

## **CEII and CONFIDENTIAL INFORMATION NON-DISCLOSURE AGREEMENT**

This NON-DISCLOSURE AGREEMENT (this “Agreement”) is made by the undersigned \_\_\_\_\_ of \_\_\_\_\_ (“Recipient”) with a principal place of business at \_\_\_\_\_, in connection with the activities of the Vermont System Planning Committee (“VSPC”), in favor of \_\_\_\_\_ (“Disclosing Party”), with its primary address located at \_\_\_\_\_. Recipient, Disclosing Party and each signatory hereto are sometimes referred to collectively in this Agreement as the “Parties” or individually as a “Party”.

WHEREAS, Recipient has requested that Disclosing Party disclose to Recipient certain information (“Disclosed Information”), which Disclosing Party states contains Critical Energy Infrastructure Information (“CEII”), as defined in Section 1.4 below, or Confidential Information, as defined in Section 1.1 below; and

WHEREAS, pursuant to the Memorandum of Understanding (“MOU”) and final order in Vermont Public Service Board Docket No. 7081<sup>1</sup>, the Disclosing Party has an obligation to share information (which may include CEII) for the purposes of long range transmission planning in the state of Vermont and in connection with its participation in the Vermont System Planning Committee (“VSPC”) for review and comment;

WHEREAS, CEII is a form of Confidential Information, which Federal Energy Regulatory Commission (“FERC”) orders and regulations require Disclosing Party to keep confidential;

WHEREAS, the purpose of this Agreement is to protect the availability and confidentiality of this information, and to ensure that it is available only to those individuals entitled to have access to such confidential information; and

WHEREAS, Recipient seeks access to the Disclosed Information in connection with its participation in the planning processes of the VSPC;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **1. Definitions.**

As used in this Agreement, the following terms shall be defined as follows:

- 1.1** “ Confidential Information” shall mean any information disclosed by Disclosing Party that Disclosing Party asserts should not be publicly disclosed as described in the VSPC Confidential Information Protocol. Confidential Information shall not include and this Agreement shall not include: (a)

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<sup>1</sup> Investigation into Least-Cost Integrated Resource Planning for Vermont Electric Power Company, Inc.’s Transmission System.

information that Recipient can demonstrate is publicly available (other than as a result of disclosure by Disclosing Party or its Representatives in violation of this Agreement or disclosure by any other person who is prohibited by a contractual, legal or other obligation from disclosing the information); (b) information that Recipient can demonstrate was already in its possession at the time of its disclosure hereunder, and which was not acquired, directly or indirectly, from Disclosing Party on a confidential basis; (c) information that is independently developed by Recipient without reference to or the use of any Confidential Information; or (d) information that is lawfully received from sources other than Disclosing Party under circumstances not involving, to the best of Recipient's knowledge, any breach of any confidentiality obligation.

- 1.2** "Information-Sharing Systems" shall mean such systems, including but not limited to the VSPC web site, as may be developed by the VSPC for the purpose of storing and distributing information, including without limitation Confidential Information. For purposes of this Agreement, the VSPC Information-Sharing System shall be deemed to be under the control of and administered by VELCO, as defined below.
- 1.3** "Confidential Information Protocol" shall mean the protocol dictating management of Confidential Information as adopted by the VSPC and as may be amended by the VSPC from time to time.
- 1.4** "Confidential Energy Infrastructure Information" or "CEII" is one type of Confidential Information that may be disclosed under this Agreement and is defined by FERC as follows:
- Specific engineering, vulnerability, or detailed design information about proposed or existing systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination thereof that:
- (i) relates details about the production, generation, transportation, transmission, or distribution of energy;
  - (ii) could be useful to a person in planning an attack on critical infrastructure;
  - (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552 (2000); and which
  - (iv) does not simply give the general location of the critical infrastructure.<sup>2</sup>
- 1.5** "VELCO" shall mean Vermont Transco LLC and Vermont Electric Power Company (collectively).

