

NON-DISLOSURE AGREEMENT
REGARDING CONFIDENTIAL INFORMATION
CPUC A.10-11-002

1. Scope. This Nondisclosure Agreement shall govern access to and the use in this proceeding of Confidential Information produced by, or on behalf of, any Disclosing Party.

2. Modification. This Nondisclosure Agreement shall remain in effect until it is modified or terminated by agreement of the parties or by order of the Commission or Assigned Administrative Law Judge (“Assigned ALJ”). The parties acknowledge that the identity of the parties submitting Confidential Information may differ from time to time. In light of this situation, the parties agree that modifications to this Nondisclosure Agreement may become necessary, and they further agree to work cooperatively to devise and implement such modifications in as timely a manner as possible. Each party governed by this Nondisclosure Agreement has the right to seek changes in it as appropriate from the Assigned ALJ or the Commission.

3. Definitions

A. The term “Confidential Information” means information designated as confidential as determined by the Disclosing Party, or (ii) any other materials that are made subject to this Nondisclosure Agreement by agreement of the parties or by order of the Assigned ALJ, Law and Motion Administrative Law Judge (“Law and Motion ALJ”), Assigned Commissioner, the Commission, or any court or other body having appropriate authority. Confidential Information also includes memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, or compiles other Confidential Information or from which such materials may be derived (except that any derivative materials must be separately shown to be Confidential Information). Confidential Information does not include: (i) any information or document contained in the public files of the CPUC or any other state or federal agency, or in any state or federal court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than

through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order.

B. The term “redacted” refers to situations in which Confidential Information in a document, whether the document is in paper or electronic form, has been covered, blocked out, or removed. The term “unredacted” refers to situations in which the Confidential Information in a document, whether in paper or electronic form, has not been covered, blocked out, or removed.

C. The term “Disclosing Party” means a party who initially discloses any specified Confidential Information in this proceeding.

D. All parties and their agents, witnesses or representatives reviewing Confidential Information are required to execute a non-disclosure agreement and are bound by the terms of this Nondisclosure Agreement.

4. Designation of Confidential Information.

When filing or providing in discovery any documents containing Confidential Information, a party shall physically mark such documents on each page (or in the case of nondocumentary materials such as computer diskettes, on each item) as “ CONFIDENTIAL INFORMATION SUBJECT TO NONDISCLOSURE AGREEMENT,” or with words of similar import as long as one or more of the terms, “Confidential Information” or “Nondisclosure Agreement” is included in the designation to indicate that the materials in question are protected.

All materials so designated shall be treated as Confidential Information unless and until (a) the designation is withdrawn pursuant to Paragraph 16 hereof, or (b) an ALJ, Commissioner or other Commission representative makes a determination pursuant to Paragraph 4 hereof changing the designation.

All documents containing Confidential Information that are tendered for filing with the Commission shall be placed in sealed envelopes or otherwise appropriately protected and shall be tendered with a motion to file the document under seal pursuant to Rule 11.4 of the Commission’s Rules of Practice and Procedure. All documents containing Confidential Information that are served on parties shall be placed in sealed envelopes or otherwise

appropriately protected and shall be endorsed to the effect that they are served under seal pursuant to this Nondisclosure Agreement.

5. Redaction of Documents. Whenever a party files, serves or provides in discovery a document that includes Confidential Information (including but not limited to briefs, testimony, exhibits, and responses to data requests), such party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this proceeding to determine with reasonable certainty the nature of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto.

6. Access to Confidential Information and Use of Confidential Information. Subject to the terms of this Nondisclosure Agreement, parties shall be entitled to access to Confidential Information. Parties may make copies of Confidential Information, but such copies become Confidential Information. Parties may make notes of Confidential Information, which shall be treated as Notes of Confidential Information if they disclose the contents of Confidential Information. Confidential Information obtained by a party in this proceeding may also be requested by that party in a subsequent Commission proceeding, subject to the terms of any nondisclosure agreement or protective order governing that subsequent proceeding, without constituting a violation of this Nondisclosure Agreement.

