December 17, 2014

Via Electronic Filing and FedEx

Public Utility Commission
Attn: Filing Center
3930 Fairview Industrial Drive SE
Salem, OR 97308

Re: Docket No. LC 62: Sierra Club Request to ALJ to Certify Ruling

Please find enclosed the original and one (1) copy of the Sierra Club's Request to the ALJ to Certify ALJ Ruling Granting PacifiCorp's Motion for a General Protective Order in the above-referenced docket. This document has been e-filed with the Commission and served on parties via email.

Please let me know if you have any questions. Thank you.

Respectfully submitted,

/s/ Derek Nelson

Derek Nelson
Legal Assistant
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
(415) 977-5595
derek.nelson@sierraclub.org

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

LC 62

In the Matter of PACIFICORP, dba PACIFIC POWER, 2015 Integrated Resource Plan	Sierra Club's Request to the ALJ to Certify ALJ Ruling Granting PacifiCorp's Motion for a General Protective Order

Pursuant to OAR 860-001-0110, Sierra Club respectfully requests for the ALJ to certify the ALJ's ruling granting PacifiCorp's Motion for a General Protective Order in LC 62 to the Commission for consideration. Sierra Club filed a motion to intervene in this docket on December 4, 2014.

On December 2, 2014, the Commission opened Docket LC 62 to consider PacifiCorp's 2015 IRP, which will be filed in March 2015. The same day PacifiCorp requested expedited consideration of its motion for a General Protective Order to govern the proceedings. The next day, on December 3, 2014, Chief ALJ Grant granted the motion and issued the General Protective Order for the docket.[1] This Request is timely filed within 15 days of that Order.

Sierra Club does not oppose the Company's request for a protective order to safeguard commercially sensitive business information related to the Company's long-term resource planning; however, good cause exists for the Commission to consider problems with the General Protective Order. Revisions to the Commission's General Protective Order are needed to allow for broad discovery and meaningful public participation at the Commission. Most importantly, consistent with the FERC Model Protective Order, the General Protective Order must be updated

[1] Protective Order No. 14-416, Docket No. LC 62 (Dec. 3, 2014).

to clarify that a company cannot designate publicly available information as confidential. The Commission should also revise other ambiguities and problems in the protective order, as described below.

I. Background: Public Participation and Broad Discovery in Commission Proceedings

The Commission's General Protective Order, which the ALJ ruled governs confidential information in Docket LC 62, is supposed to "permit[s] the broadest possible discovery consistent with the need to protect confidential information." Though the Commission's General Protective Order has generally functioned in the past, recent actions by PacifiCorp to use the Order as a sword against public intervenors for referencing publicly available information in discovery requests demonstrates that its intended function as a shield to protect sensitive information has been compromised. Revisions are necessary to restore the balance of the Protective Order to protect public participation in the discovery process as well as confidential information.

As the Commission has recognized, Sierra Club and other public intervenors add great value to utility proceedings. Sierra Club brings unique expertise to Oregon proceedings by providing staff and the commissioners with economic analyses showing that the Company's continued reliance on coal-fired generation can cause significant and avoidable impacts to Oregon ratepayers. Sierra Club's work helps to illuminate the true cost of continued reliance on fossil-fuel generated power, and supports new, robust incentive programs that encourage utility customers to generate their own renewable energy and increase energy efficiency. Obtaining discovery is critical for public participation in utility dockets.

//

//

II. The General Protective Order is Flawed and Should be Revised

A. The Protective Order Should Not Allow Companies to Claim Protection for Publicly Available Information

It is axiomatic that public information cannot be a legally protected trade secret. Thus, FERC's Model Protective Order, and protective orders around the country, explicitly do not allow a party to designate information that is publicly available.

Instead of adopting this approach, the Commission's General Protective Order allows parties to designate publicly available information as confidential and places the responsibility on intervenors to challenge the improper designations. This approach puts a far too heavy burden on public intervenors to either challenge every one of the utility's overbroad designations, locate publicly available citations for such information, or potentially face severe consequences for referencing information that is available in the public domain. This issue was front and center when PacifiCorp recently accused Sierra Club of violating the Protective Order for referencing publicly-available information that PacifiCorp had improperly designated as confidential.[2] PacifiCorp asked the Commission to impose maximum sanctions, including banning Sierra Club forever from PacifiCorp's proceedings at this Commission.

The Commission must reconsider the language of the Protective Order because, as demonstrated by this recent case, designating parties have been abusing the Order to designate entire documents as confidential where those documents contain only a few pieces of bona fide commercially sensitive information. This practice stands in stark contrast to the purpose of the Order to protect a limited amount of confidential information under Oregon law – that is, "a

[2] In the Matter of Sierra Club, Regarding Violation of Protective Order No. 13-095, Docket No.UM 1707. PacifiCorp even claimed to designate Intervenor's questions and comments as confidential.

trade secret or other confidential research, development, or commercial information" under ORCP 36(C)(7).[3]

This Commission has repeatedly recognized that utilities do not always use the protective order consistent with its purpose to protect a limited subset of sensitive information. The Commission recognized in a 2011 case that "PGE's use of the confidential designation appears to be too liberal and includes material that does not appear to be confidential, which made drafting a non-confidential order challenging. We strongly encourage PGE to be more deliberate and moderate in its use of the designation in the future and refer PGE to OAR 860-001-0080(3)(a)."[4]

Instead of limiting its designations in good faith as required by law, PacifiCorp has designated entire documents containing mostly publicly available information as confidential. Even after Sierra Club formally challenged its overbroad designations, PacifiCorp refused to limit or even justify its wholesale designation of a 16-page PowerPoint presentation. The Commission then had to force PacifiCorp to redline the PowerPoint in a second round of briefing, because "[e]ven a cursory review...shows that the document contains information that was publicly available at the time of the workshop, including a quotation from a publicly available Commission order."[5]

Sierra Club's efforts to challenge PacifiCorp's overbroad designations in LC 57 show that such challenges are time and resource intensive, and should not substitute for a common-sense provision in the Protective Order prohibiting protection of publicly available information. Two rounds of briefing and three and a half months have passed since Sierra Club first filed a motion challenging PacifiCorp's designation of certain information contained in the PowerPoint,

[3] See also OAR 860-001-0080.
[4] Order No. 11-432, Docket No. UE 228 (Nov, 2, 2011).
[5] Ruling, Docket No. LC 57 (Oct. 17, 2014).

and the Commission has still not issued an order on Sierra Club's challenge. Neither public intervenors nor the Commission should be burdened with these matters.

The FERC Model Protective Order is used as a model for utility commissions around the country. It explicitly prohibits protection for public information: "A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public…"[6] Additionally, it states:

> (3) Protected Materials shall 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 protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order.

Attached to this Request are the FERC Model Protective Order (Attachment 1) as well as several recent protective orders from Sierra Club cases across the country that include provisions prohibiting protection of publicly available information. Sierra Club recommends that the Commission adopt language similar to these examples to clarify that a party may not designate publicly available information as confidential. The relevant portions of those examples are summarized as follows:

1. Sierra Club v. Louisville Gas and Electric, C.A. No. 3:14-CV-391-H, (W.D. KY), provided as Attachment 2 ("This Protective Order shall not apply to documents that are publicly available.")

2. Sierra Club et al. v. Midwest Generation, LLC, Before the Illinois Pollution Control Board, PCB 2013-015, provided as Attachment 3:

> the following materials shall not be subject to this Order, if the content and/or substance thereof: (a) is, at the time of disclosure, in the public domain by publication or otherwise and is not otherwise protected from disclosure as a result; (b) becomes at any time,

[6] *See* Attachment 1, FERC Model Protective Order, Paragraph 2.

> through no act or failure to act on the part of the recipient Party, part of the public domain by publication or otherwise; or, (c) is already in the possession of a Party at the time of disclosure by the other Party and was not acquired directly or indirectly from the disclosing Party under conditions requiring the confidential treatment of the material.

3. In the Matter and Merger of Exelon Corp. and Pepco Holdings, Inc, Case No. 9361, Before the Public Service Commission of Maryland, provided as Attachment 4 ("Protected Materials shall not include any information which now, or prior to these proceedings, is or was public knowledge, or which becomes public knowledge as a result of publication or intentional disclosure by the Interested Parties.")

4. In the Matter of the Application of Ohio Edison Company et al, Case No. 14-1297-EL-SSO, Before the Public Utilities Commission of Ohio, provided as Attachment 5:

> 3.A. "Protected Materials" means documents and information ... that customarily are treated by the Companies or third parties as sensitive or proprietary, which are not available to the public, ...
>
> …
>
> C. "Protected Materials" do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain …

B. The Protective Order Should Use Distinct Terminology to Differentiate Between Information Unilaterally Designated by a Party as Confidential And Legally-Protected Confidential Information

The General Protective Order is ambiguous because it does not differentiate between designated information and bona fide Confidential Information. The Order allows parties to unilaterally designate information as confidential, *see* Paragraphs 4-6, but does not specify a term to refer to such information that has not been determined by the Commission to be "Confidential Information" under ORCP 36(C)(7). Instead, the Order confusingly refers interchangeably to "Confidential Information" and "information designated as confidential."

Paragraph 2 provides that "Confidential Information" is information that falls within the scope of ORCP 36(C)(7) ("a trade secret or other confidential research, development, or commercial information"). Paragraphs 4-6 allow parties to designate information as confidential, but do not provide another nomenclature for referring to the designated-but-unverified information. Instead, those paragraphs ambiguously refer to unverified unilateral designations as "Confidential Information."

According to the ALJ's Disposition, designated information cannot automatically be "Confidential Information" because the Order "makes no judgment about whether any particular document contains a trade secret or commercially sensitive information." The Order "permits any party to designate information as confidential if the party reasonably believes that the information falls within the scope of ORCIP 36(C)(7)."

The Commission's General Protective Order should include a unique terminology for designated information to clarify these ambiguities. For example, the FERC Model Protective Order uses the term "Protected Materials" to refer to designated information.