## **2.0 Limitations on Exchange of Confidential Information.**

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<sup>2</sup> 18 C.F.R. § 388.113(c)(1)

**2.1** Except as otherwise provided in this Agreement, Recipient shall not disclose or otherwise make available any Confidential Information disclosed hereunder other than to a person who has a need to access said information in connection with their participation in the VSPC and who is bound by the terms of this Agreement, or a substantially similar agreement with Disclosing Party.

**2.2** All Confidential Information shall be safeguarded by Recipient in a manner that limits improper access and/or use of Confidential Information disclosed hereunder and Recipient shall use no less care to protect the Confidential Information disclosed hereunder than it uses to protect its own proprietary or confidential information.

**2.3** Nothing in this Agreement shall restrict in any way a Party's right or ability to make its own information and data that otherwise falls within the definition of Confidential Information available to third parties on such terms and conditions as that Party, in its sole discretion, deems appropriate.

**2.4** Except as provided in Section 4.1, all information designated by Disclosing Party as Confidential Information shall be conspicuously labeled:

“Confidential Information subject to the terms and conditions of the VSPC Confidentiality Agreement. This information shall not be released or disclosed to any person or entity that has not agreed in writing to be bound by the terms of the VSPC Confidentiality Agreement. This Disclosed Information shall be returned to the Disclosing Party upon such party's request, unless the return of such Disclosed Information is barred by Vermont or federal law.”

**2.5** Recipient will only afford access to Confidential Information to an employee, director agent, consultant, affiliate, or attorney (each a “Representative”), who has submitted to Disclosing Party a joinder agreement in substantially the form attached hereto as Schedule I, which incorporates the terms of this Agreement and by which such Representative agrees to be bound by the terms of this Agreement as if a signatory hereto.

**2.5.1** Notwithstanding the foregoing, Recipient may employ or otherwise engage third-party information technology individuals (“Third-party IT Providers”) who may have access to Confidential Information in the normal course of their development, general maintenance, and support service activities to the Recipient. 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 shall be

responsible for any breach of this Agreement by any of its Third-party IT Providers.

**2.6** Should Recipient disclose Confidential Information to any person in a manner not authorized under this Agreement or lose control over any Confidential Information, whether inadvertently or otherwise, Recipient shall immediately notify Disclosing Party, and shall take all steps as may be requested by Disclosing Party to secure the prompt return or destruction of such information.

**2.7** VELCO, in its role of providing administrative support to the functions assigned to the VSPC, shall exercise all commercially reasonable efforts to resist the compelled disclosure of Confidential Information stored in and distributed by the VSPC Information Sharing Systems to any person or entity who is not a signatory to this Agreement. In the event disclosure of Confidential Information is sought from VELCO by judicial or regulatory order or directive, VELCO shall provide immediate notice to all Disclosing Parties from which VELCO received Confidential Information and furnish all reasonable assistance requested by those parties in protecting the confidential nature of the Confidential Information for which disclosure is sought.

**2.8** Challenge to Confidential Status. Recipient or any Schedule I signatory has the right to challenge whether any Disclosed Information is, in fact, Confidential Information by filing a request for a reconsideration of the confidential designation with the Disclosing Party. In any such challenge Recipient of such Schedule I signatory shall include a detailed explanation as to why it disagrees with the confidential designation. The Disclosing Party shall consider the objection, and within ten (10) business days, or another time period agreeable to by the Parties, Disclosing Party shall respond to the Recipient's objection in writing. If Recipient disagrees with Disclosing Party's determination, Recipient may make a request of the Vermont Public Service Board ("Board"), Federal Energy Regulatory Commission ("FERC") or any court of competent jurisdiction requesting that such tribunal order Disclosing Party to release the information publicly. In any such proceeding, it shall be Disclosing Party's burden to prove that the information is properly designated as Confidential Information and should be treated accordingly. Until the expiration of any appeal period or until the court or agency in question issues a final order that such Disclosed Information is not Confidential Information has been overturned by a non-appealable final order of a court of competent jurisdiction, Recipient shall continue to treat such information as confidential hereunder. Notwithstanding the foregoing, challenges to the Disclosing Party's designation of information as CEII shall be governed by Section 4.7 below.

