

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. [XXXX]

[CAPTION]

PROTECTIVE AGREEMENT

THIS AGREEMENT is dated as of [DATE], and is by and among [PARTY A] and the State of Vermont Public Service Department (“Department” or “PSD”) and such other parties to the above-captioned docket as may choose to join ([PARTY A] and/or the Department will be sometimes referenced herein, where the context requires, as a “Party” and all signatories to this Agreement collectively as the “Parties”);

WHEREAS, the Parties desire to cooperate in the provision of information relevant to the issues to be litigated or potentially litigated in the above-designated Docket;

WHEREAS, [PARTY A] has information pertinent to issues in the Docket that it desires to provide to the Parties, which [PARTY A] believes could result in financial and/or competitive harm or might threaten the security of local, regional, or national energy infrastructure if it is required to disclose such information to the public, and which information [PARTY A] believes to be proprietary, privileged, confidential or in the nature of a trade secret (which information is referenced herein as “Allegedly Confidential Information” or which [PARTY A] believes to be Critical Energy Infrastructure Information (“CEII”) and is specifically described on Schedule I (for Allegedly Confidential Information) or Schedule Ia (for CEII) attached hereto, which Schedule(s) may be amended only in accordance with the terms of this Agreement);

WHEREAS, [PARTY A] desires to disclose Allegedly Confidential Information or CEII only to Parties that have executed Schedule IIa or Schedule IIb as appropriate to this Agreement

or, in certain situations, only to the State of Vermont Public Service Board (“Board” or “PSB”) and/or to the Department for review in accordance with this Agreement; and

WHEREAS, the Parties have agreed to the procedures established in this Agreement for the disclosure of Allegedly Confidential Information or CEII to the Parties, the Department, and/or the Board and to the provisions for holding such Allegedly Confidential Information or CEII in confidence;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. If [PARTY A] seeks to place information under this protective agreement, it shall file an averment, as described in Paragraph 2 of the Protective Order and attached as Schedule IV to this agreement, with the Department. If the Department agrees to treat specific information to be provided as Allegedly Confidential Information or CEII, [PARTY A] will submit to the Board and all Parties a copy of Schedule I or Ia, as appropriate, as from time to time revised in accordance with the terms of this Agreement, identifying each such item of Allegedly Confidential Information or CEII and signed or initialed by the Department to evidence its agreement to treat such item as Allegedly Confidential Information or CEII. This Agreement applies only to that information that the Parties agree will be treated as Allegedly Confidential information listed on Schedule I or CEII information listed on Schedule Ia. Schedule I or Schedule Ia may be amended only by agreement of the Parties. Upon agreement of the Department to Schedule I or Ia, or an amendment thereto, the entity seeking to place information under this protective agreement shall file the same averment, previously filed with the

Department, with the Board as required by the Protective Order which is attached as Schedule IV to this agreement. If the Department does not agree to treat specific information as Allegedly Confidential Information or CEII, [PARTY A] may request a hearing before the Board to seek a protective order as provided under V.R.C.P. 26(c). Any request for hearing shall be filed in writing with the Board and Parties within five (5) business days of its receipt of a denial by the Department that such information can be treated as Allegedly Confidential Information or CEII under this Agreement. During the five-day period, the information shall be treated as Allegedly Confidential Information or CEII under this Agreement. If a timely request is filed with the Board and the Parties, the information shall be treated in accord with paragraph 17 of this Agreement.

2. The Department may obtain Allegedly Confidential Information or CEII by submitting to [PARTY A] Schedule IIa attached hereto, which incorporates by reference this Protective Agreement. If such a request is made for Allegedly Confidential Information or CEII, [PARTY A] will provide one copy of the Allegedly Confidential Information or CEII sought by the Department or otherwise make such Allegedly Confidential Information or CEII available. The Department will afford access to the Allegedly Confidential Information or CEII only to its employees and consultants who have executed Schedule IIa and returned the executed Schedule IIa to [PARTY A]. The Department shall make only one copy of any Allegedly Confidential Information or CEII for each individual who has executed Schedule IIa, except as otherwise provided in Paragraph 4 hereof.