C. The Commission Should Clarify the Dispute Provision

Paragraph 15 of the Protective Order, entitled "Appeal to the Presiding Officer," states that "[a]ny party may request that the ALJ conduct a conference to help resolve disputes related to this protective order." The second paragraph of 15 addresses more specifically how to challenge designation of information as confidential. Paragraph 11 also indicates that Paragraph 15 is intended to resolve any disputes under the Order: it states that parties should attempt to resolve disputes about Qualified Persons before filing a motion to the ALJ.

Yet after Sierra Club invoked the first sentence of Paragraph 15 requesting an ALJ to help resolve a protective order dispute in Docket LC 57, ALJ Grant indicated that the request

was improper because Paragraph 15 applies only to challenging designations. In an August 18, 2014 teleconference, Chief Grant stated that paragraph 15 "does not apply to the situation here where the question is not about whether the information was properly designated, but whether the designated information was used for unauthorized purposes."[7]

The Commission should clarify whether Paragraph 15 applies to all disputes under the Protective Order, and if not, how other disputes related to the Protective Order should be brought before the Commission.

D. The Meaning of the Term "Use" Should be Clarified to Conform to Common Practice at the Commission

Paragraph 12 prohibits any person without permission to "use or disclose Confidential Information for any purpose other than participating in these proceedings." The Commission should clarify that the term "use" does not include a mere reference to the existence of a designated confidential document or to the page numbers of a designated document. Such a restrictive definition would hinder fact-finding at the Commission and would never disclose legally protected information that could cause harm. Additionally, the Order should reflect the common custom at the Commission, where parties routinely ask for confidential information from a previous planning docket in future related proceedings. The Order should allow use of protected materials in future related proceedings.

E. The Seven-Day Waiting Period for Qualified Persons under Paragraph 3(e) Should Be Reduced

Paragraph 10 of the Protective Order imposes an unnecessary and burdensome seven-day waiting period before persons qualified under Paragraph 3(e), including parties and their consultants, can receive confidential information. The Protective Order does not allow such

[7] See Attachment A, Informal Transcript of August 18, 2014 Conference, PacifiCorp's Response to Motion to Consolidate and Request for Oral Argument, Docket Nos. UM 1707/ LC 57 (Sep. 30, 2014).

persons access to confidential information until seven days after the designating party receives a copy of the signed statement. Given the speed at which Commission dockets can move, three days is a more appropriate timeframe. Three days gives the designating party ample opportunity to object and does not prejudice other participants with a seven-day delay.

F. Qualified Persons from Different Parties Should be Permitted to Discuss Protected Information

Paragraph 12 states that "A Qualified Person may disclose Confidential Information only to other Qualified Persons associated with the same party." This paragraph makes it impossible for public interest intervenors to pool resources together to analyze utility filings because it prohibits them from talking to each other. For example, a coalition of western environmental groups, including Utah Clean Energy, Idaho Conservation League, Heal Utah, Western Clean Energy Campaign, Sierra Club, and Powder River Basin Resource Council, have engaged Synapse to assess PacifiCorp's 2015 IRP, which includes running the company's System Optimizer model.

Paragraph 12 makes this arrangement impossible, because it would appear to prohibit Synapse and representatives of the constituent groups to talk to each other and Synapse at the same time. The Commission should adjust this paragraph to state that "Qualified Persons from different parties may communicate about Confidential Information under this Order."

//

//

//

//

III. Conclusion

Good cause exists for the ALJ to certify the ruling on the Protective Order to the Commission to consider revisions to the General Protective Order. Revisions to the Commission's General Protective Order are needed to allow for broad discovery and meaningful public participation at the Commission.

Dated: December 17, 2014

Respectfully submitted,

/s/ Gloria Smith

Gloria D. Smith
Andrea Issod
Travis Ritchie
Sierra Club
85 Second St., 2nd Fl.
San Francisco, CA 94105
(415) 977-5532
gloria.smith@sierraclub.org
andrea.issod@sierraclub.org
travis.ritchie@sierraclub.org

Attorneys for Sierra Club
Pro Hac Vice Pending in LC 62[8]

[8] Should the Commission assign a new docket to address Sierra Club's Request, Sierra Club respectfully requests its pending Pro Hac Vice application be assigned to that new docket number.

Attachment 1

MODEL PROTECTIVE ORDER

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Name of Proceeding Docket No.

PROTECTIVE ORDER

(Issued)

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge (Presiding Judge) (which includes the Chief Administrative Law Judge) or the Federal Energy Regulatory Commission (Commission).

2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 CFR§ 388.113(c)(1) ("Critical Energy Infrastructure Information").

3. Definitions -- For purposes of this Order:

(a) The term "Participant" shall mean a Participant as defined in 18 CFR § 385.102(b).

(b) (1) The term "Protected Materials" means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as "PROTECTED MATERIALS" or with words of similar import as long as the term "Protected Materials" is included in that designation to indicate that they are Protected Materials. If the

Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on each page containing such information the words "Contains Critical Energy Infrastructure Information B Do Not Release".

(2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall 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 protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

(1) Commission Trial Staff designated as such in this proceeding;

(2) an attorney who has made an appearance in this proceeding for a Participant;

(3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);

(4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;

(5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or

(6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of 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 Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3 (d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney=s instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Subject to Paragraph 18, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information B Do Not Release". For anything filed under seal, redacted versions or, where an entire

document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.

17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be additionally marked “Contains Critical Energy Infrastructure Information – Do Not Release.”

18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination, and if the Participant seeking protection files an interlocutory

appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for Protected Materials in the files of the Commission.

19. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

Presiding Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Name of Proceeding Docket No.

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____
Printed Name: _____
Title: _____
Representing: _____
Date: _____

Attachment 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

SIERRA CLUB, **Plaintiff,** **v.** **LOUISVILLE GAS AND ELECTRIC COMPANY,** **Defendant.**	**C.A. No. 3:14-CV-391-H** **ELECTRONICALLY FILED**

STIPULATED PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION AND DOCUMENTS

It is hereby Ordered that this Stipulated Protective Order Regarding Confidential Information and Documents ("Protective Order") shall apply with respect to certain documents and other information produced and/or disclosed in connection with the above-captioned action ("the Action").

1. Entry of this Protective Order is appropriate because Defendant contends that information and documents that may be relevant to the allegations and defenses in this matter contain sensitive business and other confidential and proprietary information. This Protective Order is also appropriate to protect confidential and proprietary information that may be present in discovery sought from Sierra Club or non-parties. The Plaintiff and Defendant (collectively, "the Parties") may seek documents and information and/or seek to use documents and information in connection with this Action that a Party or non-Party may consider confidential. The Parties intend for such confidential information to be disclosed only under the terms of this Protective Order.

2. Except to the extent required by law, this protective order shall apply, and the procedures described herein shall be adopted with respect to all Discovery Material that any Party or non-Party marks as "CONFIDENTIAL/TRADE SECRET - SUBJECT TO PROTECTIVE ORDER" in accordance with this Protective Order. A Party or non-Party making such designation in accordance with this Protective Order is hereinafter referred to as a "Designator." This Protective Order shall not apply to documents that are publicly available.

Confidential Information

3. For the purpose of this Protective Order, "Discovery Material" shall mean all documents (regardless of the medium or manner generated, stored, or maintained), deposition testimony, tangible things or other information produced, subpoenaed, transcribed from depositions, or otherwise given to any Party in this Action by another Party or by a non-Party in connection with discovery (whether in the form of deposition transcripts, interrogatory answers, document productions, responses to requests for admissions or other discovery). Discovery Material shall also include any documents, things or information produced voluntarily or by agreement without the receipt of a formal discovery request, and designated as confidential by any Party or non-Party in their response.

4. For the purpose of this Protective Order, "Confidential Information" shall mean Discovery Material, marked as "CONFIDENTIAL/TRADE SECRET - SUBJECT TO PROTECTIVE ORDER" in accordance with Paragraph 8 or 9, which contains confidential commercial, trade secret, or other information that is entitled to confidential treatment pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, or any other statute, regulation, applicable court order or rule, or common law rule restricting disclosure. No Confidential Information or

any copy, excerpt, or summary thereof, or the information contained therein, shall be delivered or disclosed to any person except as provided herein.

5. If any non-Party receives a request or subpoena seeking documents or tangible things and the requested documents or tangible things contain Confidential Information, the non-Party may designate such material as confidential in accordance with Paragraph 8. Non-party Confidential Information designated as such, or any copy, excerpt, or summary thereof, or the information contained therein, shall be subject to all of the conditions and limitations set forth in this Protective Order. Any non-Party that desires to protect its claim of confidentiality by adhering to these procedures submits to the jurisdiction of this Court with regard to any proceedings related to the non-Party's claim of confidentiality and bears the burden of establishing its claim of confidentiality in such proceedings.

6. No Confidential Information, or any copy, excerpts or summary thereof, or the information contained therein, shall (a) be used for any business, commercial, competitive, personal, or other non-regulatory or non-enforcement purposes; or (b) be disclosed by the person receiving it to any other person without the prior written consent of the Designator or an order of the Court, except to the following:

i. Counsel for the Parties (including internal and external counsel);

ii. Counsel's employees (including temporary and permanent law clerks, paralegals, and clerical personnel retained by counsel for the Plaintiff);

iii. Parties and employees of the Parties who have a need for access to the Confidential Information for this Action;

iv. Litigation consultants and contractors, and persons designated as expert witnesses;

v. The Court and its employees, including, without limitation, court reporters, employees in the Clerk's Office, and law clerks, provided that the Confidential Information is filed in accordance with the terms of this Protective Order;

vi. Stenographers or other persons preparing transcripts of testimony in this Action;

vii. Witnesses or potential witnesses who have a need for access to the Confidential Information for this Action; and

viii. Outside vendors, including their employees, retained by Counsel for any Party to provide copying, data entry, data processing, or computer imaging, and similar clerical support services.

