining access to operating reliability data, each recipient party agrees to the following requirements:

- 5.1 No merchant employee of the recipient party or its affiliate shall have access to the operating reliability data received from other entities.
- 5.2 Employees of the recipient party or employees of an affiliate who are engaged in transmission system operation reliability functions shall not disclose to merchant employees of the recipient party or its affiliate any operating reliability data received from other entities, except as compelled by law or judicial or regulatory order or directive.
- 5.3 The recipient party shall not, even under conditions of confidentiality, make available, disclose, provide, or communicate any operating reliability data to any other entity or person who is not a signatory to this ORD Agreement except as (i) compelled by law or judicial or regulatory order or directive or (ii) permitted by this ORD Agreement.
- 5.4 The recipient party will exercise all reasonable efforts against the compelled disclosure of operating reliability data to any party who is not a signatory to this ORD Agreement. In the event disclosure of operating reliability data is sought from a recipient party by judicial or regulatory order or directive, the recipient party shall provide immediate notice to all disclosing parties from which recipient party received operating reliability data and furnish all reasonable assistance requested by those parties in protecting the confidential nature of the operating reliability data for which disclosure is sought.
- 5.5 The recipient party will educate its employees, and employees of an affiliate engaged in transmission system operations, in the provisions of this ORD Agreement and, upon request, provide any information to NERC necessary to determine compliance with the terms and conditions of this ORD Agreement, including confidentiality agreements that include the provisions of this ORD Agreement.
- 5.6 Notwithstanding any other provision of this ORD Agreement, a Disclosing Party may disclose to a small bundled entity operating reliability data pertaining to the real-time operation of the small bundled entity's own system if the small bundled entity, the disclosing party, and NERC have executed the Limited Operating Reliability Data

Agreement contained in Annex 1 to this ORD Agreement. NERC shall not execute the

Limited Operating Reliability Data Agreement without the concurrence of the small bundled entity's reliability coordinator. The small bundled entity shall not be eligible to receive wide-area market-sensitive, real-time data under this provision.

- 5.7 Notwithstanding any other provision of this ORD Agreement, a disclosing party may disclose to a nuclear generating plant, certain operating reliability data pertaining to the real-time operation of the transmission system interconnected with the nuclear generating plant if the nuclear generating plant, the disclosing party, and NERC have executed the Nuclear Plant Operating Reliability Data Agreement contained in Annex 2 to this ORD Agreement. The nuclear generating plant shall not be eligible to receive wide-area market-sensitive, real-time data under this provision.

6.0 Emergencies.

Notwithstanding any other provisions herein, in emergency circumstances that could jeopardize operating reliability, a recipient party may take whatever steps are necessary to maintain system operating reliability. The recipient party must report to its reliability coordinator each emergency that resulted in any deviation from this ORD Agreement within 24 hours of such deviation.

7.0 Disclaimer and Hold Harmless.

- 7.1 Each recipient party assumes any and all risk and responsibility for selection and use of, and reliance on, any operating reliability data.
- 7.2 Each recipient party acknowledges and agrees that the disclosing party generates and gathers operating reliability data to meet the disclosing party's sole needs and responsibilities. Each recipient party receives any and all operating reliability data "as is" and with all faults, errors, defects, inaccuracies, and omissions. No disclosing party makes any representations or warranties whatsoever with respect to the availability, timeliness, accuracy, reliability, or suitability of any operating reliability data pursuant to this ORD Agreement. Each recipient party disclaims and waives all rights and remedies that it may otherwise have with respect to all warranties and liabilities of each disclosing party, expressed or implied, arising by law or otherwise, with respect to any faults, errors, defects, inaccuracies or omissions in, or availability, timeliness, reliability, or suitability of the operating reliability data. Each recipient party assumes any and all risk and responsibility for selection and use of, and reliance on, any

operating reliability data. By entering into this ORD Agreement, each disclosing party does not hold itself out to provide like or similar service to any other entity.

- 7.3 Each recipient party acknowledges and agrees that NERC maintains various data sharing systems to facilitate maintenance of operating reliability by the reliability coordinators and other entities with responsibility for the operating reliability of the bulk electric system, and that the supply and use of data in accordance with this ORD Agreement is the responsibility of the individual recipient parties and disclosing parties and not of NERC. NERC makes no representations or warranties whatsoever with respect to the availability, timeliness, accuracy, reliability, or suitability of any operating reliability data provided pursuant to this ORD Agreement. Each disclosing party and recipient party disclaims and waives any rights or remedies that it might otherwise have against NERC for faults, errors, defects, inaccuracies, or omissions in, or availability, timeliness, accuracy, reliability, or suitability of the operating reliability data. Further, each disclosing party and recipient party disclaims and waives any rights or remedies that it might otherwise have against NERC for the neglect, wrongful, or unauthorized use or disclosure of the operating reliability data by any disclosing party or recipient party.

8.0 Term and Termination.

- 8.1 The term of this ORD Agreement shall commence immediately upon the signatures of an officer of a party and an officer of NERC and shall remain in effect until terminated.
- 8.2 Any party wishing to terminate this ORD Agreement as to that party shall notify NERC in writing of its desire to terminate this ORD Agreement. Termination shall be effective 30 days following acknowledgment of receipt of such written notice. Upon such termination, that party will be prohibited from further receipt of operating reliability data.
- 8.2.1 Termination does not excuse the party from supplying operating reliability data if required by NERC Reliability Standards.
- 8.2.2 Termination does not excuse the recipient party from holding confidential any forecast operating reliability data before the forecast period has passed.