3. A Party other than the Department may obtain Allegedly Confidential Information or CEII by submitting to [PARTY A] the Protective Agreement attached hereto as Schedule IIb

and its request by Schedule III hereto. If such a request is made for Allegedly Confidential Information or CEII, [PARTY A] will provide one copy of the Allegedly Confidential Information or CEII sought to such Party, or otherwise will make such Allegedly Confidential Information or CEII available to such Party, except those documents or portions thereof excised based on legal objection and duly noted by [PARTY A]'s counsel. Each such Party will afford access to the Allegedly Confidential Information or CEII only to such employees, consultants and other representatives who have executed Schedule Iib and are named in Schedule III to this Agreement and returned the executed Schedule Iib to [PARTY A]'s counsel. A Party shall make only one copy of any Allegedly Confidential Information or CEII for each individual who has executed Schedule Iib, except as otherwise provided in Paragraph 4 hereof.

4. Documents containing or incorporating Allegedly Confidential Information or CEII to be offered in evidence under seal may be copied as necessary for that purpose. The Parties' counsel, personnel, and consultants, who have agreed in writing to be bound by this Agreement, may take notes regarding such Allegedly Confidential Information or CEII, but only as necessary for preparation for proceedings in this Docket. Such notes shall be treated the same as the Allegedly Confidential Information or CEII from which the notes were taken and shall not be used for any purpose other than as specified herein.

5. No Party that has executed this Agreement, no person representing such Party, no agent of such Party or Expert associated with such Party, that is afforded access to the Allegedly Confidential Information or CEII shall use the Allegedly Confidential Information or CEII for any purpose other than the purpose of preparation for and conduct of this Docket, including appeals of any order or ruling therein, and then solely as contemplated herein. Each such Party,

and each such representative person, agent or expert witness, shall keep the Allegedly Confidential Information or CEII secure and shall not disclose it or afford access to it to any person not authorized by this Agreement to receive same. Nothing in this Agreement precludes the Department from using Allegedly Confidential Information or CEII obtained hereunder either to seek a Board investigation, (provided that the Department continues to treat such Allegedly Confidential Information or CEII pursuant to the protective terms of this Agreement), or request that the Allegedly Confidential Information, CEII or similar information be provided by [PARTY A] in any other context.

6. There must be a good-faith basis for all claims of confidentiality. Claims without such a basis may result in sanctions against the party making the unfounded claim. A Party's public disclosure of information that it has designated as Allegedly Confidential or CEII may indicate that the Party lacked a good-faith basis for that designation.

7. All documents filed with the Board and/or Department that are subject to the Protective Agreement as Allegedly Confidential Information or CEII and any documents that discuss or reveal documents that constitute Allegedly Confidential Information or CEII shall be filed by enclosing such information in sealed envelopes and/or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the contents (materials, discovery response, report, etc.) and a statement that it shall not be opened or released from custody of the Clerk of the Board except by order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed Allegedly Confidential

Information or CEII, but shall not disclose the contents of any such sealed information to any person who has not agreed to be bound by the Protective Agreement.

8. The Board will retain jurisdiction to make amendments, modifications and additions to this Order. Any Party or other person may apply to the Board for an amendment, modification, or addition to the Protective Order issued in accordance with this Agreement.

9. Subpoenas and access to public records requests.

a. Should the Department or any other Party receive any subpoena, or any request pursuant to Vermont law regarding access to public records, for any document or information received pursuant to this Agreement, the Department or such other Party promptly shall notify the counsel or other representative of [PARTY A] of the pendency of such subpoena or other request.

b. In response to a subpoena, the Department or other Party will produce the documents or information within the timeframe prescribed by the subpoena or applicable state law unless [PARTY A] obtains a Protective Order from a court or administrative body of competent jurisdiction barring the production of the documents or information.

c. In response to an access to public records request, the Department or any other state agency party to this agreement agrees to assert the “relevant to litigation” exemption contained within 1 V.S.A. § 317(b)(14) to prevent disclosure of the documents or information during the pendency of the litigation. Assertion of any other exemptions shall be at the discretion of the Department or other state agency receiving the request.

- d. At the final termination of the litigation, the Department or other state agency party to this agreement will produce on request the documents or information temporarily protected through the assertion of the "relevant to litigation" exemption within the timeframe prescribed by state law, unless within such timeframe [Party A] obtains a Protective Order from a court or administrative body of competent jurisdiction barring the production of the documents or information.
  - e. Nothing in this Agreement shall limit or waive any rights that [Party A] may have under applicable law to seek protection against disclosure pursuant to a subpoena, a request for access to public records, or any other request for information.
10. If a Party wishes to prefile any testimony or exhibits that include or otherwise disclose Allegedly Confidential Information or CEII, that Party must give five business days' advance notice to counsel for the Party that designated the information as allegedly confidential or CEII. Any Party may move the Board for an order that the testimony or exhibits be filed under seal or under other conditions to prevent unnecessary disclosure.
- a. If such motion is filed within the five-business-day advance notice period, the proponent of the testimony and exhibits shall place them in a sealed record by filing such documents in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the contents (exhibit, report, etc.) and a statement that it shall not be opened or released from custody of the Clerk of the Board, except by Order of the Board or Hearing Officer.

Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed Allegedly Confidential Information or CEII, but shall not disclose the contents of any such sealed information to any person who has not agreed to be bound by the Protective Agreement. The Board or Hearing Officer will then determine whether the proffered evidence should continue to be treated as confidential information or CEII and, if so, what protection, if any, may be afforded to such information.

- b. If no such motion is filed by the end of the five-business-day advance notice period, the testimony and exhibits may be filed as a document available for public access.

11. At any hearing or conference in this proceeding, no witness may be questioned with respect to any Allegedly Confidential Information or CEII, unless examining counsel has provided advance notice to counsel for any party or other person that designated the information as Allegedly Confidential or CEII. To the extent possible, such notice shall be given prior to the commencement of the hearing or conference. Any party may move the Board for an order that the testimony be received *in camera* or under other conditions to prevent unnecessary disclosure. If such motion is made, the Board or Hearing Officer will then determine whether the testimony should be received *in camera* or subject to other protection.

12. [PARTY A] may make a written request to the Department or other Party for the return of allegedly confidential information or CEII. Such request shall be made within sixty (60) days after final decision, order, or judgment in this docket, unless appeal from such decision, order, or judgment is taken, in which case the request shall be made within sixty (60) days after the conclusion of the appeal and of any remand or further appeal therefrom. Within sixty (60) days of such a request, the Department or other Party shall: (a) return the Allegedly Confidential Information or CEII to [PARTY A]'s counsel, except for those portions of the Allegedly Confidential Information or CEII which have been made public; (b) cause its employees and consultants to destroy any notes taken concerning, or any documents or information in any form incorporating, Allegedly Confidential Information or CEII which has not been made public; and (c) advise [PARTY A] in writing that the requirements of this paragraph have been met. Notwithstanding the foregoing, nothing in this paragraph shall require the Department to destroy notes, documents, or information in violation of statute. In the absence of a written request from [PARTY A] to the Department for the return of allegedly confidential information or CEII, the Department shall consider such records subject to disclosure under 1 V.S.A. § 316.

13. No signing Party hereto shall assign to any third party its rights or obligations hereunder, and any such assignment by any signing Party of the rights and obligations hereunder shall be null and void.

14. An individual's access to Allegedly Confidential Information or CEII ceases upon termination of employment with a Party, and any individual who terminates employment with a

Party who has executed this Agreement or Schedule IIa or Schedule IIb shall continue to be bound by its terms.

15. This Agreement is made under and shall be governed by the laws of the State of Vermont.

16. This Agreement shall in no way be deemed to constitute any waiver of the rights of any Party to this Docket. The foregoing provisions of this Agreement notwithstanding, any Party to this Docket may at any time, to the full extent allowable by applicable law, contest any assertion or appeal any finding that specific information is or should be Allegedly Confidential Information or CEII or that it should or should not be subject to the protective requirements of this Agreement. The Parties hereto retain the right to question, challenge, and object to the admissibility of any and all Allegedly Confidential Information or CEII furnished under this Agreement on any available grounds. Any Party may at any time seek by appropriate pleading to have Allegedly Confidential Information or CEII submitted under this Agreement, or under protective order issued by the Board or Hearing Officer pursuant to this Agreement, removed from the coverage of this Agreement or the order.

17. In the event that the Board or a Hearing Officer assigned to this Docket should rule that any information is not appropriate for inclusion in a sealed record, or should be disclosed to a Party where [PARTY A] objects to such disclosure under Paragraph 3 of this Agreement, the Parties agree that, at the request or upon the motion seeking protection of such information from disclosure, such information will not be disclosed until the later of five business days after the Board or Hearing Officer so orders, or, if an interlocutory appeal or request for a stay of such order is filed, the date upon which such appeal or request is decided;

provided, however, that such period of time may be extended in accordance with any stay ordered by the Board or a reviewing court.

18. The Parties will promptly submit to the Board a proposed Protective Order in the form attached hereto as Schedule IV that, if adopted, will set forth the procedure for treating Allegedly Confidential Information or CEII in a sealed record.

