



North Carolina Transmission Planning Collaborative

TRANSMISSION ADVISORY GROUP

TAG CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”), dated as of the __ day of _____, 20__, is entered into by and between the North Carolina Transmission Planning Collaborative (“NCTPC”), and _____ (“TAG participant”), hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, the NCTPC is an organization formed by Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, Inc. (“DEP”); North Carolina Electric Membership Corporation (“NCEMC”); and ElectriCities of North Carolina, Inc. (“ElectriCities”), to create and implement a collaborative electric transmission planning process for their respective service territories in North Carolina and South Carolina (“Planning Activities”);

WHEREAS, the TAG participant is an Eligible Customer, member of the general public, generation owner/generation development company, an organization capable of providing Ancillary Services under the Duke or Progress open access tariff, or a Transmission Owner, Transmission Operator, or Transmission Planner as those terms or their successors are used under the NERC Functional Model, as may be amended from time to time;

WHEREAS, the NCTPC desires that the Planning Activities be carried out in an atmosphere of full and complete disclosure, but one which also protects the critical energy infrastructure information and the confidential, and/or proprietary nature of information made available to the NCTPC by the NCTPC Participants and other TAG participants (as those terms are defined in the Open Access Transmission Tariffs of DEC and DEP);

WHEREAS, representatives of TAG participants are in need of access to certain Confidential Information, and the NCTPC recognizes and acknowledge such need; and thus the NCTPC is creating a process that requires that representatives of TAG participants not disclose information that is deemed “Confidential Information” to any other person for any purpose, except as set forth herein;

WHEREAS, the NCTPC will allow the disclosure of certain Confidential Information to representatives of TAG participants upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Confidential Information. For purposes of this Agreement, the term “Confidential Information” means critical energy infrastructure, proprietary, and/or confidential information, whether printed, written, oral, electronic or on software, including but not limited to information (a) developed or produced by NCTPC itself, or (b) obtained from one or more NCTPC Participant or other TAG participant. Such Confidential Information includes, but is not limited to, information involving power and transmission systems planning and operation, power sales and transfers, transmission transactions, and such other information as an NCTPC Participant or TAG participant in its sole discretion determines is proprietary and/or confidential; provided, however, that such Confidential Information whether in written or electronic form, is marked as Confidential Information or, if disclosed orally, is identified as Confidential Information at the time of disclosure.

The term “Confidential Information” shall not include any information that a Party can demonstrate (a) is or has been independently developed by the Party, or is lawfully received by the Party from another source having the right to furnish such information to either; (b) has become generally available to the public without breach of this Agreement by any Party; or (c) which, as evidenced by documentation in the possession of a Party, was previously rightfully in possession of that Party for a lawful purpose and without restrictions on its use.

2. Written Consent Required. If an NCTPC Participant or TAG participant submits Confidential Information to the NCTPC or a NCTPC Participant, the NCTPC must obtain written consent from the submitting NCTPC Participant or TAG participant prior to releasing such Confidential Information to TAG participants. The submitting entity’s consent shall be in the sole discretion of such entity.

3. Obligation of Confidentiality. The TAG participant shall assure that all Confidential Information to which it has access shall be kept confidential by the TAG participant. Among other things, the TAG participant agrees and shall ensure that, without the prior written consent of the entity which owns such Confidential Information, which consent shall be in its sole discretion, the TAG participant shall not: (a) use or cause to be used the Confidential Information whatsoever other than the specific purposes for which the NCTPC has distributed the Confidential Information to the TAG participants; (b) distribute or disclose in any manner whatsoever any Confidential Information to any officers, directors, employees, consultants, attorneys, accountants or financial advisors or other parties affiliated with the TAG participant; or (c) permit any third party to have access to any Confidential Information. However, the TAG participant may transmit Confidential Information to those of its officers, directors, employees, consultants, attorneys, accountants and financial advisors (collectively, the “Representatives”) who (i) are specifically listed by name in Attachment A hereto; and (ii) have been instructed by the TAG participant that they are to comply with those terms, and (iii) have acknowledged in writing that they have read this Agreement and understand its terms by signing Attachment A.

4. Obligations of TAG participant. To meet its obligations under this Agreement, the TAG participant will ensure that the NCTPC Administrator has a current copy of Attachment A for such TAG participant and shall maintain the original, signed Attachment A, which will be made available to the NCTPC Administrator upon request. The TAG participant commits that if any of its Representatives acts in a manner that results in the Representative and/or the TAG participant breaching or otherwise violating the terms of this Agreement, the TAG participant shall (a) immediately upon learning of such breach or violation notify the NCTPC Administrator; and (b) review its internal policies to determine the cause of such breach; and (c) implement actions reasonably designed to prevent a recurrence of such breach; and (d) promptly notify the NCTPC Administrator as to the cause of such breach and the actions taken pursuant to (c).