9.0 Governmental Authority.

This ORD Agreement is subject to the laws, rules, regulations, orders, and other requirements, now or hereafter in effect, of all regulatory authorities having jurisdiction over the operating reliability data, this ORD Agreement, the disclosing parties, and recipient parties. All laws, ordinances, rules, regulations, orders, and other requirements, now or hereafter in effect, of governmental authorities that are required to be incorporated in agreements of this character are by this reference incorporated in this ORD Agreement.

10.0 Noncompliance.

A party found not to be in compliance with this ORD Agreement by NERC or any other party will be prohibited from further receipt of the operating reliability data until NERC determines that the party has resumed compliance with this ORD Agreement. Noncompliance does not excuse the party from supplying operating reliability data if required by NERC Reliability Standards, nor does it excuse the party from holding confidential any forecast operating reliability data before the forecast period has passed.

11.0 Due Diligence.

All signatories to this ORD Agreement shall use due diligence to protect the various data-sharing systems maintained by NERC and operating reliability data from improper access.

12.0 Disputes.

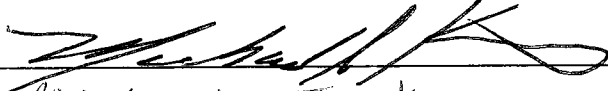
Disputes arising over issues regarding this ORD Agreement will be settled in accordance with the dispute resolution procedures of the party's regional council and NERC.

13.0 Governing Law.

This ORD Agreement shall in all respects be interpreted, construed, and enforced in accordance with the laws of the State of New Jersey, without reference to rules governing conflicts of law, except to the extent such laws may be preempted by the laws of the United States of America, Canada, or Mexico, as applicable.

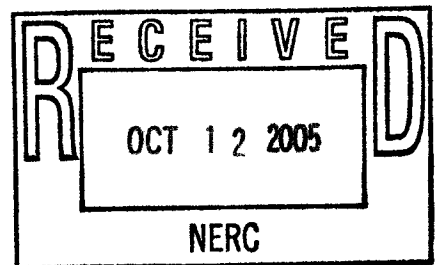
14.0 Integration.

This ORD Agreement constitutes the entire agreement of the parties with regard to operating reliability data exchanged between them. This ORD Agreement may be signed in multiple originals.

PARTY: P J M Interconnection, LLC
By: 
Name: Michael J. Kormos
Title: Senior Vice President, Reliability Services
Date: 10/10/05

NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL

By: _____
Name: _____
Title: _____
Date: _____



Instructions for Submitting the Operating Reliability Data Confidentiality Agreement to NERC

General

1. The Operating Reliability Data Confidentiality Agreement is provided as a Microsoft Word[®] document with fields to insert signatory information. Please see signature field instructions on the following page. You may download the Microsoft Word[®] documents at the following Web site:

[Instructions for Submitting the Operating Reliability Data Confidentiality Agreement to NERC](#)

or use the versions enclosed.

2. You must sign the main Confidentiality Agreement for Electric System Operating Reliability Data plus
 - a. Annex 1 if you are a small bundled entity
 - b. Annex 2 if you are a nuclear generating plant

Submitting the Agreement(s) to NERC

Return *two* completed copies of the Agreement(s) to the following address:

Donald M. Benjamin
Vice President – Operations
North American Electric Reliability Council
116-390 Village Blvd.
Princeton, NJ 08540
609-452-8060

NERC will return one copy bearing the signature of an officer of NERC for your reference.

Signature Field Instructions

Operating Reliability Data Confidentiality Agreement

Label	Instructions
Party	Name of your organization
By	Signature of an officer of your organization
Name	Officer's typed or printed name
Title	Officer's title
Date	Signing date
North American Electric Reliability Council	Leave these lines blank. We will return a copy of the agreement with the NERC officer's signature

Annex 1 — Limited Operating Reliability Data Agreement for Small Bundled Entities

Label	Instructions
Small Bundled Entity	Name of your organization
By	Signature of an officer of your organization
Name	Officer's typed or printed name
Title	Officer's title
Date	Signing date
Disclosing Organization	Organization that you are receiving the data from
By	Signature of an officer of the disclosing organization
Name	Officer's typed or printed name
Title	Officer's title
Date	Signing date
North American Electric Reliability Council	Leave these lines blank. We will return a copy of the agreement with the NERC officer's signature

Annex 2 — Nuclear Plant Operating Reliability Data Agreement

Label	Instructions
Nuclear Generating Plant	Name of the nuclear generating plant
By	Signature of an officer of your organization
Name	Officer's typed or printed name
Title	Officer's title
Date	Signing date
Disclosing Organization	Organization that you are receiving the data from
By	Signature of an officer of the disclosing organization
Name	Officer's typed or printed name
Title	Officer's title
Date	Signing date
North American Electric Reliability Council	Leave these lines blank. We will return a copy of the agreement with the NERC officer's signature