

PANDA POWER GENERATION	§	IN THE DISTRICT COURT OF
INFRASTRUCTURE FUND, LLC	§	
D/B/A PANDA POWER FUNDS;	§	
PANDA SHERMAN POWER HOLDINGS,	§	
LLC; PANDA SHERMAN POWER	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA SHERMAN POWER	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
PANDA SHERMAN POWER, LLC;	§	
PANDA TEMPLE POWER HOLDINGS,	§	
LLC; PANDA TEMPLE POWER	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA TEMPLE POWER	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
PANDA TEMPLE POWER, LLC;	§	
PANDA TEMPLE POWER II HOLDINGS,	§	GRAYSON COUNTY, TEXAS
LLC; PANDA TEMPLE POWER II	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA TEMPLE POWER II	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
and PANDA TEMPLE POWER II, LLC,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
ELECTRIC RELIABILITY COUNCIL	§	
OF TEXAS, INC.,	§	
	§	
Defendant.	§	15TH JUDICIAL DISTRICT

DEFENDANT’S MOTION FOR ENTRY OF PROTECTIVE ORDER

TO THE HONORABLE JAMES P. FALLON:

Defendant, Electric Reliability Council of Texas, Inc. (“ERCOT”), files its Motion for Entry of Protective Order (the “Motion”), requests the Court enter the protective order attached hereto as “Exhibit A,” and respectfully states as follows:

I. INTRODUCTION

Materials that are responsive to Plaintiffs' discovery requests include (1) confidential information and (2) "Protected Information" as defined under section 1.3 of the ERCOT Protocols. ERCOT is prohibited by Texas law (the ERCOT Protocols) from disclosing to Plaintiffs "Protected Information." That's because certain "Protected Information" would provide resource entities, like Plaintiffs, an unfair competitive advantage over other resource entities. The relief sought by ERCOT here is necessary to protect the integrity of the wholesale power market in Texas.

ERCOT is willing to produce the documents requested by Plaintiffs to their outside counsel and independent consultants, but is entitled to adequate safeguards given the sensitive nature of certain information contained in documents that are responsive to Plaintiffs' discovery requests. Instead of working with ERCOT to ensure protection of confidential and sensitive information, Plaintiffs take the position that no protective order is warranted. This Motion was made necessary by Plaintiffs' lack of cooperation. They dispute that an "Attorneys Eyes Only" designation is appropriate in this case, despite the fact that they agreed to comply with, and be bound by, the very ERCOT Protocols that mandate ERCOT refrain from disclosing to Plaintiffs "Protected Information." Moreover, given that Plaintiffs' attorneys agreed to virtually identical protective measures the last time they pursued claims against ERCOT,¹ it appears Plaintiffs' aim here is to create an unnecessary distraction and/or use this lawsuit to gain unauthorized access to market data of their competing resource entities.

¹ See Agreed Protective Order, entered in *Electric Reliability Council of Texas, Inc. v. HWY 3 MHP, LLC*, Cause No. D-1-GN-09-003607; in the 419th Judicial District Court of Travis County, Texas, attached hereto as "Exhibit B."

The sensitive nature of the information requested by Plaintiffs in the present case necessitates a protective order be entered by the Court. ERCOT files this Motion in order to comply with its obligation under Texas law to refrain from disclosing “Protected Information” to Plaintiffs, and respectfully requests the proposed order attached as “Exhibit A” be signed and entered by the Court.

II. BACKGROUND

A. The Parties

ERCOT has long been responsible for ensuring the reliability of the electric system covering the majority of the State of Texas. ERCOT is a 501(c)(4) nonprofit corporation, governed by a board of directors and subject to oversight by the Public Utility Commission of Texas (the “PUC”) and the Texas Legislature. It is a unique entity whose primary function is to manage the flow of electric power to 24 million Texas customers. As the independent system operator for the region, ERCOT schedules power on an electric grid that connects more than 46,500 miles of transmission lines and more than 550 generation units. It also operates and performs financial settlement for the competitive wholesale bulk-power market. ERCOT’s members include consumers, cooperatives, generators (resource entities), power marketers, retail electric providers, investor-owned electric utilities, and municipally owned electric utilities.

Plaintiffs Panda Sherman Power, LLC, Panda Temple Power, LLC, and Panda Temple Power II, LLC are three power plants located in Sherman and Temple, Texas, and are market participants (resource entities) in the Texas power market (collectively, the “Panda Market Participants”). The Panda Market Participants are the primary Plaintiffs in this case—the remaining Plaintiffs are all upstream parent, holding, and/or intermediate financing entities

(collectively, the “Affiliated Parties”) of the Panda Market Participants. Pls.’ First Am. Pet. at ¶¶ 4-16.

B. PUC Oversight and the ERCOT Protocols

In addition to establishing PUC control over ERCOT, section 39.151 of the Texas Public Utility Regulatory Act (“PURA”) granted the PUC authority to “adopt and enforce rules” governing an independent organization’s reliability and market functions or to delegate that rulemaking authority to that independent organization “subject to commission oversight and review.” TEX. UTIL. CODE § 39.151(d). Although the PUC has adopted a number of rules concerning ERCOT and its wholesale market, the majority of market standards are contained in the ERCOT Protocols. *See* PUC Subst. R. 25.361-366; 25.501-.508 (16 TEX. ADMIN. CODE §§ 25.361-.366; 25.501-.508); *BP Chems., Inc. v. AEP Texas. Cent. Co.*, 198 S.W.3d 449, 452 (Tex. App.—Corpus Christi 2006, no pet.). The PUC approved the original version of the Protocols in 2001, prior to the implementation of retail customer choice on January 1, 2002. *See* Tex. Pub. Util. Comm’n, *Petition of the Electric Reliability Council of Texas (ERCOT) for Approval of the ERCOT Protocols*, Docket No. 23220 (June 4, 2001) (Order on Rehearing). Pursuant to authority delegated to ERCOT, and in accordance with the processes established under PUC Rules, the ERCOT Board of Directors has approved a number of revisions to the Protocols over the years.² Nonetheless, the Protocols remain subject to the PUC’s ongoing oversight and review. *See Pub. Util. Comm’n v. Constellation Energy Commodities Group, Inc.*, 351 S.W.3d 588, 591 (Tex. App.—Austin 2011, pet. denied).

