

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
ENERGY FACILITY SITING BOARD**

**In re: Invenergy Thermal Development LLC           :                   SB-2015-06**  
**Application to Construct the Clear River           :**  
**Energy Center in Burrillville, R.I.                 :**

**MOTION OF INVENERGY THERMAL DEVELOPMENT LLC FOR  
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Now comes Invenergy Thermal Development LLC and the Clear River Energy Center Project (“Invenergy”) and hereby requests that the Energy Facility Siting Board (“EFSB” or “the Board”) grant protection from public disclosure certain confidential information submitted as attachments to Invenergy’s responses to the Conservation Law Foundation’s (“CLF’s”) Data Requests, Nos. 10-1 – 10-3, 10-6 – 10-7, 10-9, 11-5, 11-7, 14-6, 14-7 and the Town of Burrillville’s (“Town’s”) Data Requests, Nos. 41-1 – 41-3, 41-5, 41-10, 41-12, 41-19, 42-1, 42-2, 42-4 42-10, 42-11, 42-14 and 42-15.

The confidential information that is the subject of this Motion can be categorized into three categories: (1) confidential information that is protected from public release by ISO-NE’s Tariffs, in accordance with federal law and is treated by ISO-NE and the Federal Energy Regulatory Commission (“FERC”) as confidential and not subject to public review; (2) confidential information that is protected from public release as critical energy/electrical infrastructure information (“CEII”), in accordance with federal law and is treated as confidential and not subject to public review; and (3) confidential commercial and business sensitive financial information that if disclosed would cause “substantial harm to the competitive position” of Invenergy, PA Consulting Group (“PA”) and/or General Electric (“GE”).

Accordingly, Invenergy requests protective treatment of this information in this proceeding in accordance with R.I. Gen. Laws § 38-2-2(4)(B), R.I. Gen. Laws § 38-2-2(4)(F), and R.I. Gen. Laws § 38-2-2(4)(S).

## **I. LEGAL STANDARD**

Rhode Island's Access to Public Records Act ("APRA"), R.I. Gen. Laws § 38-2-1 *et. seq.*, sets forth the parameters for public access to documents in the possession of state and local government agencies. Under APRA, all documents and materials submitted in connection with the transaction of official business by an agency are deemed to be a "public record," unless the information contained in such documents and materials falls within one of the exceptions specifically identified in R.I. Gen. Laws § 38-2-2. Therefore, to the extent that information provided to the Board falls within one of the designated exceptions to APRA, the Board has the authority under the terms of APRA to deem such information to be confidential and to protect that information from public disclosure.

In that regard, R.I. Gen. Laws § 38-2-2(4)(B) provides that the following records shall *not* be deemed public:

Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

Additionally, R.I. Gen. Laws § 38-2-2(4)(F) provides that the following records shall not be deemed public:

Scientific and technical secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

Similarly, R.I. Gen. Laws § 38-2-2(4)(S) provides that the following records shall *not* be deemed public:

Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.

When interpreting APRA, the Rhode Island Supreme Court has held that the agencies making determinations as to the disclosure of information under APRA may apply the balancing test established by the Court in *Providence Journal v. Kane*, 577 A.2d 661 (R.I. 1990). Under this balancing test, the Board may protect information from public disclosure if the benefit of such protection outweighs the public interest inherent in disclosure of information pending before regulatory agencies. Further, where the release of information or data to a competitor will “cause substantial harm to the competitive position of the person from whom the information was obtained[,]” the Board should grant a request to protect the information from public disclosure. *Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001).

Moreover, the Rhode Island Supreme Court has held that the agencies applying the balancing test established in *Kane*, 577 A.2d 661 may grant protection of the information even if the requested document does not fall within one of the twenty-five (25) enumerated exceptions in APRA, where the requested document may be subject to redaction upon an appropriate balancing test weighing the public interests in disclosure against the privacy interests of the affected individual. See *Direct Action for Rights and Equality v. Gannon (DARE I)*, 713 A.2d 218 (R.I. 1998); see also *DARE (II)*, 819 A.2d 651 (R.I. 2003); *Kane*, 577 A.2d 661.