7. With the exception of those persons designated in clauses 6.i., 6ii., 6iii., 6.v. and 6.vi. of Paragraph 6, no Confidential Information, or any copy, excerpt, or summary thereof, or the information contained therein, received from a Party or non-Party, shall be disclosed to any person unless (a) such person has been provided with a copy of this Protective Order, and (b) such person has agreed to be bound thereto and executed the agreement attached hereto as Exhibit A. Documents may be handled by clerical personnel in the employ of any Party or non-Party, including those in the employ of contractors or vendors hired by that Party or non-Party, where that Party or non-Party has executed the agreement and the clerical personnel are performing purely clerical duties, such as mail handling, copying, bates stamping, filing, etc., without such personnel signing the agreement. Persons indicated on the face of Confidential Information as having been the authors or recipients of such documents need not execute Exhibit A before being provided access to such information. The agreement, attached hereto as Exhibit A, shall provide for the return of all copies of the Confidential Information that have not been destroyed, at the conclusion of this Action, including any appeals therein, to Counsel for the Party that provided the copy. Counsel for each Party shall obtain and retain executed copies of the agreements attached as Exhibit A from each person, other than persons designated in clauses 6.i., 6.ii., 6.iii., 6.v. and 6.vi. of Paragraph 6, to whom it discloses any Confidential Information other than its own Confidential Information.

8. Any Discovery Material considered by a Party or non-Party to be confidential or to contain Confidential Information shall be marked "CONFIDENTIAL/TRADE SECRET - SUBJECT TO PROTECTIVE ORDER" in a readily visible or noticeable manner, and include a stamp identifying the name and telephone number of counsel for the Designator. In the case of documents, interrogatory responses, and responses to requests for admission, Confidential Information shall be designated by a stamp or designation on each such document or response prior to production or service. Any Party photocopying or otherwise duplicating Confidential Information shall ensure that the "CONFIDENTIAL/TRADE SECRET - SUBJECT TO PROTECTIVE ORDER" designation and name and telephone number of counsel for the Designator appear clearly on any such copies or duplicates.

9. Whenever Confidential Information is to be referred to or disclosed in a deposition, any Party or non-Party may exclude from the room during such testimony any person who is not authorized to receive Confidential Information under this Protective Order. Any testimony given in any deposition may be designated as "CONFIDENTIAL/TRADE SECRET - SUBJECT TO PROTECTIVE ORDER" by any Party or non-Party by making such designation on the record. A Party or non-Party may also make such designation in writing to the court reporter if the designations are made within fourteen (14) days after the transcript has been made available to the Party or non-Party making the designations, and notice of such designations is sent to all Counsel of Record. At the Designator's expense, the reporter shall then separately transcribe those portions of the testimony so designated and shall mark the face of the transcript with the words "CONFIDENTIAL/TRADE SECRET - SUBJECT TO PROTECTIVE ORDER," and seal it in a separate envelope. Whenever any Confidential Information is identified as an exhibit in connection with testimony given in any deposition proceeding in this Action, it shall

be so marked, if it has not previously been marked, and appropriately sealed. Only persons who have executed the agreement attached hereto as Exhibit A and those persons designated in clauses 6.i., 6.ii., 6.iii., 6.v. and 6.vi. of Paragraph 6, shall be entitled to obtain copies of that portion of the transcript and/or exhibit. A copy of this Protective Order shall be identified and marked as an exhibit to any such transcript, and all persons who have actual notice of this Protective Order shall be bound by its terms.

10. All Parties, their Counsel, and all persons designated in Paragraph 6 above who obtain Confidential Information shall take all necessary and appropriate measures to maintain the confidentiality of the Confidential Information, shall disclose such information only to persons authorized to receive it under this Protective Order, and shall retain such information in a secure manner.

11. Whenever Confidential Information is to be referred to or disclosed in a hearing or trial proceeding, any Party or non-Party may move in accordance with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and/or this Protective Order that the Court exclude from the room those persons who are not authorized to receive Confidential Information under this Protective Order. In addition, any Party or non-Party may move the Court to designate any testimony given in such hearing or trial proceeding as "CONFIDENTIAL/TRADE SECRET - SUBJECT TO PROTECTIVE ORDER," and to require the reporter to separately transcribe those portions of the testimony, mark the face of the transcript with the words "CONFIDENTIAL/TRADE SECRET - SUBJECT TO PROTECTIVE ORDER," and seal it in a separate envelope. Whenever any document designated as "CONFIDENTIAL/TRADE SECRET - SUBJECT TO PROTECTIVE ORDER" is identified as an exhibit in connection with testimony given in any hearing or trial proceeding in this Action, any Party or non-Party may

move that it be so marked if it has not previously been marked and appropriately sealed. Where the Court rules that such material is entitled to protection from disclosure under this Protective Order and the Federal Rules of Civil Procedure, Federal Rules of Evidence, or other applicable law, only persons who have executed the agreement attached hereto as Exhibit A and those persons designated in clauses 6.i., 6.ii., 6.iii., 6.v. and 6.vi. of Paragraph 6 shall be entitled to obtain copies of that portion of the transcript and/or exhibit. A copy of this Protective Order shall be identified and marked as an exhibit to any such transcript, and all persons who have actual notice of this Protective Order shall be bound by its terms.

12. Any Party may at any time notify a Party or non-Party asserting a claim of confidentiality, in writing, or in the case of a deposition, either upon the record of a deposition or in writing later, of the Party's objection to the designation of any information, documents, or testimony as confidential. In that event, the challenging Party and Designator shall attempt to resolve any challenge in good faith on an expedited and informal basis. If the challenge cannot be expeditiously and informally resolved, either the Designator or the challenging Party may seek an appropriate ruling from the Court. In any such application for a ruling, the Designator shall have the burden of proof to establish that the designated material is in fact confidential and is entitled to confidential treatment. The information in issue shall continue to be treated as Confidential Information pursuant to this Protective Order until the Parties agree or the Court rules otherwise. No Party in this Action shall be obliged to challenge the propriety of the designation of any Confidential Information. Failure to bring such challenge shall not preclude any subsequent objection to the designation and shall not preclude any request for permission from the Designator or any other appropriate action in any forum to disclose such Confidential

Information to persons not referred to in this Protective Order. Nothing herein shall affect any Party's right to seek modification of this Protective Order.

13. Should any non-Party, by way of subpoena or bona fide discovery request, seek disclosure from a Party of Confidential Information designated by any other Party or non-Party, the Party receiving the request shall promptly send that portion of the Discovery Request relating to the request for Confidential Information to Counsel for the Designator upon concluding that such Discovery Request may call for the production of Confidential Information. (Notice shall also be given to Counsel of Record for the Parties if the Designator is a non-Party.) Unless the Designator waives its claim of confidentiality over the requested documents or elects at its discretion, without waiving its claim of confidentiality, to consent to production of its Confidential Information subject to protections suitable to the Designator, the recipient of the request will inform the non-Party seeking disclosure that the information requested is Confidential Information protected by this Protective Order and that such non-Party will have to seek an appropriate ruling from this Court. In any such action before this Court, the Designator shall have the burden of proof to establish that the designated material is in fact confidential and is entitled to confidential treatment.

14. Inadvertent or unintentional disclosure of Confidential Information shall not be deemed a waiver in whole or in part of a Party's or non-Party's claim of confidentiality with respect to the information so disclosed. A Party or other person making such inadvertent disclosure must give prompt notification, in writing, to the Parties when such inadvertent disclosure is discovered. Upon receiving written notice that Confidential Information has been inadvertently produced, all such information, and all copies thereof, shall be returned to counsel for the Designator, and the receiving Party or non-Party shall not use such information for any

purpose unless or until the information is thereafter intentionally disclosed by the Designator with an appropriate identification indicating that it is Confidential Information. Inadvertent disclosure of the document or information shall not be deemed a violation of the provisions of this Protective Order, but all reasonable steps shall be taken to protect such inadvertently disclosed information after notification is received in accordance with this Protective Order.

15. Throughout and after the conclusion of this Action, including any appeals, the restrictions on communication and disclosure provided for herein shall continue to be binding upon the Parties and all other persons to whom Confidential Information has been communicated or disclosed pursuant to the provisions of this Protective Order or any other order of the Court.

16. Nothing in this Protective Order shall prevent any Party from seeking amendments broadening or restricting the rights of access to, or the use of, Confidential Information, or otherwise modifying this Protective Order. This Protective Order may be amended without leave of the Court by the agreement of Counsel for the Parties in the form of a filed stipulation.

17. This Protective Order is designed to facilitate the disclosure of documents in this Action that a Party or non-Party considers to be "Confidential Information." It does not constitute a determination that documents or information so designated are "Confidential Information." Nothing in this Order shall prejudice in any way the right of any Party to seek a determination whether particular documents, information or testimony are confidential business information that should remain subject to the terms of this Protective Order. Any Party may request that the Court modify or otherwise grant relief from any provision of this Order.

18. The Parties agree that a breach of the provisions of this Agreement by a Party will cause irreparable harm to the other Parties, and therefore agree that injunctive relief, and

injunctive relief alone, is the appropriate means to enforce this Agreement. No Party shall be subject to any claim for damages as a result of a breach of this Agreement.

19. This Protective Order will not be interpreted to and is not intended to keep motions, memoranda supporting motions, orders, and other filings with the Court under seal or under confidentiality. In the event a Party other than the Designator makes a filing with the Court containing or referring to Confidential Information, that Party shall make such filing under seal and simultaneously serve a copy of the filing upon the Designator. The Designator shall have ten (10) business days following service of the sealed filing to provide a redacted version of the filing to the Party making the filing. At the conclusion of this period, the Party making the filing shall make an unsealed filing of either the redacted version of the filing (if provided by the Designator) or, if no redacted version has been provided, of the initial version that was previously filed under seal. The failure of a Designator to provide a redacted version within ten (10) business days of such a filing under seal constitutes a waiver of any claim of Confidential Information as to any information contained in such filing. Any filing deadlines that are triggered by the filing of a document under seal shall not be tolled by the subsequent filing of a redacted version.

20. Nothing in this Protective Order shall limit or affect the right of a Designator to disclose, to authorize disclosure of, or to use in any way, its own Confidential Information.