5. Ownership of Confidential Information. All Confidential Information submitted to the NCTPC by a NCTPC Participant, or by another TAG participant, shall be and will remain the property of the submitting entity. All Confidential Information developed or produced by the Oversight/Steering Committee (OSC) and/or the Planning Working Group (PWG), and distributed to the TAG participants shall be and remain the property of the NCTPC.

6. Disclosures Required by Court Order or Law. In the event that the TAG participant or a Representative thereof receives a request to disclose any or all of the Confidential Information under the terms of (a) a state freedom of information act, public records act or similar statute, (b) the Federal Freedom of Information Act, (c) a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body or agency, or (d) pursuant to an appropriate request for production of documents in any proceeding before an administrative agency or court of competent jurisdiction, the TAG participant agrees to notify the NCTPC Administrator, and, if known, the owner of the Confidential Information at issue, immediately of the existence, terms and circumstances surrounding such a request so that the NCTPC and/or the owner of the information may seek an appropriate protective order, take such other action as it deems appropriate to protect against the release of Confidential Information or waive compliance by the TAG participant with the appropriate provisions of this Agreement. If the TAG participant is compelled to disclose any of the Confidential Information, only that portion thereof compelled to be disclosed will be disclosed, and the TAG participant shall use reasonable best efforts to obtain an order and other reliable assurance that confidential treatment shall be accorded to the Confidential Information so disclosed.

7. Remedies. Each Party agrees that any threatened or existing violation of this Agreement would cause the NCTPC, the NCTPC Participants, and/or the owner of the Confidential Information irreparable harm for which they would not have an adequate remedy at law, and that any or all such parties shall be entitled to seek immediate injunctive relief prohibiting such violation. In the event that Confidential Information is disclosed in violation of this Agreement, nothing contained herein shall preclude such parties from pursuing an action for damages or for enforcement of any other rights or remedies they shall have at law or in equity.

8. No Licenses Implied. Except as specifically stated herein, nothing contained in this Agreement shall be construed as granting or conferring upon any Party any rights by license or otherwise, express or implied, to the Confidential Information.
9. Return of Confidential Information. Upon the request of the NCTPC Administrator, either written or electronically transmitted, all documents, records, materials and similar repositories of Confidential Information, including any and all copies thereof in possession of the TAG participant or its Representatives, shall be promptly surrendered and delivered to the NCTPC Administrator, the TAG participant shall certify in writing that all Confidential Information has been so returned.
10. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties concerning the subject matter hereof, and no representations, promise, inducement or statement of intention not set forth in this Agreement have been made by or on behalf of any Party hereto.
11. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provisions shall be fully severable and this Agreement shall be construed as if the illegal, invalid and unenforceable provision had never been a part of this Agreement and the remaining provisions of this Agreement shall be given full force and effect.
12. Survival. The restrictions and obligations of this Agreement shall survive any expiration, termination or cancellation of this Agreement and shall continue to bind the Parties and their successors and permitted assigns.
13. Assignment. The TAG participant shall not assign any of its rights or delegate any of its duties hereunder to a third party without the written consent of the NCTPC Administrator at its sole discretion.
14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to its principles of conflicts of laws.
15. Consent to Jurisdiction. The Parties consent to the nonexclusive jurisdiction of the state and federal courts located in the State of North Carolina in any action brought under this Agreement or to enforce its terms.
16. Term and Termination. This Agreement shall continue in force and effect unless terminated by a Party in accordance with this provision. A Party may terminate this Agreement by providing sixty (60) days written notice to the other. Notwithstanding any such termination, all rights and obligations in this Agreement shall survive with respect to any Confidential Information disclosed prior to the effective date of such termination.

IN WITNESS WHEREOF, each of the Parties, intending to be legally bound by the provisions of this Confidentiality Agreement, has caused its duly authorized representatives to execute this Confidentiality Agreement as of the date set forth above.

NCTPC Chairman
Name : _____
Title: _____
Date: _____
By: _____
(Signature)

[TAG Participant]
Company: _____
Name : _____
Title: _____
Date: _____
By: _____
(Signature)

**Attachment A
TAG Participants
Authorized List of Company Representatives**

Name:
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