## **II. BASIS FOR CONFIDENTIALITY REQUEST**

In order to fully respond to the CLF and the Town’s recent data requests, Invenergy attached highly commercially sensitive business and financial information regarding the Clear River Energy Center Project (“CREC” or the “Project”) and other critical infrastructure information related to the interconnection to the transmission system.

Specifically, the attachments to the responses to Data Requests, Nos. 10-1, 10-6, 10-7, 41-1, 41-19 contain internal company communications with ISO-NE that are considered confidential by ISO-NE. These communications concern Invenergy's participation in the competitive wholesale electricity markets. Disclosure of these internal communications to other competitors in a public filing would substantially harm Invenergy and the ISO-NE competitive market process. This type of confidential information also is protected from public release by ISO-NE's Tariffs, in accordance with federal rules and is treated by ISO-NE and the FERC as confidential and not subject to public review.

Similarly, the attachment to the response to Data Request, No. 42-11, Exhibit 42-11(a), (referenced in Data Request, Nos. 42-12, 42-13 and 12-1) and the attachments to the response to Data Request, Nos. 14-6 and 14-7 contain confidential information that is protected from public release as CEII, in accordance with federal rules and is treated as confidential and not subject to public review. *See* 18 CFR 388.113; FERC Order No. 833, dated Nov. 17, 2016. This information is also treated as confidential by the ISO-NE and the transmission company, National Grid.

Additionally, the attachments to the responses to Data Requests, Nos. 10-2 – 10-3, 10-7, 10-9, 11-5<sup>1</sup>, 11-7, 41-1 – 41-3, 41-5, 41-10, 41-12, 41-19, 42-1, 42-2, 42-4<sup>2</sup>, 42-10, 42-11(b), 42-

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<sup>1</sup> The Board previously granted a motion for protective treatment regarding the information redacted in Exhibit 11-5, Benn Water and Heavy Transport Corp.'s water source locations. *See* Board's Order No. 118, effective Oct. 17, 2017, issued Jan. 8, 2018.

<sup>2</sup> The Board previously granted a motion for protective treatment regarding the information in Exhibits 42-2, 42-4(a) and 42-4(b). The information included in Exhibit 42-2 is similar to the information that the Board has previously protected as confidential information. *See* Order No. 82 (March 10, 2016), Order No. 99 (October 3, 2016), Order No. 101 (October 5, 2016), Order No. 109 (March 28, 2017) and Order No. 112 (June 23, 2017). The information included in Exhibits 42-4(a) and 42-4(b) is an updated version of the information protected in the Board's Order No. 82, dated Jan. 12, 2016, issued Mar. 10, 2016.

14 and 42-15 contain confidential information that if disclosed would cause “substantial harm to the competitive position” of Invenenergy, PA, GE and/or Benn Water and Heavy Transport Corp.

Disclosure to the public of the protected ISO-NE and CEII information would be contrary to federal law as well as contrary to the manner in which National Grid and ISO-NE treat this type of information. CEII information is defined by the Federal Energy Regulatory Commission (“FERC”) as “Specific engineering, vulnerability or detailed design information about proposed or existing critical infrastructure (physical or virtual) that: 1) Relates details about the production, transmission, distribution of energy; 2) Could be useful to a person planning attack on critical infrastructure; 3) Is exempt from mandatory disclosure under the [Federal] Freedom of Information Act, 5 U.S.C. 552; and 4) Does not simply give the general location of the critical information.” *See* 18 CFR 388.113(c)(1); FERC Order No. 833, dated Nov. 17, 2016. Critical infrastructure is further defined 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.” 18 CFR 388.113(c)(2).

The CEII information requested by Data Request, Nos. 42-11(a), 42-12, 42-13, 12-1, 14-6 and 14-7 concern transmission system analysis, designs and engineering details prepared by National Grid and the ISO-NE for purposes of the CREC Project. The electrical transmission infrastructure information in the CEII information is critical for the safe and reliable operation of the electric system and for the safety of the public. For these reasons, CEII information prepared by National Grid and/or ISO-NE is only provided to individuals who have a particularly demonstrated need to have access to this information and then pursuant to a specific signed non-

disclosure document of the form attached to this Motion as **Exhibit A and B**.<sup>3</sup> Because of the security concerns explained by FERC's regulation and decisions, Invenenergy seeks a Protective Order for this type of information.