21. Within 120 days after the conclusion of this Action, i.e., after there is a final judgment no longer subject to appeal, all Confidential Information shall be returned to that Designator, or destroyed, except that any Party that received Confidential Information and its counsel may maintain archive copies of all pleadings, correspondence, depositions, deposition exhibits, trial transcripts, trial exhibits, and one complete set of Confidential Information

produced in this Litigation, together with any attorney work product. If any Party elects to destroy rather than return any Confidential Information to the Designator, it shall provide the Designator with a certificate of destruction signed by the person destroying the documents designating the documents destroyed and the date of destruction. If any Party or its counsel retains Confidential Information following the conclusion of this Litigation, it shall continue to be subject to this Protective Order so long as the Party retains such Confidential Information, unless or until the Designator withdraws its claim of confidentiality or a court determines that the Designator's claim of confidentiality is invalid.

22. Counsel for the Parties shall use their best efforts to ensure that the provisions of this Protective Order are adhered to by the Party they represent and by those acting on its behalf.

23. This constitutes the entire Agreement between the Parties. It shall be modified and any parties shall be added only by a writing executed by all of the Parties.

We stipulate to entry of the above order:

/s/ John C. Bender
John C. Bender
Richard Clayton Larkin
Bingham Greenebaum Doll LLP
300 West Vine Street, Suite 1100
Lexington, Kentucky 40507
Telephone: (859) 231-8500
Facsimile: (859) 255-2742
jbender@bgdlegal.com
clarkin@bgdlegal.com

Sheryl G. Snyder
Jason Renzelmann
Frost Brown Todd LLC
400 West Market Street, 32nd Floor
Louisville, Kentucky 40202-3363
Telephone: (502) 589-5400
Facsimile: (502) 581-1087
ssnyder@fbtlaw.com
jrenzelmann@fbtlaw.com

Gerald A. Reynolds
J. Gregory Cornett
Travis A. Crump
Robert J. Ehrler
LG&E and KU Energy LLC
220 West Main Street
Louisville, KY 40202
Telephone: (502) 627-2000
Facsimile: (502) 627-3367
gerald.reynolds@lge-ku.com
greg.cornett@lge-ku.com
travis.crump@lge-ku.com
bob.ehrler@lge-ku.com

Nash E. Long
Brent A. Rosser
Sarah Anna Santos
Hunton & Williams LLP
Bank of America Plaza
Suite 3500
101 South Tryon Street
Charlotte, North Carolina 28280
Telephone: (704) 378-4700

/s/ Thomas Cmar (w/permission)
Thomas Cmar
Earthjustice
5042 N. Leavitt Street, Suite 1
Chicago, IL 60625
312-257-9338
Fax: 212-918-1556
tcmar@earthjustice.org

Joe F. Childers, Jr.
201 W. Short Street, Suite 300
Lexington, KY 40507
859-253-9824
Fax: 859-258-9288
childerslaw81@gmail.com

Shannon W. Fisk
Earthjustice
1617 John F. Kennedy Blvd., Suite 1675
Philadelphia, PA 19103
212-717-4522
Fax: 212-918-1556
sfisk@earthjustice.org

Kristin Henry
Laurie Williams
Sierra Club
85 Second Street, 2nd Floor
San Francisco, CA 94105
415-977-5716
Fax: 415-977-5793
kristin.henry@sierraclub.org
laurie.williams@sierraclub.org

Attorneys for Plaintiff Sierra Club

Facsimile: (704) 378-4890
nlong@hunton.com
brosser@hunton.com
ssantos@hunton.com

F. William Brownell
Eric J. Murdock
Hunton & Williams LLP
2200 Pennsylvania Avenue N.W.
Washington D.C. 20037
Telephone: (202) 955-1500
Facsimile: (202) 778-2201
bbrownell@hunton.com
emurdock@hunton.com

Robert M. Rolfe
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
rrolfe@hunton.com

Attorneys for Defendant Louisville Gas and Electric Company

Tendered by:

John C. Bender
Richard Clayton Larkin
Bingham Greenebaum Doll LLP
300 West Vine Street, Suite 1100
Lexington, Kentucky 40507
Telephone: (859) 231-8500
Facsimile: (859) 255-2742
jbender@bgdlegal.com
clarkin@bgdlegal.com

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

SIERRA CLUB, **Plaintiff,** **v.** **LOUISVILLE GAS AND ELECTRIC COMPANY,** **Defendant.**	**C.A. No. 3:14-CV-391-H** **ELECTRONICALLY FILED**

CONFIDENTIALITY AGREEMENT PURSUANT TO PROTECTIVE ORDER

The undersigned, _____, hereby acknowledges that I have received a copy of the Protective Order Regarding Confidential Information and Documents entered or to be entered in this Action, to which this Agreement was attached as Exhibit A, have read it, and agree to be bound to the terms of the Protective Order to the extent allowed by law, and any amendments thereto as if fully set forth herein, including, without limitation, that I shall not use Confidential Information or any copy, excerpt, or summary thereof, or the information contained therein, for any purpose not permitted by the Protective Order; that I shall return to Counsel supplying me with said Confidential Information, at the earlier of the end of my involvement or the conclusion of this Action, including any appeals therein, all copies of such Confidential Information that has been provided to me, including all notes, abstracts, summaries and excerpts prepared from Confidential Information that have not otherwise been destroyed by me and certify to such Counsel that all Confidential Information in my possession has been returned to such Counsel or destroyed; that I shall not make any copies of Confidential Information for any purpose not permitted by the Protective Order; and, that I shall not provide Confidential Information to anyone else who has not executed this Agreement or who, pursuant to Paragraph 6 of the Protective Order is not entitled to receive Confidential Information without executing this Agreement. I further understand that I shall remain bound by the Protective Order after the conclusion of this Action unless otherwise ordered by the Court or a court of competent jurisdiction. I understand that violation of this Protective Order may constitute contempt of an Order of the Court.

Dated:_____

Signature:
Name:
Address:

15730728_1.docx

Attachment 3

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
SIERRA CLUB, ENVIRONMENTAL LAW AND POLICY CENTER, PRAIRIE RIVERS NETWORK, and CITIZENS AGAINST RUINING THE ENVIRONMENT	)	
	)	**PCB 2013-015**
Complainants,	)	**(Enforcement – Water)**
	)	
v.	)	
	)	
MIDWEST GENERATION, LLC,	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Attached Service List

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Motion for Entry of Agreed Protective Order for Non-Disclosable Information, a copy of which is herewith served upon you.

MIDWEST GENERATION, LLC

By: /s/ Jennifer T. Nijman

Dated: October 6, 2014

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
(312) 251-5255

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
SIERRA CLUB, ENVIRONMENTAL LAW AND POLICY CENTER, PRAIRIE RIVERS NETWORK, and CITIZENS AGAINST RUINING THE ENVIRONMENT	)	
	)	**PCB 2013-015**
Complainants,	)	**(Enforcement – Water)**
	)	
v.	)	
	)	
MIDWEST GENERATION, LLC,	)	
	)	
Respondent.	)	

MOTION FOR ENTRY OF AGREED PROTECTIVE ORDER FOR NON-DISCLOSABLE INFORMATION

Pursuant to 35 Ill. Adm. Code 101.500, Respondent, Midwest Generation, LLC ("MWG"), by its undersigned counsel, respectfully requests that the Board enter the attached Protective Order for Non-Disclosable Information. In support of its Motion, MWG states as follows:

1. Pursuant to the schedule set by the Board, Complainants and Respondent (together, the "Parties") have been engaging in written discovery and seek to share Non-Disclosable information, as that term is defined in Section 101.202 of the Board's Regulations.
2. The Parties have agreed to the terms of the Protective Order for Non-Disclosable Information, attached as Exhibit 1, and have executed same.
3. The Parties are in agreement in requesting that the Board enter the Protective Order for Non-Disclosable Information.

WHEREFORE, Respondent, Midwest Generation, LLC, respectfully requests that the Board enter the attached Protective Order for Non-Disclosable Information.

Respectfully submitted,

Midwest Generation, LLC

By: /s/ Jennifer T. Nijman
One of Its Attorneys

Dated: October 6, 2014

Jennifer T. Nijman
Susan M. Franzetti
Kristen L. Gale
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
312-251-5255

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
SIERRA CLUB, ENVIRONMENTAL LAW AND POLICY CENTER, PRAIRIE RIVERS NETWORK, and CITIZENS AGAINST RUINING THE ENVIRONMENT	)	
	)	PCB 2013-015
Complainants,	)	
	)	(Enforcement – Water)
v.	)	
	)	
MIDWEST GENERATION, LLC,	)	
	)	
Respondent.	)	

PROTECTIVE ORDER FOR NON-DISCLOSABLE INFORMATION

Pursuant to Section 101.616(d) and Part 130 of the Illinois Pollution Control Board's ("Board") Regulations, 35 Ill. Adm. Code 101.616(d) & 130, Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment ("Complaints"), and Midwest Generation, LLC ("Respondents") (collectively "Parties"), by and through undersigned counsel, stipulate to the following Protective Order for Non-Disclosable Information ("Protective Order").

1. **Introduction and Scope**

This Protective Order shall govern documents and information exchanged during this action, including, but not limited to documents produced by the Parties or non-Parties, interrogatory answers, responses to requests for admission, and depositions testimony (collectively, "Discovery Material").

2. **Designation of Non-Disclosable Information**

Discovery Material may be designated "Non-Disclosable Information" as that term is defined in Section 101.202 of the Board's Regulations, 35 Ill. Adm. Code 101.202. The term "confidential" as that term is used therein, shall mean information whose disclosure could provide an unfair competitive advantage to the disclosing party's competitors, including but not limited to information related to the prices paid for coal ash removal, coal types, coal ash contracts and other financial data that includes prices charged to the party's customers and the disclosing party's price structure, or information otherwise deemed confidential by the Pollution Control Board.