**2.9** To the extent that Disclosed Information is or becomes subject to a protective agreement approved by the Board or other tribunal of competent jurisdiction,

which binds the Disclosing Party and at least one of the other Parties, such protective agreement shall govern the use of such Disclosed Information in such proceeding, for so long as such proceeding is open. This Agreement shall govern the use of such Disclosed Information in all other circumstances, unless otherwise agreed by the Disclosing Party.

### **3. Conditions for Access to Confidential Information.**

Neither Recipient nor any of its Representatives shall use Confidential Information for any purpose other than the for the purpose of participation and planning within the VSPC and the processes established under the Docket No. 7081 MOU and Order.

Subject to Section 2.5, Recipient shall not, even under conditions of confidentiality, make available, disclose, provide, or communicate any Confidential Information to any other entity or person who has not agreed to be bound by the terms of this Agreement, either as a signatory or by executing and delivering to Disclosing Party a joinder agreement in substantially the form attached hereto as Schedule I, or by executing a substantially similar Agreement with Disclosing Party except as: (i) compelled by law or judicial or regulatory order or directive; or (ii) permitted by this Agreement.

Recipient shall exercise all commercially reasonable efforts to resist the compelled disclosure of Confidential Information to any person or entity who is not a signatory to this Agreement. In the event disclosure of Confidential Information is sought from Recipient by judicial or regulatory order or directive, Recipient shall provide immediate notice to all Disclosing Parties from which said Recipient received Confidential Information so that the Disclosing Party may, at the Disclosing Party's expense, seek a protective order or other appropriate remedy. Recipient shall furnish all reasonable assistance requested by those parties in protecting the confidential nature of the Confidential Information for which disclosure is sought.

Recipient shall inform its representatives about the provisions of this Agreement and, upon Disclosing Party's request, provide any information to the VSPC and Disclosing Party necessary to determine Recipient's and such representative's compliance with the terms and conditions of this Agreement.

### **4. Critical Energy Infrastructure Information**

**4.1** CEII shall be clearly marked as CEII by Disclosing Party with the following legend:

“This document contains Critical Energy Infrastructure Information (CEII) subject to the terms and conditions of the VSPC Confidentiality

Agreement. This information shall not be released or disclosed to any person or entity that has not agreed in writing to be bound by the terms of the VSPC Confidentiality Agreement. This Disclosed Information shall be returned to the Disclosing Party upon such party's request, unless the return of such Disclosed Information is barred by Vermont or federal law.”; and

- 4.2** CEII shall include all reports, summaries, compilations, analyses, notes or other information which contain CEII regardless of the manner in which it is stored.

Provided, however that CEII shall not include:

- (i) information that Recipient can demonstrate was already in its possession at the time of its disclosure hereunder, and which was not acquired, directly or indirectly, from Disclosing Party on a confidential basis;
- (ii) information which is independently developed by Recipient without reference to or the use of any CEII disclosed hereunder;
- (iii) information that is lawfully received from sources other than Disclosing Party under circumstances not involving, to the best of Recipient's knowledge, any breach of any confidentiality obligation;
- (iv) information that is otherwise publicly available, including without limitation, information that is made available to the public through the VSPC Information-Sharing Systems or other means;
- (v) information that Disclosing Party agrees is not CEII;
- (vi) information that is excluded from the definition of CEII by FERC (in FERC Orders 630, 683, or otherwise, including without limitation as a result of a successful challenge to the CEII status of any information disclosed hereunder as decided by FERC or any court of competent jurisdiction); or
- (vi) simplified maps and general information on engineering, vulnerability, or design that relate to production, generation, transportation, transmission or distribution of energy.