This information is therefore not considered public information, in accordance with the APRA, specifically the exception identified in R.I. Gen. Laws § 38-2-2(4)(F) and R.I. Gen. Laws § 38-2-2(4)(S). In order to provide the Board and the other Parties with as much information and analysis as possible in response to the recently received data requests, Invenenergy attached (confidentially) information provided to and received from ISO-NE regarding critical infrastructure analysis but respectfully requests protective treatment of the documents, for the reasons described in this Motion.

Providing all of the details regarding ISO-NE's critical infrastructure analysis and ISO-NE's analysis of the CREC Project to the public would also cause Invenenergy "substantial harm to the competitive position" of the company. *See Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001). Revealing this information to the public would also undermine the ISO-NE Forward Capacity Market process, as this process is a highly competitive market based auction system, where companies can, to the detriment of Invenenergy, utilize the information contained in the attachments against Invenenergy in future ISO-NE market transactions. Disclosing this information would undermine the ISO-NE competitive process because ISO-NE goes to great lengths to protect this information as confidential information so as not to reveal to other companies the commercially sensitive ISO-NE specific company determinations. This information should, therefore, be protected under the trade secret and commercial information exception, as authorized by R.I. Gen. Laws § 38-2-2(4).

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<sup>3</sup> Please note that counsel for Invenenergy provided this form of NDAs (Exhibit A and B) to counsel for the Town of Burrillville and the Conservation Law Foundation.

Additionally, public disclosure of PA's market assumptions and financial analysis data and land purchase option agreement between Invenergy and Algonquin Gas Transmission, LLC would cause Invenergy and PA "substantial harm to [its] competitive position." *See Providence Journal Company*, 774 A.2d 40. The information contained in the attachments to the Town's Data Requests, Nos. 42-2 and 42-4 was calculated based on a series of confidential PA market assumptions, financial analysis and economic inputs. This information is not generally available to the public and commercially sensitive. PA's market assumptions and financial analysis should therefore be protected under the trade secret and commercially protected information exception, as authorized at R.I. Gen. Laws § 38-2-2(4)(B). *See id.* This type of data is also similar to the information that the Board has previously protected as confidential information. *See* Order No. 82 (March 10, 2016), Order No. 99 (October 3, 2016), Order No. 101 (October 5, 2016), Order No. 109 (March 28, 2017) and Order No. 112 (June 23, 2017).

Finally, Invenergy's and PA's financial models and the firm quotes Invenergy has received from other companies (GE) are highly confidential. Public disclosure of this information would cause Invenergy, PA and GE "substantial harm to the competitive position" of their companies. *See Providence Journal Company v. Convention Center Authority*, 774 A.2d 40 (R.I. 2001).<sup>4</sup> Likewise, the land purchase option agreement between Invenergy and Algonquin Gas Transmission, LLC contains commercially sensitive market price information. This information should, therefore, also be protected under the trade secret and commercial information exception, as authorized by R.I. Gen. Laws § 38-2-2(4).

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<sup>4</sup> It should be noted that GE did not give Invenergy permission to share its cost and internal pricing information with anyone, including the attorneys that signed non-disclosure agreements, nor was this specific information requested in the data request.

For the reasons stated above, the information attached to the data request responses should be exempt from the definition of a public record under APRA as “. . . commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature” and as “scientific and technical secrets and the security plans . . . the disclosure of which would endanger the public welfare and security” and as “confidential as “required to be kept confidential by federal law or regulation.” *See* R.I. Gen. Laws § 38-2-2(4)(B), R.I. Gen. Laws § 38-2-2(4)(F) and R.I. Gen. Laws § 38-2-2(4)(S).

The EFSB should determine that the information provided is confidential and provide protective treatment for this information by granting this Motion for a Protective Order, pursuant to R.I. Gen. Laws § 38-2-2. Invenenergy respectfully requests that the information identified herein (i) be kept confidential indefinitely, (ii) not be placed in the public docket, and (iii) be disclosed only to the EFSB, attorneys and expert consultants as necessary to this proceeding and in accordance with the protections ordered and in accordance with the form of non-disclosure agreements attached to this Motion.