Non-Disclosable Information shall be so identified at the time of service by including on each page the legend "Non-Disclosable Information." Any document, material, or information

designated by a Party as "Non-Disclosable Information" must be reviewed by an attorney. The designation of any document, material, or information as "Non-Disclosable Information," in the manner described above, shall constitute a certification by the attorney reviewing the material and making such designation that he or she in good faith believes the material meets the definition of Non-Disclosable Information or is otherwise entitled to protection under Sections 7 and 7.1 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/7 & 7.1 and Part 130 of the Board's Regulations, 35 Ill. Adm. Code 130.

3. **Authorized Personnel**

Access to and disclosure of the Non-Disclosable Information is limited to the Authorized Personnel identified as the following:

(a) Counsel of record for the Parties to this lawsuit and the support staff, including paralegal, secretarial, and clerical personnel reasonably necessary to assist such counsel;

(b) In-house counsel for the Parties with responsibility for the oversight of this litigation;

(c) Employees of the Parties with responsibility for the oversight of this litigation;

(d) Witnesses expected to testify at a hearing or trial, and technical experts/ consultants (and their staff) who are retained by a Party or attorney to assist in this action, but only to the extent reasonably necessary to perform such work. A Party desiring to disclose Non-Disclosable Information to testifying witnesses, experts or consultants shall first obtain from each expert or consultant an Acknowledgement in the form provided in Exhibit A;

(e) Employees of outside vendors providing copy services and exhibit preparation services in connection with this litigation; and,

(f) Stenographic reporters and videographers engaged for depositions or proceedings necessary to this action.

4. **Limitations on Access to Non-Disclosable Information**

The Parties agree to limit disclosure of the Non-Disclosable Information to the Board, Hearing Officer, Clerk, the Board's personnel and the Authorized Personnel identified in Paragraph 3, and to not use the Non-Disclosable Information for any purpose whatsoever other than the prosecution or defense of this litigation.

5. **Procedures for Filing Non-Disclosable Information**

Any Party wishing to include, disclose or attach any Non-Disclosable Information to any pleading, motion, brief or other paper, shall treat the Non-Disclosable Information as protected information pursuant to this Order and pursuant to Sections 7 and 7.1 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/7 & 7.1 and Part 130 of the Board's Regulations, 35 Ill. Adm. Code 130, and not file the Non-Disclosable Information electronically, but only in paper and properly marked. A version of the document that has the Non-Disclosable Information redacted may be filed electronically.

6. **Use of Non-Disclosable Information at Hearing or Trial**

At any hearing related to this proceeding, subject to the Board's Procedural Rules and the State of Illinois rules of evidence, and any Order of the Board, a Party may use any Non-Disclosable Information for any purpose. In the event that any Non-Disclosable Information is used in a hearing, the Parties shall treat the Non-Disclosable Information as confidential pursuant to Sections 7 and 7.1 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/7 & 7.1 and Part 130 of the Board's Regulations, 35 Ill. Adm. Code 130, and may request that attendance at those portions of the hearing or access to the transcripts of those hearings in which the Non-Disclosable Information is disclosed be restricted to the Board, the Hearing Officer, the Clerk, Board personnel and the Authorized Personnel.

7. **Challenge to Designation**

In the event that the Party receiving Non-Disclosable Information disagrees with the designation by the producing Party, then the Parties initially will try to resolve the dispute on an informal basis, within five (5) business days from the date that the receiving Party raises the objection to the designation (or a mutually agreed upon longer period) in writing. Any such disputed items shall be treated as Non-Disclosable Information, as designated, and subject to the protections of this Order unless and until the Parties reach an agreement or the Board or Hearing Officer determines otherwise.

If the Parties are unable to resolve their differences, then the objecting Party may file a motion requesting disclosure within ten (10) business day after the informal period has concluded (or a longer time period agreed upon by the Parties). In connection with a motion filed under this provision, the Party designating the information as Non-Disclosable Information shall bear the burden of establishing that good causes exists for the disputed information to be so treated. Non-Disclosable Information marked and identified in accordance with this Protective Order shall remain subject to the terms of this Protective Order unless otherwise agreed by the producing Party or ordered by the Board or Hearing Officer

8. **Other Protections**

(a) Nothing herein shall affect any confidentiality obligations to which the Parties may be subject pursuant to agreements independent of this litigation, nor shall anything herein constitute an agreement that such obligations will relieve any Party of the obligation to produce Non-Disclosable Information.

(b) This Protective Order shall not preclude any Party from seeking additional protection of the Non-Disclosable Information as that Party deems appropriate. Nor shall any Party be precluded from seeking an order from the Board or Hearing Officer permitting the disclosure or use of certain Non-Disclosable Information otherwise prohibited by this Protective Order;

(c) Nothing herein shall prevent the Parties from mutually agreeing in writing to the use or disclosure of Non-Disclosable Information other than as permitted by this Order; and,

(d) If it becomes necessary for counsel for a Party receiving Non-Disclosable Information to seek the assistance of any person other than those specified in Paragraph 3 above, the following procedures shall be employed:

i. Counsel for the receiving Party shall notify, in writing, counsel for the producing Party of the desire to disclose such Non-Disclosable Information and shall identify the person(s) to whom counsel intends to make such disclosure;

ii. If no objection to such disclosure is made by counsel for the producing Party within five (5) business days of such notification, counsel for the receiving Party shall be free to make such disclosure to the designated person(s); provided, however, that counsel for the receiving Party shall serve upon opposing counsel, prior to disclosure, an Acknowledgment in the form set forth in Exhibit A whereby such persons agree to comply with and be bound by this Protective Order

iii. If the producing Party objects to such disclosure, no disclosure shall be made at that time. However, any Party may bring before the Hearing Officer the question of whether the particular Non-Disclosable Information can be disclosed to the designated person(s) and the Party objecting shall have the burden of establishing before the Hearing Officer the basis for the objection.

9. **Inadvertent Disclosure**

If Non-Disclosable Information is disclosed to any person other than in the manner authorized by this Order, the person responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of counsel for the producing Party and, if appropriate, to the Hearing Officer and, without prejudice to other rights and remedies of any Party, take reasonable and appropriate measures to prevent further disclosure by it or by the person who was the recipient of such information.

The inadvertent disclosure of Discovery Material that is subject to a claim of attorney-client privilege, work product privilege, or any other privilege, will not be deemed to waive a Party's claim to its privileged or protected nature or estop that Party or the privilege holder from designating the information or document as attorney-client privileged or subject to the work product doctrine at a later date. Any Party receiving any such information or document shall return it upon request from the producing Party. Upon receiving such a request as to specific information or documents, the receiving Party shall return the information, documents and copies to the producing Party within five (5) business days, regardless of whether the receiving Party agrees with the claim of privilege and/or work-product protection.

10. **Materials Not Subject to this Protective Order**

Notwithstanding the findings and agreements in this Protective Order, the following materials shall not be subject to this Order, if the content and/or substance thereof:

(a) is, at the time of disclosure, in the public domain by publication or otherwise and is not otherwise protected from disclosure as a result;

(b) becomes at any time, through no act or failure to act on the part of the recipient Party, part of the public domain by publication or otherwise; or,

(c) is already in the possession of a Party at the time of disclosure by the other Party and was not acquired directly or indirectly from the disclosing Party under conditions requiring the confidential treatment of the material.

11. **Use and Return of Discovery Material**

The Parties hereto agree not use the Discovery Material for any purpose other than the prosecution or defense of this litigation. After this case is completed, including the exhaustion of all appeals, each Party, unless otherwise agreed in writing by counsel for the Parties, shall have sixty (60) calendar days to notify the other Party in writing that it wants the destruction of Discovery Materials by the Party, person, or firm in possession.

The destruction of Discovery Materials shall occur within thirty (30) days after this written notice is received. The Party asked to destroy the Discovery Materials has the option of returning the Materials to the requesting party in lieu of destruction. The Party destroying (or returning) materials under this paragraph shall provide a written certificate to the producing Party attesting to the destruction (or return) of all designated materials. To the extent that documents, extracts or summaries of Discovery Material that constitute attorney work product cannot reasonably be destroyed, the Parties hereto agree they shall be treated as Non-Disclosable Information and shall not be used for any other matters or for any other purposes.

12. **Waiver or Termination**

The provisions of this Protective Order may not be modified, waived or terminated except by the written stipulation of counsel or order of the Board or Hearing Officer. This Protective Order shall survive the final termination of this proceeding with respect to any retained Non-Disclosable Information. Termination of the proceedings shall not relieve any person from the obligations of this Protective Order, unless the Board or Hearing Officer orders otherwise.

13. **Notice**

All notices required by this Protective Order are to be served via email or facsimile to the outside counsel for the Parties. The date by which a Party to this action receiving the notice shall respond, or otherwise take action, shall be computed from the date indicating that the email or facsimile was received. Any of the notice requirements herein may be waived in whole or in part, but only in writing signed or emailed by an attorney for the Party designating Non-Disclosable Information under this Order.

14. **Other Proceedings**

Any person or Party subject to this Order who receives a subpoena, or court order seeking disclosure of another Party's Non-Disclosable Information, such person shall promptly (no more than five (5) business days after receipt) notify counsel for the producing Party of the subpoena or court order and shall provide a copy of the same.

ENTERED:

By: _____ DATE: _____
Hearing Officer

AGREED:

By: _____, attorney for
Midwest Generation, LLC

AGREED:

By: Faith E Bugel ATTORNEY FOR
Sierra Club

AGREED:

By: Faith E Bugel ATTORNEY FOR
Prairie Rivers Network,

AGREED:

By: Faith E Bugel
Environmental Law & Policy Center

AGREED:

By: Kate Hanley, ATTORNEY FOR
Citizens Against Ruining the Environment

EXHIBIT A

WRITTEN ACKNOWLEDGEMENT TO ABIDE BY THE TERMS OF PROTECTIVE ORDER FOR NON-DISCLOSABLE INFORMATION

I, , do solemnly swear that I have received a copy of the Protective Order for Confidentiality that was entered into by the Parties in connection with *Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment*, Illinois Pollution Control Board, PCB 2013-015, and I hereby agree to be bound by its terms and conditions. I recognize that during my participation in the handling and development of this case I may have occasion to read or hear of Non-Disclosable Information, I agree to use any such Non-Disclosable Information solely in connection with my participation in this case and for no other purpose.