- 4.3. Use and Protection of CEII.** Notwithstanding the provisions of this Agreement that apply to Confidential Information generally, Recipient shall use the following standards and care when using, handling and storing CEII:

- (a) All CEII shall be safeguarded by Recipient in a manner that limits improper access and/or use of CEII disclosed hereunder and Recipient shall use no less care to protect the CEII disclosed hereunder than it uses to protect its own proprietary or confidential information. Recipient shall limit CEII access to:

- (i) those persons who have entered into an agreement with Disclosing Party containing substantially similar obligations to those contained in this Agreement in favor of Disclosing Party; or
  - (ii) employees of a Vermont transmission or distribution utility or other persons who are bound by the ISO New England Information Policy or similar obligations; or
  - (iii) persons who have executed and delivered to Disclosing Party a joinder agreement in substantially the form attached hereto as Schedule I.
- (b) Recipient may make notes of CEII, which shall be treated as CEII if they contain CEII.
  - (c) Recipient of CEII may use CEII as foundation for advice provided to any third party, as long as such advice does not reveal CEII.
  - (d) Recipient will not knowingly use CEII directly or indirectly for any illegal or non-legitimate purpose.
  - (e) In the event that Recipient is required to disclose CEII by subpoena, law or other directive of a court, administrative agency or arbitration panel, Recipient hereby agrees to provide Disclosing Party with prompt notice of such request or requirement in order to enable Disclosing Party to (i) seek an appropriate protective order or other remedy, (ii) consult with Recipient with respect to taking steps to resist or narrow the scope of such request or legal process, 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, compliance with such subpoena, law or other directive of a court, administrative agency or arbitration panel shall not constitute a breach hereof.

**4.4 Return of CEII.** Each party agrees that the disclosure of Disclosed Information pursuant to this Agreement does not convey any rights or title to the Disclosed Information, which rights are and will at all times remain with the lawful owner. No grant under any of the applicable intellectual property rights is hereby given or intended including license implied or otherwise with respect to CEII disclosed hereunder. In the event that Disclosing Party, so requests, Recipient will promptly return to Disclosing Party all Disclosed Information (whether or not it is CEII), including all copies, reproductions, summaries, compilations, analyses or extracts thereof, unless the return of such Disclosed Information is barred by Vermont or federal law.

**4.5 Change in Status.** If Recipient or any signatory to a Schedule I possesses Disclosed Information and Recipient terminates his or her relationship with his/her employer or his/her/its relationship as a Representative of such

Recipient or, if Recipient is a participant in the VSPC, his/her/its relationship to the VSPC (e.g., Recipient leaves his or her employ and/or is no longer a member of the VSPC) Recipient shall inform Disclosing Party immediately in writing at the address given above, and promptly return any CEII in Recipient's possession to Disclosing Party or destroy the CEII and shall certify in writing to Disclosing Party that Recipient has done so. Disclosing Party may require the return or destruction of the CEII.

- 4.6** Exemption from Public Records. If Recipient or signatory to a Schedule I joinder agreement is an employee of a federal or state agency, he/she agrees that the CEII, although it is subject to Freedom of Information/Public Records acts, the Vermont Public Records and Documents Law, or similar statutes, will be deemed exempt from public inspection and copying to the fullest extent permitted by law under the relevant exemption clauses for materials deemed confidential, unless and until the Disclosed Information's CEII status is successfully challenged in the appropriate forum.
- 4.7** Challenge to CEII Status. Recipient of any Schedule I signatory has the right to challenge whether any Disclosed Information is, in fact, CEII by filing a request for a reconsideration of the CEII designation with Disclosing Party's CEII Coordinator. Recipient shall include a detailed explanation as to why it disagrees with the CEII designation. The Disclosing Party shall consider the objection, and within ten (10) business days, or another time period agreeable to the Parties, Disclosing Party shall respond to Recipient's objection in writing.