**WHEREFORE**, the Invenenergy respectfully requests that the Board grant this Motion for Protective Treatment as stated herein.



Respectfully submitted,  
INVENERGY THERMAL DEVELOPMENT LLC  
By its attorneys,

/s/ Alan M. Shoer  
Alan M. Shoer, Esq. (#3248)  
Richard R. Beretta, Esq. (#4313)  
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Adler Pollock & Sheehan P.C.  
One Citizens Plaza, 8<sup>th</sup> Floor  
Providence, Rhode Island 02903  
(401) 274-7200 (Telephone)  
(401) 351-4607 (Facsimile)

Dated: January 9, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that on January 9, 2018, I delivered a true copy of the foregoing Motion via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer

# **EXHIBIT A**

**CRITICAL ENERGY INFRASTRUCTURE INFORMATION (“CEII”)  
REQUEST INSTRUCTIONS**

The attached form is intended to facilitate your request to National Grid for information that is classified as CEII. For purposes of these instructions “National Grid” shall mean New England Power Company d/b/a National Grid. The Federal Energy Regulatory Commission (“FERC”) has defined CEII as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure.”

The attached form is intended to cover separate and discrete requests for information, including participation in limited purpose working groups (e.g., formed to complete a transmission study). These requests must be specific to the individual submitting the request and to the information requested. Each person within an entity or organization who seeks access to the CEII must complete these documents. A separate CEII request form must be submitted each time CEII is requested. For access to secure portions of National Grid’s website, please refer to those sections of the website.

In order for National Grid to consider your request, you must complete, sign, date and return the following:

1. CEII Request Form
2. Non-Disclosure Agreement (“NDA”)

\*\*NDA is not required if you are an employee of or consultant to a federal or state government agency.

National Grid will not act upon your request until all of the steps have been completed and the completed documents reviewed by National Grid.

Please understand that changes to these documents are not permissible due to the volume of requests we receive and to ensure that all entities are treated fairly and equally.

These documents require you to identify yourself as: a registered employee of a Governance or Market Participant; an employee of another utility or RTO; a state agency employee; a federal agency employee; an employee of an electric reliability organization or regional entity; an employee of a transmission owner in another region; a consultant for one of the foregoing entities; or “other.” Note that it is less likely that National Grid will grant the request of an individual in the latter category, given the sensitive nature of CEII.

Please note that these requests are individual and each person within an entity or organization who will access the CEII must complete these forms.

**PLEASE BE ADVISED THAT THE DISCLOSURE OF CEII TO YOU IS DISCRETIONARY, AND NATIONAL GRID MAY REJECT YOUR REQUEST FOR ANY REASON.**

Any questions regarding this CEII Request Form or Non-Disclosure Agreement may be directed to the Transmission Planning CEII Coordinator at 781-907-2590. All correspondence, including the completed forms, should be submitted via electronic mail to National Grid, Attention: Transmission Planning, [TransmissionPlanning@nationalgrid.com](mailto:TransmissionPlanning@nationalgrid.com).

**CRITICAL ENERGY INFRASTRUCTURE INFORMATION ("CEII")  
REQUEST FORM**

1. This form must be accompanied by a signed Non-Disclosure Agreement, unless you are a registered employee of a Governance Participant (as indicated below) or FERC, in which case the National Grid Information Policy applies. If you have already signed a CEII Non-Disclosure Agreement, please provide a copy of such executed CEII Non-Disclosure Agreement.
  
2. The undersigned requests the following information [describe in detail]:  

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3. Check all that apply. The undersigned requests this material in my capacity as:
  - an employee of a Governance Participant or Market Participant and registered as a "Person" under that Participant in National Grid's Customer and Asset Management System;
  - an employee of another independent system operator or regional transmission organization in North America;
  - a state agency employee;
  - a federal agency employee;
  - an employee of the electricity reliability organization or regional entity (e.g., NPCC, EIPC);
  - an employee of a transmission owner outside the New England Control Area;
  - a consultant of one of the entities listed above who has been retained to provide advice regarding the matter described in no. 5 below; and
  - other. Explain. \_\_\_\_\_  
(National Grid is less likely to grant the request of persons in this category.)
  