I am employed by and my title is

_____.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on , , at .

SERVICE LIST

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Jennifer L. Cassel
Faith E. Bugel
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601

Keith Harley
Chicago Legal Clinic, Inc.
211 West Wacker Drive, Suite 750
Chicago, IL 60606

Abel Russ
Whitney Ferrell
Environmental Integrity Project
1000 Vermont Avenue, Suite 1100
Washington, DC 20005

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Motion for Entry of Agreed Protective Order for Non-Disclosable Information were filed electronically on October 6, 2014 with the following:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and that true copies were mailed by First Class Mail, postage prepaid, on October 6, 2014 to the parties listed on the foregoing Service List.

/s/ Jennifer T. Nijman

Attachment 4

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE MERGER OF	)	
EXELON CORP. AND	)	**Case No. 9361**
PEPCO HOLDINGS, INC.	)	

PROTECTIVE AGREEMENT

WHEREAS, certain parties in the above-captioned proceeding may request data and documents in the above-captioned matter relating to the application by Exelon Corporation ("Exelon"), Pepco Holdings, Inc. ("PHI"), Potomac Electric Power Company ("Pepco"), and Delmarva Power & Light Company ("Delmarva Power") (collectively, the "Joint Applicants"). Certain data and documents that may be requested or portions thereof may contain commercially sensitive information which is confidential and proprietary to the Joint Applicants, as well as any other affiliate, subsidiary or assign of the Joint Applicants (individually, a "Producing Party" and collectively, the "Producing Parties"). In addition, certain of the information may include materials designated as containing Critical Energy Infrastructure Information ("CEII"), as defined in 18 C.F.R. § 388.113(c)(1). In an effort to provide requested information regarding the merger of Exelon and PHI while protecting the confidential information of the Producing Parties and of CEII material, the Producing Parties agree to release or provide for inspection and review certain materials that shall be treated as confidential or CEII in accordance with this Protective Agreement ("Agreement").

THEREFORE, IT IS HEREBY AGREED, certain of the requested materials shall only be provided subject to the following conditions:

1. Protected Materials. All confidential information and CEII made available subject to the terms of this Protective Agreement hereinafter shall be referred to as "Protected Materials." Any such Protected Materials provided by a Producing Party shall be clearly identified as "CONFIDENTIAL,"

"CONFIDENTIAL – Attorneys' Eyes Only," or "CEII," as appropriate. Protected Materials shall include any portion of any notes, memoranda, analyses or any other writing (including deposition transcripts), prepared by any person which includes any information from documents provided pursuant to this Protective Agreement or any knowledge derived from such documents (collectively, "Derived Materials"). Protected Materials shall not include any information which now, or prior to these proceedings, is or was public knowledge, or which becomes public knowledge as a result of publication or intentional disclosure by the Interested Parties. A Reviewing Party shall be defined upon its execution of this Protective Agreement. If a Reviewing Party is a Maryland agency subject to the Maryland Public Information Act ("Act") as set forth in Maryland Code, Sections 10-611 *et seq.* of the State Government Article, Protected Materials shall not include public records, as defined in the Act, for which disclosure is required under the Act.

a. Protected Materials will only be made available to a "Reviewing Party."

b. A Reviewing Party shall be permitted access to Protected Materials only through its "Authorized Representatives." Authorized Representatives of a Reviewing Party include the Reviewing Party's counsel of record and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons retained by a Reviewing Party and directly assisting a Reviewing Party. If a Reviewing Party is an individual person, the Authorized Representative of that party is the individual person.

c. Each person who inspects the Protected Materials, including all Authorized Representatives, shall first agree in writing to the following Certification:

> I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Agreement in Case No. 9361 dated _____, 2014, and I have read and understand the Protective Agreement and I agree to be bound by that Protective Agreement. I understand that the contents of the Protected Materials, including any portion of any notes, memoranda, analyses or any other writing (including deposition transcripts), prepared by any

person which includes information from the Protected Materials, either taken directly or derived in some other form, and any knowledge derived from the Protected Materials, shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purpose of the proceedings in Case No. 9361. I understand that the obligations in the Protective Agreement and this Certification are ongoing in nature and shall continue in full force and effect, and that to the extent I retain knowledge of the information contained in Protected Materials, I will not use or divulge such information in any other proceeding or for any other purpose. By signing this Certification I represent that I am not a Restricted Person, as that term is defined in the Protective Agreement and/or 18 C.F.R. § 388.113, and that I will not disclose any information designated as CEII to a Restricted Person.

I understand that the restrictions in the Protective Agreement and in this Certification will not apply to any Protected Materials subsequent to the time, if any, such Protected Materials are intentionally disseminated publicly by a Producing Party who has declared the material to be confidential or are disclosed pursuant to lawful order of the Public Service Commission of Maryland, its designated Discovery Judge, or a court of competent jurisdiction; subpoena; or an agreement of the parties.

I agree to comply with this Protective Agreement and understand that a Producing Party will enforce its rights under the Protective Agreement and will pursue any available remedies to address material violations, including, but not limited to, pecuniary damages, attorneys' fees and injunctive relief.

d. A copy of each executed, written Certification shall be provided to counsel for the Producing Parties. Any Authorized Representative may disclose materials only to any other person who is an Authorized Representative of the same Reviewing Party, provided that if the person to whom disclosure is to be made has not executed and provided for delivery of a written Certification to the Producing Parties, that written Certification shall be executed prior to any disclosure. In the event that any person to whom such Protected Materials are disclosed ceases to be an Authorized Representative, access to such materials by such person shall be terminated and he or she immediately shall return or destroy any Protected Materials in his or her possession in accordance with Paragraph 12. Any person who has agreed to the foregoing Certification shall continue to be bound by the provisions of this Protective Agreement, even if no longer so engaged.

e. Upon execution of this Protective Agreement and the Certification by the person receiving the documents, any and all requested materials will be provided to the Reviewing Party, without delay, in the ordinary course of discovery and pursuant to any Orders or rulings, if any, of the Maryland Public Service Commission ("PSC").

f. If the Reviewing Party, or its Authorized Representative(s), makes notes containing Protected Materials or the information contained therein, any portion of those notes and the portion of any copies of those notes that contain Protected Materials shall all be considered "Protected Materials" as defined in Paragraph 1 herein, with the same level of protection as the Protected Materials from which they are derived.

g. All Protected Materials shall be made available to the Reviewing Party solely for the purposes of the proceedings in Case No. 9361. The Protected Materials, including any Derived Materials, are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Agreement. A Reviewing Party must take all reasonable precautions to ensure that Protected Materials, including Derived Materials are not viewed, taken by, or communicated to any person other than an Authorized Representative of the Reviewing Party.

2. Attorneys' Eyes Only Protected Materials. Any Producing Party may designate Protected Materials as "Attorneys' Eyes Only" when the Producing Party reasonably believes that the disclosure of the Protected Materials to anyone other than counsel or a designated Authorized Representative for a Reviewing Party could be especially detrimental or harmful to the Producing Party. Counsel for the Reviewing Party shall be subject to the restrictions regarding Protected Materials described in this Agreement and further shall not disclose or permit the disclosure of any Protected Materials designated as "Attorneys' Eyes Only" to any other person or entity except:

a. disclosure may be made to employees of counsel for the Reviewing Party who

are involved in providing service to the Reviewing Party,

b. disclosure may be made to a designated Authorized Representative and his/her employees who are involved in providing consulting service to the Reviewing Party, provided

i. the Producing Parties are first informed of the identity of the designated Authorized Representative so as to ensure that the designated Authorized Representative is not or may not become a competitor or affiliated with a competitor of the Producing Party;

ii. if any Producing Party determines that a designated Authorized Representative designated under this paragraph is or may become a competitor or affiliated with a competitor of the Producing Party, the Producing Party and the Reviewing Parties shall work together to put in place additional confidentiality protections so as to allow the designated Authorized Representative access to the Attorneys' Eyes Only information; and

iii. the designated Authorized Representative and his/her employees sign the Certification described above and shall be subject to the restrictions regarding Protected Materials described in this Agreement and further shall not disclose or permit the disclosure of any Protected Materials except as set forth in this Protective Agreement.

3. Critical Energy Infrastructure Information – CEII. Intervenors and interested persons may also seek information that includes CEII, as defined in 18 C.F.R. §388.113(c)(1).[1] An Authorized Representative shall be subject to the restrictions regarding Protected Materials described in this Agreement with respect to CEII and, additionally, to the restrictions set forth in paragraphs 3, 4

[1] 18 C.F.R. §388.113(c)(1) defines "Critical Energy Infrastructure Information" as specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure 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; and (iv) Does not simply give the general location of the critical infrastructure. Moreover, 18 C.F.R. §388.113(c)(2) defines "Critical Infrastructure" as existing and proposed 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 of those matters.

and 5 of this Agreement. Information deemed as "CEII" may be made available for inspection and review by an Authorized Representative at a location to be agreed upon by the Producing Parties and the Reviewing Party. Provided, further, any Producing Party may, by subsequent objection or motion, seek further protection with respect to CEII, including, but not limited to, total prohibition of disclosure to a Restricted Person or limitation of disclosure only to particular Authorized Representatives. A "Restricted Person" is any person who poses a security risk, including, but not limited to, a person identified as potentially misusing information in planning an attack on critical infrastructure or a person who has been denied access to CEII by the Federal Energy Regulatory Commission. The burden to establish a Reviewing Party or Authorized Representative as a "Restricted Person" shall be on the Producing Party.

4. CEII may be made available to an Authorized Representative for inspection and review but not copied, except as specified herein. The Producing Party producing the materials may, but is not required to, permit other Reviewing Parties' counsel to take custody of CEII; the information shall not be copied except that Authorized Representatives who are independent consultants and who are assisting counsel with the preparation or presentation of the Reviewing Party's case in these proceedings may, if authorized by the Producing Parties, make copies. Notwithstanding the immediately preceding sentence, CEII may be copied by an Authorized Representative when agreed to by the Parties. All copies of CEII shall also be deemed to be CEII.