If Disclosing Party agrees that the subject information should not be designated as CEII, Disclosing Party shall provide the information with its written response. If Disclosing Party does not agree that the subject information should not be designated as CEII, Disclosing Party shall provide an explanation as to why the information is protectable CEII. If Recipient disagrees with Disclosing Party's determination, Recipient may make a request of the Board, FERC or any court of competent jurisdiction requesting that Disclosing Party release the information publicly. In any such proceeding, it shall be Disclosing Party's burden to prove that the information is properly designated as CEII and should be treated accordingly. Until the court or agency in question issues a final order that such Disclosed Information is not CEII, or until the CEII Coordinator's decision that it is CEII has been overturned by a non-appealable final order of a court of competent jurisdiction, Recipient shall continue to treat such information as CEII hereunder.

## **5. Disclaimer and Hold Harmless.**

- 5.1** Recipient assumes any and all risk and responsibility for selection and use of, and reliance on, any Disclosed Information.

**5.2** Recipient acknowledges that Disclosing Party produces and gathers Disclosed Information to meet Disclosing Party's sole needs and responsibilities. Recipient receives any and all Disclosed Information "as is" and with all faults, errors, defects, inaccuracies, and omissions. Neither Disclosing Party nor the VSPC make any representation or warranty whatsoever with respect to the availability, timeliness, accuracy, reliability, or fitness for any particular purpose of any Disclosed Information. Recipient disclaims and waives all rights and remedies that it may otherwise have with respect to all warranties and liabilities of Disclosing Party or the VSPC, expressed or implied, arising by law or otherwise, with respect to any faults, errors, defects, inaccuracies or omissions in, or availability, timeliness, reliability, suitability or fitness for any particular purpose of the Disclosed Information.

**5.3** Recipient acknowledges that the VSPC maintains various Information-Sharing Systems in order to facilitate the transmission system planning activities of the VSPC as contemplated under Docket No. 7081 and as may be agreed to by the VSPC participants from time to time. The use of data in accordance with this Agreement is the responsibility of the individual Recipient Parties and Disclosing Parties and not of the VSPC. Each Disclosing Party and Recipient disclaims and waives any rights or remedies that it might otherwise have against the VSPC or its participants for faults, errors, defects, inaccuracies, or omissions in, or availability, timeliness, accuracy, reliability, or suitability of the Disclosed Information. Further, each Disclosing Party and Recipient disclaims and waives any rights or remedies that it might otherwise have against the VSPC for the neglect, wrongful, or unauthorized use or disclosure of the Disclosed Information by any Disclosing Party or Recipient.

**6. Equitable Relief; Audit.**

**6.1** The provisions of this Agreement are necessary so that Disclosing Party may meet both its obligations under FERC regulations and orders and/or Disclosing Party's obligations under the Docket 7081 MOU and related orders, and are considered by the Parties to be reasonable for such purpose. Recipient agrees that any breach of this Agreement will cause Disclosing Party substantial and irreparable harm for which damages would be difficult to calculate and, therefore, in the event of any such breach or threatened breach, in addition to other remedies which may be available, Disclosing Party shall have the right to specific performance and other injunctive and equitable relief, it being acknowledged that legal remedies are inadequate. Disclosing Party may audit Recipient's compliance with this Agreement at Disclosing Party's sole cost and during normal business hours.

**6.2** If Recipient breaches its obligation under this Agreement, Recipient will be prohibited from further receipt of Disclosed Information until the VSPC determines that Recipient has resumed compliance with this Agreement. A breach of this Agreement by Recipient shall not relieve Recipient of its obligations hereunder.