4. Give the name of your employer and your title: \_\_\_\_\_  
\_\_\_\_\_
  
5. The undersigned represents, warrants, and agrees that the information is needed and will be used solely for the following purpose [describe in detail]:  

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6. If you are a consultant, provide the name and contact information of an individual at the organization that has retained you so that we may verify your role:  

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7. If you are in the "other" category, please provide the name and contact information of an individual at National Grid or one of the entities listed in no. 3 who may verify the legitimacy of your request: \_\_\_\_\_  
\_\_\_\_\_

I acknowledge that the foregoing is true and accurate, and agree to give National Grid immediate notice if any of the foregoing becomes no longer true. I also consent to National Grid sharing the fact that this request has been made and/or granted, and agree that National Grid shall have no liability to me whatsoever in connection with this request.

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

Name and Middle Initial (please print): \_\_\_\_\_

Organization: \_\_\_\_\_

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

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

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

## CEII NON-DISCLOSURE AGREEMENT

This CEII NON-DISCLOSURE AGREEMENT (the "Agreement") is made as of  
by and between  
("Recipient") and New England Power Company d/b/a National Grid ("National Grid"), having a  
place of business located at 40 Sylvan Road, Waltham, MA 02451.

WHEREAS, Recipient has requested that National Grid disclose to Recipient certain information, all or a portion of which may be classified by National Grid as Critical Energy Infrastructure Information; and

WHEREAS, the Federal Energy Regulatory Commission has defined Critical Energy Infrastructure Information as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure";

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Recipient agrees as follows:

1. Definition of CEII. For purposes of this Agreement, "Critical Energy Infrastructure Information" or "CEII" shall mean: (i) all information designated as such by National Grid, whether furnished before or after the date hereof, whether oral, written or recorded/electronic, and regardless of the manner in which it is furnished; and (ii) all reports, summaries, compilations, analyses, notes or other information which contain such information.

2. Use and Protection of CEII.

- (a) Recipient shall strictly comply with any and all laws, rules and regulations (including, without limitation, Federal Energy Regulatory Commission rules, regulations, orders and policies) applicable to any CEII disclosed hereunder. Recipient shall not divulge any CEII to any person or entity, directly or indirectly, unless permitted to do so by applicable law and unless Recipient has first obtained, in each case, the express specific written consent of National Grid. All CEII shall be maintained by Recipient in a secure place. Recipient may make copies of CEII, but such copies become CEII and subject to these same procedures. Recipient may make notes of CEII, which shall be treated as CEII if they contain CEII.
- (b) Although a Recipient of CEII may use CEII as foundation for advice provided to his or her employer or clients, s/he may only discuss CEII with or disclose CEII to another Recipient of the identical CEII. A Recipient may check with National Grid to determine whether another individual is a Recipient of the identical CEII.
- (c) A Recipient will not knowingly use CEII directly or indirectly for an illegal or non-legitimate purpose.

