

MODEL NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement between (Applicant), having offices at (Address, City, State, Zip Code) ("Applicant"), and (Creditor), having offices at (Address, City, State, Zip Code) ("Creditor"), is effective as of this the day of , 20 ("Agreement"). Applicant and Creditor may hereinafter be referred to individually as a "Party" and collectively as the "Parties".

1. "Confidential Information" means information that relates to the nonpublic information concerning the financial condition of the Applicant or any of the Applicant's Affiliates that is disclosed to the Creditor by the Applicant or any of Applicant's Affiliates. In addition, pursuant to the requirements of the ARA [term is not defined], the Parties may agree in writing [?] that Confidential Information includes the name of the Applicant, the execution of this Agreement between the Parties, and the fact that the Applicant has asked the Creditor to evaluate its financial status. Confidential Information may be provided to the Creditor in written or other tangible forms (including on magnetic media), or by oral, visual, or other means. The term "Affiliate" as used in this Agreement means any person or entity directly or indirectly controlling, controlled by, or under common control with a Party.

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2. The Creditor may use the Confidential Information only for the purpose of evaluating the financial status of the Applicant and/or any of the Applicant's Affiliates as such status relates to a determination by the Creditor as to whether or not the Parties may enter into a written contract for the supply or delivery of electricity and/or gas.

3. [MOVED FROM 6] The Creditor may disclose Confidential Information received hereunder to (i) its Affiliates who agree, in advance, in writing, to be bound by this Agreement, and (ii) to Creditor's employees and independent contractors, and its Affiliates' employees and independent contractors, who have a need to know, for the purpose of this Agreement, and who are bound to protect the received Confidential Information from unauthorized use and disclosure under the terms of a written agreement. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of Applicant. [Is this clause already covered in paragraph 3 and is this paragraph in conflict with FERC and ARA rules?] [In response to the parenthetical question: This clause is essential to the agreement and should not be deleted. It does NOT duplicate what was originally paragraph 3 (now paragraph 4). I don't know the FERC and ARA rules referred to, so I can't comment on the rest of the question, KB].

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4. The Creditor will take steps to restrict access to Confidential Information to those individuals authorized in paragraph 3 who have a business reason for access. The Creditor will advise those individuals who have access of their obligation to comply with all applicable securities trading rules and laws.

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5. The Creditor shall protect the Confidential Information from disclosure to any persons or entities other than those authorized in paragraph 3 or in any manner not authorized by this Agreement, using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care.

6. The Creditor shall protect the Confidential Information to the extent sufficient to preclude any duty of the Applicant or the Applicant's Affiliates to disclose (by reason of Regulation FD of the

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Securities and Exchange Commission) material nonpublic information communicated to the Creditor or its **Representatives [this term is not defined]** in connection with the Confidential Information. **(Proposal to delete this paragraph???) [While including this paragraph is not harmful, it might not resolve a Reg FD disclosure requirement. KB]**

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7. The restrictions of this Agreement on use and disclosure of Confidential Information shall not apply to information that:

- (a) Was publicly known at the time of the Applicant's communication of this information to the Creditor;
- (b) Becomes publicly known, through no act or omission of the Creditor, subsequent to the time of the Applicant's communication of this information to the Creditor;
- (c) Was rightfully in the Creditor's possession free of any obligation of confidence at the time of the Applicant's communication of this information to the Creditor;
- (d) Is rightfully obtained by the Creditor from third parties authorized to make such disclosure without restriction;
- (e) Is identified by the Applicant as no longer proprietary or confidential; or
- (f) **[Existing law could require disclosure but allow for confidentiality – this item could defeat that protection. "Required disclosure" is covered in the next section.]**

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8. In the event the Creditor is required by law, regulation or court order to disclose any of the Applicant's Confidential Information, the Creditor will promptly notify the Applicant in writing prior to making any such disclosure in order to facilitate the Applicant seeking a protective order or other appropriate remedy from the proper authority. The Creditor agrees not to oppose reasonable efforts by the Applicant, in seeking such order or other remedy. The Creditor further agrees that if the Applicant is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, the Creditor will furnish only that portion of the Confidential Information, which is legally required to be furnished, and the Creditor will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

9. **Nothing in this Agreement shall be construed as granting or conferring any right or license, express or implied, in or to any Confidential Information disclosed to Creditor, including without limitation any patent, trademark, and/or copyright.**

10. Neither Party is obligated under this Agreement to purchase from or provide to the other Party any service or product.

**11. This Agreement shall become effective as of the date first written above.**

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12. Neither Party may assign any of its rights or obligations hereunder, except to an Affiliate or successor in interest, without the prior, written consent of the other Party, which consent shall not be unreasonably withheld.

13. No failure or delay 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 other right, power or privilege hereunder.

14. This Agreement (a) is the complete agreement of the Parties concerning the subject matter hereof and supersedes any prior such agreements with respect to further disclosures concerning such subject matter; (b) may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both Parties; and (c) SHALL BE GOVERNED

AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF  (Creditor's State)  WITHOUT REGARD TO ITS CHOICE OF LAW PROVISIONS.

15. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative.

(Applicant Name)   
a  (state and type of organization) .

(Creditor Name)   
a  (state and type of organization) .

By : (if the above entity is a Limited Partnership  
enter name of its General Partner)

By: (if the above entity is a Limited Partnership  
enter name of its General Partner)

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

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

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

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

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

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

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

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