**7. Term.**

This Agreement shall bind the signatories hereto until the earlier of (i) its termination by a signatory by written notice to the other party or parties; provided, however, that such termination shall not affect any obligation with respect to Disclosed Information received by Recipient prior to such termination, until Recipient confirms in writing to Disclosing Party that it has either (1) returned to Disclosing Party all of the Disclosed Information that it received from Disclosing Party, and all copies thereof or (2) destroyed all Disclosed Information received hereunder, in whatever form; or (ii) with respect to CEII disclosed hereunder amendment of the provisions of 18 C.F.R. § 388.113 (c) (1) and (2), or any successor regulation to allow the disclosure of CEII generally; or (iii) a ruling by FERC or court of competent jurisdiction that the provisions of 18 C.F.R. § 388.113 (c) (1) and (2) or any successor regulation are substantially unenforceable. Nothing in this Agreement shall obligate Recipient to recover or destroy Disclosed Information that it has provided to third parties pursuant to the terms of this Agreement.

**8. No Waiver.**

Each Party understands and agrees that no failure or delay by the other 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.

**9. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont without regard to its conflicts of laws principles.

**10. Assignment Prohibited.**

Any assignment of Recipient's rights, obligations or duties under this Agreement without Disclosing Party's prior written consent, shall be void.

**11. Entire Agreement; Amendment.**

This Agreement contains the entire agreement between the Parties concerning the protection of Confidential Information, 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.

**12. Severability.**

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

**13. Representation and Warranty.**

Each Party represents and warrants to the other that the execution and delivery of this Agreement has been duly authorized, that the signature appearing below is the true signature of such Party's duly authorized representative. Each execution and delivery of a Schedule I to Disclosing Party shall constitute the representation and warranty of Recipient to Disclosing Party as of the date of such delivery that the signature on such Schedule I constitutes the true signature of the person whose name appears on such Schedule I and that such Schedule I signatory is a duly authorized Representative of Recipient and entitled thereby to receive Confidential Information hereunder.

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IN WITNESS WHEREOF, the Parties have executed this Non-Disclosure Agreement as of the date set forth below.

<b>RECIPIENT:</b> Signature: _____ Name (please print): _____ Date: _____ Title: _____	Organization or Entity on whose behalf CEII is requested: _____ By: _____ Name: Title: (if a corporate entity, must be an officer with ability to bind the entity) Date: _____
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[If Disclosed Information is being released to a person employed by the interested Party, both must sign]

**DISCLOSING PARTY:**

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

ACKNOWLEDGED AND AGREED  
as to its obligations in Section 2.7 hereof:

VERMONT TRANSCO LLC AND  
VERMONT ELECTRIC POWER COMPANY

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE I  
JOINDER AGREEMENT

I, \_\_\_\_\_ (name), serve as  
\_\_\_\_\_  
\_\_\_\_\_ (title or advisory capacity) to  
\_\_\_\_\_  
\_\_\_\_\_ (Recipient) in  
connection with the \_\_\_\_\_'s (Recipient's) duties pursuant to the  
Vermont Public Service Board's Docket 7081 Memorandum of Understanding and final  
order in that Docket. In connection with the work done for  
\_\_\_\_\_  
\_\_\_\_\_ (Recipient), and for good  
and valuable consideration, the receipt and sufficiency of which are hereby  
acknowledged, I request to be given access to certain Confidential Information of  
\_\_\_\_\_  
\_\_\_\_\_ ("Disclosing Party") under that CEII and Confidential Information  
Non-Disclosure Agreement (the "Non-Disclosure Agreement"), dated \_\_\_\_\_, 20\_\_\_\_,  
by and among the Disclosing Party and the Recipient, as defined therein. A copy of that  
Non-Disclosure Agreement has been delivered to me. I have read the Non-Disclosure  
Agreement and agree to comply with and be bound by its terms, as if I were the Recipient  
thereunder. I agree that this Schedule I does not authorize my access to the Allegedly  
Confidential Information until this Schedule I is executed, delivered to Disclosing Party  
and approved by Disclosing Party's counsel or a corporate officer of Disclosing Party.

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

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

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

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

DISCLOSING PARTY

Acknowledged and Agreed:

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

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