- (d) In the event that Recipient is required to disclose CEII by subpoena, law or other directive of a court, administrative agency or arbitration panel, Recipient hereby agrees to provide National Grid with prompt notice of such request or requirement in order to enable National Grid to (i) seek an appropriate protective order or other remedy, (ii) consult with Recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (iii) waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or National Grid waives compliance with the provisions hereof, Recipient hereby agrees to furnish only that portion of the CEII which Recipient's counsel advises is legally required to be furnished and to exercise best efforts to obtain assurance that confidential treatment will be accorded such CEII.
3. Return of CEII. In the event that National Grid, in its sole discretion, so requests, Recipient will promptly deliver to National Grid all CEII, including all copies, reproductions, summaries, compilations, analyses or extracts thereof.
  4. Change in Status. If the information provided to National Grid in Recipient's request for CEII changes (e.g., Recipient leaves his or her employ, the consulting engagement cited in the request is terminated, Recipient's employer is no longer a Governance Participant) s/he must inform National Grid immediately in writing at the address first given above (Attention: Transmission Planning). National Grid may require the return of the CEII or its destruction.
  5. CEII "on Loan". Information provided pursuant to this Agreement is deemed to be on loan and must be returned to National Grid promptly upon request. If Recipient is an employee or contractor of a federal or State agency, s/he must note that the information is not the property of the agency and is not subject to Freedom of Information/Public Records acts or similar statutes.
  6. No Warranty. The CEII is provided "as is" with all faults. National Grid makes no representation or warranties, express or implied, with respect to any CEII disclosed hereunder, including, without limitation, any representations or warranties as to the quality, accuracy, completeness or reliability of any such CEII; all such representations or warranties are hereby expressly disclaimed. Recipient shall not acquire any rights in CEII by virtue of its disclosure hereunder. No license to Recipient, under any trademark, patent, or other intellectual property right, is either granted or implied by the disclosure of CEII under this Agreement. Without limiting the foregoing: (i) in no event shall National Grid be liable for any inaccuracy or incompleteness of or in the CEII, and (ii) National Grid shall not have liability to Recipient, or to any other person or entity, for Recipient's or any other person or entity's use of any CEII disclosed pursuant to this Agreement.
  7. Indemnity. To the greatest extent permitted by law, Recipient shall indemnify and hold harmless National Grid and its officers, directors, employees, agents, contractors and assigns (National Grid Indemnitees") from and against any and all claims, losses, liabilities and expenses, including attorney's fees, incurred by the National Grid Indemnitee as a result of Recipient's violation of any of its obligations under this Agreement.

8. Equitable Relief Audit. Without prejudice to the rights and remedies otherwise available to National Grid, National Grid shall be entitled to seek equitable relief by way of injunction or otherwise if Recipient breaches or threatens to breach any of the provisions of this Agreement. National Grid may audit Recipient's compliance with this Agreement.
9. Term and Survival. Recipient's obligations and duties under this Agreement shall survive until (i) National Grid rescinds, in writing, the CEII designation for all CEII disclosed hereunder, or (ii) the CEII disclosed hereunder is no longer required to be kept confidential under applicable law, whichever occurs last in time.
10. No Waiver. Recipient understands and agrees that no failure or delay by National Grid in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of laws principles.
12. Assignment Prohibited. Any assignment of Recipient's rights, obligations or duties under this Agreement without National Grid's prior written consent shall be void.
13. Entire Agreement. This Agreement contains the entire agreement between Recipient and National Grid concerning the subject matter hereof, and no modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon the parties, unless approved in writing by each of them. This Agreement shall not supersede or modify any existing written agreement with respect to CEII between National Grid and any company or organization employing or retaining Recipient.
14. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, Recipient and National Grid have executed this CEII Non-Disclosure Agreement as of the date first above written.

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

Name (please print): \_\_\_\_\_

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

Organization: \_\_\_\_\_

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



**NEW ENGLAND POWER COMPANY d/b/a NATIONAL GRID**

**Signature:** \_\_\_\_\_  
**Authorized Representative**

**Name (please print):** \_\_\_\_\_

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

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

# **EXHIBIT B**

## **CRITICAL ENERGY INFRASTRUCTURE INFORMATION (“CEII”) REQUEST INSTRUCTIONS**

The attached form facilitates your request for information that is classified by ISO New England Inc. (“ISO-NE”) as CEII. For your information, the Federal Energy Regulatory Commission (“FERC”) has defined CEII as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure.”

The attached form covers discrete requests for information, including participation in limited purpose working groups (e.g., formed to complete a transmission study). For access to secure portions of ISO-NE’s website, like those for the NEPOOL Reliability Committee and the Planning Advisory Committee, please refer to those sections of the website.

In order for ISO-NE to consider your request, you must complete, sign, date, and return the following:

1. CEII Request Form
2. Non-Disclosure Agreement (unless you are employed by a Governance Participant, Market Participant, or FERC, in which cases the ISO New England Information Policy applies and the NDA is not required)

Employees of Governance and Market Participants must be registered as a Person in ISO’s Customer and Asset Management System (CAMS). Please contact your Security Administrator before you submit the request form if that is not the case.

Please understand that changes to these documents are not permissible due to the volume of requests we receive and to ensure that all entities are treated fairly and equally. Note that each request is specific to the individual making the request and to the information requested. Each person within an entity who will access CEII must complete their own forms. A separate CEII request form must be submitted each time different CEII is requested.