7. Maintaining Confidentiality of Confidential Information. Each party shall treat Confidential Information as confidential in accordance with this Nondisclosure Agreement and the Non-Disclosure Certificate executed pursuant to Paragraph 7 and 8 hereof. Confidential Information shall not be used except as necessary for the conduct of this proceeding, and shall not be disclosed in any manner to any person except: (i) Parties who have executed Non-Disclosure Certificates; (ii) Parties' paralegal employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Parties, provided that they shall first ensure that such personnel are familiar with the terms of this Nondisclosure Agreement, and have signed a Non-Disclosure Certificate, (iii) persons employed by or working on behalf of the Commission, and (iv) persons employed by or working on behalf of the CEC or

other state governmental agency that has executed an Interagency Confidentiality Agreement as referred to in Paragraph 12. Parties shall adopt suitable measures to maintain the confidentiality of Confidential Information they have obtained pursuant to this Nondisclosure Agreement, and shall treat such Confidential Information in the same manner as they treat their own most highly confidential information. Parties shall be liable for any unauthorized disclosure or use by their paralegal employees or administrative staff. In the event any Party is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Confidential Information, they shall immediately inform the Disclosing Party of the request, and the Disclosing Party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Party shall cooperate in good faith with such party either to oppose the disclosure of the Confidential Information consistent with applicable law, or to obtain confidential treatment of them by the person or entity who wishes to receive them prior to any such disclosure. If there are multiple requests for substantially similar Confidential Information in the same case or proceeding where a Party has been ordered to produce certain specific Confidential Information, the Party may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

8. Non-Disclosure Certificates. A Party shall not inspect, participate in discussions regarding, or otherwise be granted access to, Confidential Information unless and until he or she has first completed and executed a Non-Disclosure Certificate, attached hereto as Appendix A, and delivered the original, signed Non-Disclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Non-Disclosure Certificates pertaining to the Confidential Information it has disclosed and shall promptly provide copies of the Non-Disclosure Certificates to Commission Staff upon request.

9. Return or Destruction of Confidential Information. Confidential Information shall remain available to Parties 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 Confidential Information is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Parties shall, within fifteen days of such request,

return the Confidential Information (including Notes of Confidential Information) 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 Confidential Information, and Notes of Confidential Information may be retained, if they are maintained in accordance with Paragraph 8. Within such time period each Party, if requested to do so, shall also submit to the Disclosing Party an affidavit stating that, to the best of its knowledge, all Confidential Information and all Notes of Confidential Information have been returned or have been destroyed or will be maintained in accordance with Paragraph 8. To the extent Confidential Information is not returned or destroyed, it shall remain subject to the Nondisclosure Agreement. In the event that a Party to whom Confidential Information is disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every such person shall continue to be bound by the provisions of this Nondisclosure Agreement and the Non- Disclosure Certificate.

10. Dispute Resolution. All disputes that arise under this Nondisclosure Agreement, including but not limited to alleged violations of this Nondisclosure Agreement and disputes concerning whether materials were properly designated as Confidential Information shall first meet and confer in an attempt to resolve such disputes. If the meet and confer process is unsuccessful, the involved parties may present the dispute for resolution to the Assigned ALJ or the Law and Motion ALJ.

11. Other Objections to Use or Disclosure. Nothing in this Nondisclosure Agreement shall be construed as limiting the right of a party or the Commission Staff from objecting to the use or disclosure of Confidential Information on any legal ground, such as relevance or privilege.

12. Remedies. Any violation of this Nondisclosure Agreement shall constitute a violation of an order of the CPUC. Notwithstanding the foregoing, the parties reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Confidential Information.

13. Withdrawal of Designation. A Disclosing Party may agree at any time to remove the “Confidential Information” designation from any materials of such party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify

all other parties that the Disclosing Party believes are in possession of such materials of the change of designation.

14. Interpretation. Titles are for convenience only and may not be used to restrict the scope of this Nondisclosure Agreement.

REQUESTING PARTY

DISCLOSING PARTY

By: _____

By: _____

Title: _____

Title: _____

Representing: _____

Representing: _____

Date: _____

Date: _____

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Confidential Information is provided to me pursuant to the terms and restrictions of the Nondisclosure Agreement between ____ and _____ in this proceeding, that I have been given a copy of and have read the Nondisclosure Agreement, and that I agree to be bound by it. I understand that the contents of the Confidential Information, any notes or other memoranda, or any other form of information that copies or discloses Nondisclosure Agreement shall not be disclosed to anyone other than in accordance with that Nondisclosure Agreement.

By: _____

Title: _____ Attorney _____

Organization: _____

Representing: _____

Date: _____

Signed: _____