5. All copies containing CEII shall be maintained by the Reviewing Party and Authorized Representative in a secure place. CEII information is on loan to the Reviewing Party and Authorized Representative and shall either be returned to the Producing Parties or destroyed in accordance with Paragraph 12 of the Protective Agreement. The parties intend that Paragraphs 3, 4, and 5 of the Protective Agreement are consistent with the regulations and practices of the Federal Energy Regulatory Commission, 18 C.F.R. §§ 388 *et seq.*, and that any challenge under Paragraphs 3, 4, or 5 of the

Protective Agreement shall be governed by those rules and regulations.

6. The Producing Party shall bear the burden of proof in connection with any challenge to the designation of Protected Materials as such. Material shall be designated as "CONFIDENTIAL," "CONFIDENTIAL – Attorneys' Eyes Only," or "CEII," and thereby attain the status of Protected Material only if the Producing Party reasonably believes there is a legally recognized basis in law supporting the "CONFIDENTIAL," "CONFIDENTIAL – Attorneys' Eyes Only," or "CEII" designation. If only a portion of the material includes such Protected Material, then the Producing Parties will make reasonable efforts to designate only such portion as Protected Material and the remainder of the material shall not be designated Protected Material. Disputes over the designation of materials as "Confidential," "Confidential – Attorneys' Eyes Only," or "CEII" shall be treated as a discovery dispute in Case No. 9361.

7. After completion of the discovery phase of this proceeding, this Protective Agreement shall continue in full force and effect, and Protected Materials shall remain protected.

8. Unless otherwise ordered by the PSC or Discovery Judge, or any court of competent jurisdiction, or otherwise agreed upon by the parties, Protected Materials shall only be used or disclosed in hearings or other proceedings which may occur in accordance with this Paragraph. In any phase of this proceeding, including the filing of testimony, the conduct of a hearing or the submission of initial or reply briefs or memoranda on appeal or replies thereto, any filing containing Protected Materials shall be made by submission of a public, non-confidential copy with any Protected Materials excised and a confidential copy kept under seal by the PSC and only available to persons bound by this Protective Agreement or by a similar protective agreement executed in this proceeding. Any hearings or other proceedings in which Protected Materials will be discussed will be *in camera* unless otherwise ordered by the PSC or the Discovery Judge, or any court of competent jurisdiction, or otherwise agreed upon by the parties. Transcripts of those hearings or other proceedings will be made to provide for public,

non-confidential copies and confidential copies kept in a manner set forth above, unless otherwise ordered by the PSC or the Discovery Judge, or any court of competent jurisdiction, or otherwise agreed upon by the parties.

9. If a Producing Party asserts a claim that information is subject to attorney-client privilege or attorney work product or is otherwise protected from public disclosure, the Producing Party shall, upon the request of a Reviewing Party, provide a privilege log within seven (7) calendar days meeting the requirements of Rule 26(b)(5) of the Federal Rules of Civil Procedure. Any information that is subject to a claim of attorney-client privilege or attorney work product or is otherwise protected from public disclosure that is inadvertently disclosed does not constitute a waiver of, or estoppel as to, any claim of privilege or protection from disclosure. If a claim of inadvertent production is made promptly after discovery of the inadvertent production, the Reviewing Party and its Authorized Representative(s) shall promptly return all copies of the inadvertently disclosed material to the Producing Party. The Reviewing Party or its Authorized Representative(s) shall not use such information for any purpose, except in good faith to dispute the claim of privilege or protection from disclosure. Any such motion to the PSC compelling production of the material shall not assert as a ground for entering such an Order the fact or circumstance of the inadvertent production. Absent an express written agreement by the Producing Party or an Order of the PSC, such returned material or information obtained therefrom may not be used by the Reviewing Party or its Authorized Representative(s) for any purposes, either in the above-captioned matter or otherwise.

10. Notwithstanding any other provision in this Agreement, a Reviewing Party or its Authorized Representatives may disclose Protected Materials if necessary to comply with any applicable law, order, ruling, or subpoena of a governmental authority or tribunal with competent jurisdiction. In the event that a Reviewing Party or its Authorized Representative(s) is so requested or required to disclose any Protected Materials, the Reviewing Party or its Authorized Representative(s)

shall, to the extent permitted by law, promptly notify the Producing Parties of such request or requirement prior to disclosure so that the Producing Parties may, if they so elect, seek an appropriate protective order or otherwise seek to contest, limit, or protect the confidentiality of the Protected Materials. With respect to any disclosure made by a Reviewing Party pursuant to this Paragraph, the Reviewing Party and its Authorized Representative(s) agree to furnish only that portion of the Protected Materials that is reasonably determined to be consistent with the scope of the subpoena or demand.

11. Nothing in this Protective Agreement shall be construed as precluding any Producing Party from objecting to the use of the Protected Materials on any legal ground other than confidentiality or the CEII nature of the materials.

12. Unless otherwise agreed upon by the parties, within thirty (30) days after a final, PSC Order in this proceeding, and the exhaustion of any appeals thereof, the Reviewing Party shall, at the discretion of the Producing Parties, either return all Protected Materials to the Producing Parties or destroy all Protected Materials, except that any Derived Materials shall be destroyed by that party. When requested, the Reviewing Party shall certify to the Producing Parties that all such materials have been destroyed. However, to the extent that any testimony, hearing transcripts, briefs, memoranda on appeal or any other documents containing Protected Material are submitted into the record in this proceeding as prescribed in Paragraph 8, such documents need not be returned to the Producing Parties or destroyed.

[INTENTIONALY LEFT BLANK – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto, by their undersigned counsel, have executed the foregoing Protective Agreement this 19 day of September, 2014.

Signature: _____

Printed Name: _____

Company/
Organization: _____

Address: _____

_____

_____

Phone: _____

Counsel for: _____

J. Joseph Curran, III
Venable LLP
750 East Pratt Street
Suite 900
Baltimore, MD 21202

Counsel for Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, and Delmarva Power & Light Company

PROTECTIVE AGREEMENT CERTIFICATION

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Agreement in Case No. 9361 dated _____, 2014, and I have read and understand the Protective Agreement and I agree to be bound by that Protective Agreement. I understand that the contents of the Protected Materials, including any portion of any notes, memoranda, analyses or any other writing (including deposition transcripts), prepared by any person which includes information from the Protected Materials, either taken directly or derived in some other form, and any knowledge derived from the Protected Materials, shall not be disclosed to anyone other than in accordance with the Protective Agreement and shall be used only for the purpose of the proceedings in Case No. 9361. I understand that the obligations in the Protective Agreement and this Certification are ongoing in nature and shall continue in full force and effect, and that to the extent I retain knowledge of the information contained in Protected Materials, I will not use or divulge such information in any other proceeding or for any other purpose. By signing this Certification I represent that I am not a Restricted Person, as that term is defined in the Protective Agreement and/or 18 C.F.R. § 388.113, and that I will not disclose any information designated as CEII to a Restricted Person.

I understand that the restrictions in the Protective Agreement and in this Certification will not apply to any Protected Materials subsequent to the time, if any, such Protected Materials are intentionally disseminated publicly by a Producing Party who has declared the material to be confidential or are disclosed pursuant to lawful order of the Public Service Commission of Maryland, its designated Discovery Judge, or a court of competent jurisdiction; subpoena; or an agreement of the parties.

I agree to comply with this Protective Agreement and understand that a Producing Party will enforce its rights under the Protective Agreement and will pursue any available remedies to address material violations, including, but not limited to, pecuniary damages, attorneys' fees and injunctive relief.

Printed Name: _____

Signature: _____

Company/
Organization: _____

Date: _____

Attachment 5

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan	)))))))	Case No. 14-1297-EL-SSO

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into by and between Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company ("the Companies") and the Sierra Club ("Receiving Party") (collectively, "the Parties"). This Agreement is designed to facilitate and expedite the exchange with Receiving Party of information in the discovery process in this proceeding, as this "Proceeding" is defined herein. It reflects agreement between the Companies and Receiving Party as to the manner in which "Protected Materials," as defined herein, are to be treated. This Agreement is not intended to constitute any resolution of the merits concerning the confidentiality of any of the Protected Materials or any resolution of the Companies' obligation to produce (including the manner of production) any requested information or material.

1. The purpose of this Agreement is to permit prompt access to and review of such Protected Materials in a controlled manner that will allow their use for the purposes of this Proceeding while protecting such data from disclosure to non-participants, without a prior ruling by an administrative agency of competent jurisdiction or court of competent jurisdiction regarding whether the information deserves protection.

2. "Proceeding" as used throughout this document means the above-captioned case(s), including any appeals, remands and other cases related thereto.

3.A. "Protected Materials" means documents and information designated under this Agreement as "CONFIDENTIAL" that customarily are treated by the Companies or third parties as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject the Companies or third parties to risk of competitive disadvantage or other business injury, and may include materials meeting the definition of "trade secret" under Ohio law.

B. "Protected Materials" also includes documents and information designated under this Agreement as "COMPETITIVELY SENSITIVE CONFIDENTIAL" that contain highly proprietary or competitively-sensitive information, that, if disclosed to suppliers, competitors or customers, may damage the producing party's competitive position or the competitive position of the third party which created the documents or information. COMPETITIVELY SENSITIVE CONFIDENTIAL DOCUMENTS can include documents or information prepared by the Companies or provided to the Companies by a third-party pursuant to a nondisclosure agreement.

C. "Protected Materials" do not include any information or documents contained in the public files of any state or federal administrative agency or court and do not include documents or information which at, or prior to, commencement of this Proceeding, is or was otherwise in the public domain, or which enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Companies and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain.

D. "Protected Materials" that are in writing shall be conspicuously marked with the appropriate designation, or counsel for the Companies may orally state on the deposition record that a response to a question posed at a deposition is considered Protected Materials.