The CEII Request Form requires you to identify yourself as: a registered employee of a Governance or Market Participant; an employee of another ISO or RTO; a state agency employee; a federal agency employee; an employee of an electric reliability organization or regional entity; an employee of a transmission owner in another region; a consultant for one of the foregoing entities; or “other.” Note that it is not likely that ISO-NE will grant the request of an individual in the latter category, given the sensitive nature of CEII, unless the business need is explained clearly and its legitimacy is verifiable. You may attach an additional sheet if there is not enough room on the request form.

**PLEASE BE ADVISED THAT THE DISCLOSURE OF CEII TO YOU IS DISCRETIONARY, AND ISO-NE MAY REJECT YOUR REQUEST FOR ANY REASON.**

Any questions regarding this CEII Request Form may be directed to Customer Support at 413-540-4220. All correspondence, including the completed forms, should be mailed or emailed (PDF) to ISO New England Inc., Attention: Customer Support Department, One Sullivan Road, Holyoke, MA, 01040-2841, or email [custserv@iso-ne.com](mailto:custserv@iso-ne.com). Please allow us two weeks to process your request.

**CRITICAL ENERGY INFRASTRUCTURE INFORMATION (“CEII”)  
REQUEST FORM**

1. This form must be accompanied by an original signed Non-Disclosure Agreement, unless you are a registered employee of a Governance Participant, Market Participant, or FERC, in which case the ISO New England Information Policy applies and the NDA is not required. If you have already signed a CEII Non-Disclosure Agreement that you want to use for this request, please provide the date: \_\_\_\_\_
  
2. The undersigned requests the following information [describe in detail]:  
\_\_\_\_\_  
\_\_\_\_\_
  
3. The undersigned is:
  - employed by a Governance Participant or Market Participant and registered as a “Person” under that Participant in ISO-NE’s Customer and Asset Management System.
  - an employee of another independent system operator or regional transmission organization in North America
    - a state agency employee
    - a federal agency employee
    - an employee of the electricity reliability organization or regional entity
    - an employee of a transmission owner in another control area
    - a consultant to one of the entities listed above who has been retained to provide advice regarding the matter described in no. 5 below
    - other (note that ISO New England is not likely to grant the request of persons in this category unless the business need is explained clearly and its legitimacy is verifiable.)
  
4. Provide the name of your employer and your title: \_\_\_\_\_  
\_\_\_\_\_
  
5. The undersigned represents warrants and agrees that the information is to be used solely for the following purpose [describe the business need in detail, including if applicable queue position(s) for interconnection request CEII and whether IRTT access has been or will be requested]: \_\_\_\_\_  
\_\_\_\_\_
  
6. If you are working with an employee of ISO New England, provide his or her name: \_\_\_\_\_  
\_\_\_\_\_
  
7. If you are a consultant to an entity of one of the types listed in no. 3, provide the name and contact information of an individual at the organization that has retained you so that we may verify your role. If you are a subcontractor, provide that information for both the primary contractor and the client. A reference from within your own company is not acceptable. \_\_\_\_\_  
\_\_\_\_\_
  
8. If you are in the “other” category, and you have not provided the name of an ISO New England employee in no. 6, provide the name and contact information of an individual at one of the entities listed in no. 3 who will verify the business need and legitimacy of your request: \_\_\_\_\_  
\_\_\_\_\_

I acknowledge that the foregoing is true and accurate, and agree to give ISO New England immediate notice if any of the foregoing is no longer true. I also consent to ISO New England sharing the fact that this request has been made and/or granted, and agree that ISO New England shall have no liability to me in connection with this request.

Signature: \_\_\_\_\_ Name (please print): \_\_\_\_\_ Date: \_\_\_\_\_

Organization: \_\_\_\_\_ Business Address: \_\_\_\_\_

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

## CEII NON-DISCLOSURE AGREEMENT

This CEII NON-DISCLOSURE AGREEMENT (the "Agreement") is made by the undersigned (the "Recipient") in favor of ISO NEW ENGLAND INC. ("ISO-NE"), with its primary address located at One Sullivan Road, Holyoke, MA 01040.