19. Each Party warrants that it will act in good faith and will not do anything to deprive any other Party of the benefit of this Agreement.

20. This Agreement may be amended or modified only by a written document signed by the Parties hereto.

21. The Parties have entered into this Agreement to expedite the production of information, to minimize the time spent in discovery disputes, and facilitate the progress of these investigations to the fullest extent possible. Entry into this Agreement shall not be construed as an admission by any Party regarding the scope of the Party's statutory right to information, nor shall it be construed as a waiver of the right to raise any and all appropriate confidentiality issues in future dockets.

22. Information that is designated Allegedly Confidential Information or CEII pursuant to this Agreement that a Party obtains independent of this Agreement is not subject to this Agreement.

23. [PARTY A] shall not seek the disqualification of any Department employee, consultant, or other representative as to any authorized Department activity on the grounds that such person reviewed information provided hereunder.

24. In the event that any part of this agreement is not approved by the Board, the Parties acknowledge the whole agreement as contractually binding on the Parties.

[PARTY A]

By: \_\_\_\_\_

VERMONT PUBLIC SERVICE DEPARTMENT

By: \_\_\_\_\_

STATE OF VERMONT  
PUBLIC SERVICE BOARD

SCHEDULE I

Docket No. [XXXX]

[CAPTION]

DOCUMENTS AND MATERIALS TO BE TREATED AS ALLEGEDLY  
CONFIDENTIAL INFORMATION

- 1.
- 2.
- 3.
- 4.

STATE OF VERMONT

PUBLIC SERVICE BOARD

SCHEDULE Ia

Docket No. [XXXX]

[CAPTION]

DOCUMENTS TO BE TREATED AS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION ("CEII")

- 1.
- 2.
- 3.
- 4.

STATE OF VERMONT  
PUBLIC SERVICE BOARD

SCHEDULE IIa

Docket No. [XXXXX]

[CAPTION]

I, \_\_\_\_\_ (name), serve as  
\_\_\_\_\_ (title or advisory capacity) to the State of  
Vermont Public Service Department (“Department” or “PSD”) in the above-captioned  
proceeding before the State of Vermont Public Service Board. In connection with the work done  
for PSD, I request to be given access to certain Allegedly Confidential Information or Critical  
Energy Infrastructure Information (“CEII”) of [PARTY A] under a Protective Agreement, dated  
as of [DATE], by and among [PARTY A] and the Department. A copy of that Protective  
Agreement has been delivered to me. I have read this Agreement and agree to comply with and  
be bound by its terms.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

STATE OF VERMONT  
PUBLIC SERVICE BOARD

SCHEDULE IIb

Docket No. [XXXX]

[CAPTION]

I, \_\_\_\_\_ (name), serve as  
\_\_\_\_\_ (title or advisory capacity) to  
\_\_\_\_\_ (Party) in the  
above-captioned proceeding before the State of Vermont Public Service Board. In connection  
with the work done for \_\_\_\_\_ (Party), I  
request to be given access to certain Allegedly Confidential Information or Critical Energy  
Infrastructure Information (“CEII”) of [PARTY A] under a Protective Agreement, dated as of  
[DATE], by and among [Party A] and the State of Vermont Public Service Department. A copy  
of that Protective Agreement has been delivered to me. I have read this Agreement and agree to  
comply with and be bound by its terms. I agree that this Schedule IIb does not authorize my  
access to the Allegedly Confidential Information or CEII until it is executed, delivered to and  
approved by the counsel for [PARTY A].

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF VERMONT  
PUBLIC SERVICE BOARD

SCHEDULE III

Docket No. [XXXX]

[CAPTION]

The undersigned Party hereby requests that the Allegedly Confidential Information or Critical Energy Infrastructure Information (“CEII”) described below be furnished pursuant to the Protective Agreement, dated as of [DATE], by and among [PARTY A] and the State of Vermont Public Service Department, to the following person on behalf of

\_\_\_\_\_ (Party):

Name:

Address:

Title:

Description of Employment Responsibilities:  
(or Advisory Responsibilities to Party)

Description of Allegedly Confidential Information or CEII to be Provided: (attach description as Schedule A if more room is necessary)

Such person has read the Protective Agreement, executed the form designated as Schedule IIa or IIb to that Agreement, and agrees that Schedule IIa or IIb does not authorize his/her access to the Allegedly Confidential Information or CEII until it is executed, delivered to and approved by counsel for [PARTY A]

PARTY: \_\_\_\_\_

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ORDER