E. "Protected Materials" includes documents or information that are stored or recorded in the form of electronic or magnetic media (including information, files, databases, or programs stored on any digital or analog machine-readable device, computers, discs, networks or tapes) ("Computerized Material"). The Companies at their discretion may produce Computerized Material in such form. To the extent that Receiving Party reduces Computerized Material to hard copy, Receiving Party shall conspicuously mark such hard copy as confidential.

4. "Fully Authorized Representative" must execute a Non-Disclosure Certificate in the form of Exhibit B (applicable to COMPETITIVELY SENSITIVE CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Receiving Party's outside legal counsel and in-house legal counsel who are actively engaged in the conduct of this Proceeding;

B. Paralegals and other employees who are associated for purposes of this case with the attorneys described in Paragraph 4(A); and

C. An outside expert or employee of an outside expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding and who is not involved in (or providing advice regarding) decision-making by or on behalf of any supplier, marketer, broker, aggregator or governmental aggregator (as defined in ORC Section 4928.01(A)(13)) concerning any aspect of competitive retail electric service in Ohio, Illinois, Maryland, Michigan, New Jersey or Pennsylvania or of any supplier, marketer, or broker concerning any aspect of competitive wholesale electric procurements in the PJM or MISO markets. .

5. "Limited Authorized Representative" must execute the Non-Disclosure Certificate in the form of Exhibit A (applicable to CONFIDENTIAL Protected Materials) and shall be limited to the following persons:

A. Legal counsel who have made an appearance in this proceeding or are actively engaged in this Proceeding for Receiving Party;

B. Paralegals and other employees who are associated for purposes of this case with an attorney described in Paragraph 5(A);

C. An employee of Receiving Party who is involved in the Proceeding on behalf of Receiving Party;

D. An expert or employee of an expert retained by Receiving Party for the purpose of advising, preparing for or testifying in this Proceeding.

6. Copies of all executed Non-Disclosure Certificates signed by Fully Authorized Representatives and Limited Authorized Representatives in this proceeding shall be provided to counsel for the Companies as soon as possible after the Certificates are executed.

7. Access to Protected Materials designated as "CONFIDENTIAL" is permitted to Fully Authorized Representatives and Limited Authorized Representatives who have executed the appropriate Non-Disclosure Certificate. Notwithstanding other provisions of this Agreement to the contrary, Protected Materials designated as "COMPETITIVELY SENSITIVE CONFIDENTIAL" will be **strictly** limited to Fully Authorized Representatives. Counsel for Receiving Party will ensure that individuals who are not Fully Authorized Representatives are not permitted to access COMPETITIVELY SENSITIVE CONFIDENTIAL materials. Receiving Party, its Counsel, Fully Authorized Representatives and Limited Authorized Representatives must treat all Protected Materials (no matter how designated), copies thereof, information contained therein, and writings made therefrom (including, without limitation, Protected Materials comprised of portions of transcripts) as proprietary and confidential, and will safeguard such Protected Materials, copies thereof, information contained therein, and writings

made therefrom so as to prevent voluntary, inadvertent, or accidental disclosure to any persons other than Receiving Party's counsel and those persons authorized to have access to the Protected Materials as set forth in this Agreement.

8. Nothing in this Agreement precludes the use of any portion of the Protected Materials that becomes part of the public record or enters into the public domain except that any disclosure of Protected Materials contrary to the terms of this Agreement or protective order or a similar protective agreement made between the Companies and other persons or entities shall not be deemed to have caused such Protected Materials to have entered the public domain. Nothing in this Agreement precludes Receiving Party from using any part of the Protected Materials in this Proceeding in a manner not inconsistent with this Agreement, such as by filing Protected Materials under seal.

9. If any Receiving Party counsel, Fully Authorized Representative or Limited Authorized Representative ceases to be engaged in this Proceeding, access to any Protected Materials by such person will be terminated immediately and such person must promptly return Protected Materials in his or her possession to a counsel of Receiving Party who is a Fully Authorized Representative, and if there is no such counsel of Receiving Party who is a Fully Authorized Representative, such person must treat such Protected Materials in the manner set forth in Paragraph 16 hereof as if this Proceeding herein had been concluded. Any person who has signed either form of the foregoing Non-Disclosure Certificates will continue to be bound by the provisions of this Agreement even if no longer so engaged.

10. Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives are prohibited from disclosing Protected Materials to another party or that party's authorized representatives, provided however, (i) Receiving Party's counsel may

disclose Protected Materials to employees or persons working for or representing the Public Utilities Commission of Ohio in connection with this Proceeding, (ii) for Protected Materials identified as CONFIDENTIAL, Receiving Party's counsel may disclose Protected Materials or writings regarding their contents to any individual or entity that is in possession of said Protected Materials or to any individual or entity that is bound by a Protective Agreement or Order with respect to the Protected Materials and has signed a Non-Disclosure Certificate applicable to materials designated as CONFIDENTIAL, and (iii) for Protected Materials identified as COMPETITIVELY SENSITIVE CONFIDENTIAL, Receiving Party's counsel may disclose such materials to another party's counsel as long as Receiving Party's Counsel has executed the **appropriate** Non-Disclosure Certificate and the Receiving Party's counsel (a) represents a party that has signed a protective agreement with the Companies and (b) has signed a Non-Disclosure Certificate applicable to materials designated as COMPETITIVELY SENSITIVE CONFIDENTIAL. Protected Materials, designated as "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL" and provided to Receiving Party by another party or its counsel shall be treated by Receiving Party, its counsel, Fully Authorized Representatives and Limited Authorized Representatives as being provided by the Companies and all terms of this Protective Agreement shall apply to the treatment of such materials.

11. Receiving Party may file Protected Materials under seal in this Proceeding whether or not Receiving Party seeks a ruling that the Protected Materials should be in the public domain. If Receiving Party desires to include, utilize, refer to, or copy any Protected Materials in such a manner, other than in a manner provided for herein, that might require disclosure of such material, then Receiving Party must first give notice (as provided in Paragraph 15) to the Companies, specifically identifying each of the Protected Materials that could be disclosed in the

public domain. The Companies will have five (5) business days after service of Receiving Party's notice to file, with an administrative agency of competent jurisdiction or court of competent jurisdiction, a motion and affidavits with respect to each of the identified Protected Materials demonstrating the reasons for maintaining the confidentiality of the Protected Materials. The affidavits for the motion must set forth facts delineating that the documents or information designated as Protected Materials have been maintained in a confidential manner and the precise nature and justification for the injury that would result from the disclosure of such information. If the Companies do not file such a motion within five (5) business days of Receiving Party's service of the notice, then the Protected Materials will be deemed non-confidential and not subject to this Agreement.

12. The Parties agree to seek *in camera* proceedings by the administrative agency of competent jurisdiction or court of competent jurisdiction for arguments or for the examination of a witness that would disclose Protected Materials. Such *in camera* proceedings will be open only to the Parties, their counsel who are either a signatory to this Agreement or who have executed a Non-Disclosure Certification prior to any access, any other person who would otherwise be permitted to have access to the Protected Materials under the terms of Paragraph 7, and others authorized by the administrative agency or court to be present; however, characterizations of the Protected Materials that do not disclose the Protected Materials may be used in public.

13. Any portions of the Protected Materials that the administrative agency of competent jurisdiction or court of competent jurisdiction has deemed to be protected and that is filed in this Proceeding will be filed in sealed confidential envelopes or other appropriate containers sealed from the public record.

14. It is expressly understood that upon a filing made in accordance with Paragraph 11 of this Agreement, the burden will be upon the Companies to show that any materials labeled as Protected Materials pursuant to this Agreement are confidential and deserving of protection from disclosure.

15. All notices referenced in Paragraph 11 must be served by the Parties on each other by one of the following methods: (1) sending the notice to such counsel of record herein via e-mail; (2) hand-delivering the notice to such counsel in person at any location; or (3) sending the notice by an overnight delivery service to such counsel.

16. Once Receiving Party has complied with its records retention schedule(s) pertaining to the retention of the Protected Materials and Receiving Party determines that it has no further legal obligation to retain the Protected Materials and this Proceeding (including all appeals and remands) is concluded, Receiving Party must return or dispose of all copies of the Protected Materials unless the Protected Materials have been released to the public domain or filed with a state or federal administrative agency or court under seal. Receiving Party, and each person who is serving as counsel for Receiving Party, and who is either a Fully Authorized Representative or a Limited Authorized Representative, as applicable, may each keep one copy of each document designated as Protected Material that was filed under seal and one copy of all testimony, cross-examination, transcripts, briefs and work product pertaining to such information and will maintain that copy as provided in this Agreement.

17. By entering into this Protective Agreement, Receiving Party does not waive any right that it may have to dispute the Companies' determination regarding any material identified as confidential by the Companies and to pursue those remedies that may be available to

Receiving Party before an administrative agency or court of competent jurisdiction. Nothing in this Agreement precludes Receiving Party from filing a motion to compel.

18. By entering into this Protective Agreement, the Companies do not waive any right it may have to object to the discovery of confidential material on grounds other than confidentiality and to pursue those remedies that may be available to the Companies before the administrative agency of competent jurisdiction or court of competent jurisdiction.

19. Inadvertent production of any document or information during discovery without a designation of "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL" will not be deemed to waive the Companies' claim to its confidential nature or estop the Companies from designating the document or information at a later date. Disclosure of the document or information by Receiving Party prior to such later designation shall not be deemed a violation of this Agreement and Receiving Party bears no responsibility or liability for any such disclosure. Receiving Party does not waive its right to challenge the Companies' delayed claim or designation of the inadvertent production of any document or information as "CONFIDENTIAL" or "COMPETITIVELY SENSITIVE CONFIDENTIAL."

20. This Protective Agreement shall become effective upon the date first above written, and shall remain in effect until terminated in writing by either party or three (3) years from the date first set forth above, whichever occurs earlier. Notwithstanding any such termination, the rights and obligations with respect to the disclosure of Protected Materials as defined hereinabove shall survive the termination of this Protective Agreement for a period of three (3) years following the later of the Commission's final Order or Entry on Rehearing in this proceeding.