WHEREAS, the Recipient has requested that ISO-NE disclose to the Recipient certain information, all or a portion of which may be classified by ISO-NE as Critical Energy Infrastructure Information; and

WHEREAS, the Federal Energy Regulatory Commission has defined Critical Energy Infrastructure Information as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure";

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Recipient agrees as follows:

1. Definition of CEII. For purposes of this Agreement, "Critical Energy Infrastructure Information" or "CEII" shall mean: (i) all information designated as such by ISO-NE, whether furnished before or after the date hereof, whether oral, written or recorded/electronic, and regardless of the manner in which it is furnished; and (ii) all reports, summaries, compilations, analyses, notes or other information which contain such information.

2. Use and Protection of CEII.

(a) All CEII shall be maintained by Recipient in a secure place. Recipients may make copies of CEII, but such copies become CEII and subject to these same procedures. Recipients may make notes of CEII, which shall be treated as CEII if they contain CEII.

(b) Although a Recipient of CEII may use CEII as foundation for advice provided to his or her employer or clients, s/he may only discuss CEII with or disclose CEII to another Recipient of the identical CEII. A Recipient may check with ISO-NE to determine whether another individual is a Recipient of the identical CEII.

(c) A Recipient will not knowingly use CEII directly or indirectly for an illegal or non-legitimate purpose.

(d) In the event that the Recipient is required to disclose CEII by subpoena, law or other directive of a court, administrative agency or arbitration panel, the Recipient hereby agrees to provide ISO-NE with prompt notice of such request or requirement in order to enable ISO-NE to (i) seek an appropriate protective order or other remedy, (ii) consult with the Recipient with respect to taking steps to resist or narrow the scope of such request or legal process, or (iii) waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or ISO-NE waives compliance with the provisions hereof, the Recipient hereby agrees to furnish only that portion of the CEII which the Recipient's counsel advises is legally required and to exercise best efforts to obtain assurance that confidential treatment will be accorded such CEII.

3. Return of CEII. In the event that ISO-NE, in its sole discretion, so requests, the Recipient will promptly deliver to ISO-NE all CEII, including all copies, reproductions, summaries, compilations, analyses or extracts thereof.

4. Change in Status. If the information provided to ISO-NE in Recipient's request for CEII changes (e.g., Recipient leaves his or her employ, the consulting engagement cited in the request is terminated, Recipient's employer is no longer a Governance Participant) s/he must inform ISO-NE immediately in writing at the address first given above (Attention: Customer Support). ISO-NE may require the return of the CEII or its destruction.

5. CEII "on Loan". Information provided pursuant to this Agreement is deemed to be on loan and must be returned to ISO-NE upon request. If the Recipient is an employee of a federal or State agency, s/he must

note that the information is not the property of the agency and is not subject to Freedom of Information/Public Records acts or similar statutes.

6. No Warranty. The CEII is provided "as is" with all faults. In no event shall ISO-NE be liable for the accuracy or completeness of the CEII. ISO-NE shall not have liability to the Recipient, or any other person or entity, for the Recipient's use of any CEII disclosed pursuant to this Agreement.

7. Equitable Relief; Audit. Without prejudice to the rights and remedies otherwise available to ISO-NE, ISO-NE shall be entitled to seek equitable relief by way of injunction or otherwise if the Recipient breaches or threatens to breach any of the provisions of this Agreement. ISO-NE may audit the Recipient's compliance with this Agreement.

8. Survival. The Recipient remains bound by these provisions unless ISO-NE rescinds the CEII designation.

9. No Waiver. The Recipient understands and agrees that no failure or delay by ISO-NE in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of laws principles.

11. Assignment Prohibited. Any assignment of the Recipient's rights, obligations or duties under this Agreement without ISO-NE's prior written consent shall be void.

12. Entire Agreement. This Agreement contains the entire agreement between the parties concerning the protection of the CEII, and no modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon the parties, unless approved in writing by each of them.

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

IN WITNESS WHEREOF, the Recipient has executed this CEII Non-Disclosure Agreement as of the date set forth below.

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

Name (please print): \_\_\_\_\_

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

Organization: \_\_\_\_\_

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

\_\_\_\_\_