² The ERCOT Protocols themselves are an integral part of the regulatory framework under the PUC’s control. The ERCOT Protocols, which currently fill nearly 1200 pages, provide specific details on market operations, registration, settlement, metering, transmission planning, and other activities. Current and past versions of the Protocols can be found on ERCOT’s website at <http://www.ercot.com/mktrules/nprotocols/lib>.

C. *The Standard Form Agreement*

As required by the ERCOT Protocols, ERCOT utilizes a Standard Form Market Participant Agreement (the “Standard Form Agreement”) in connection with its dealings with all market participants, including the Panda Market Participants. The Standard Form Agreement is a standard form contract that all market participants are required to sign as a condition for their participation. *See* ERCOT Zonal Protocols, May 1, 2008 § 16.1 (requiring execution of Standard Form Agreement). The Standard Form Agreement establishes the basic legal relationship between ERCOT and the participant.³ True and correct copies of the Standard Form Agreement executed by the Panda Market Participants are attached hereto as “Exhibit C,” “Exhibit D,” and “Exhibit E.” The Standard Form Agreement mandates the Panda Market Participants “comply with, and be bound by, all ERCOT Protocols.” *See* Standard Form Agreement § 5(A). Conversely, ERCOT is also bound to comply with all ERCOT Protocols. *See* Standard Form Agreement § 6(A).

D. *Origin of the Case*

This is a creatively pled tort case in which Plaintiffs assert claims for negligent misrepresentation, breach of fiduciary duty, and fraud. This case was brought by Plaintiffs after they gambled on future increased demand for power, and apparently lost. Each of the three claims asserted by Plaintiffs against ERCOT is based on capacity, demand, and reserve reports (“CDRs”) created and issued to the public by ERCOT. *See* Pls.’ First Am. Pet. at ¶¶ 51-63. ERCOT is mandated to publish CDRs by the ERCOT Protocols. *See* ERCOT Nodal Protocols, March 1, 2016 § 3.2 et seq. (requiring preparation of CDRs). According to Plaintiffs, ERCOT’s

³ The ERCOT Protocols themselves are an integral part of the regulatory framework under the PUC’s control. The ERCOT Protocols, which currently fill nearly 1200 pages, provide specific details on market operations, registration, settlement, metering, transmission planning, and other activities. Current and past versions of the Protocols can be found on ERCOT’s website at <http://www.ercot.com/mktrules/nprotocols/lib>.

2010 and 2011 CDRs were flawed. *See* Pls.’ First Am. Pet. at ¶¶ 38-39, 43. They contend, “[ERCOT] . . . sponsored false and misleading market reports depicting capacity, demand and reserves in the ERCOT region” *See* Pls.’ First Am. Pet. at ¶ 2. Plaintiffs also contend that despite broad disclaimer language contained in the 2010 and 2011 CDRs, they relied on ERCOT’s 2010 and 2011 CDRs in making their decisions to invest in and construct three power plants—one in Sherman, Texas and two in Temple, Texas.⁴

E. Plaintiffs’ Production Request and ERCOT’s Response

On April 14, 2016 Plaintiffs served Plaintiff Panda Sherman Power Holdings, LLC’s First Set of Requests for Production to ERCOT (the “Production Request”). A true and correct copy of the Production Request is attached as “Exhibit F.” On May 17, 2016 ERCOT served Defendant’s Response to Panda Sherman Power Holdings, LLC’s First Set of Requests for Production to ERCOT (the “Response”). A true and correct copy of the response is attached hereto as “Exhibit G.” As authorized by Texas Rule of Civil Procedure 192.6, ERCOT objected

⁴ For example, the December 2011 CDR provides:

Disclaimer

CDR WORKING PAPER

FOR PLANNING PURPOSES ONLY

This ERCOT Working Paper has been prepared for specific ERCOT and market participant purposes and has been developed from data provided by ERCOT market participants. The data may contain errors or become obsolete and thereby affect the conclusions and opinions of the Working Paper. ERCOT MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO THE ACCURACY OF SAME OR THE FITNESS OR APPROPRIATENESS OF SAME FOR ANY PARTICULAR USE. THIS ERCOT WORKING PAPER IS SUPPLIED WITH ALL FAULTS. The specific suitability for any use of the Working Paper and its accuracy should be confirmed by each ERCOT market participant that contributed data for this Working Paper.

This Working Paper is based on data submitted by ERCOT market participants as part of their Annual Load Data Request (ALDR) and their generation asset registration and on data in the EIA-411. As such, this data is updated on an ongoing basis, which means that this report can be rendered obsolete without notice.

See http://www.ercot.com/content/news/presentations/2011/CDR_2011WinterUpdate.pdf.

to numerous requests because they encompassed “confidential information that is properly subject to a mutually agreeable protective order.” *See* Ex. G.

In an effort to reach an agreement on a mutually acceptable protective order, ERCOT prepared and submitted to Plaintiffs a proposed form of order that incorporated (1) the New York order initially proposed by Plaintiffs, (2) the United States District Court for the Western District of Texas’ form order, which Plaintiffs’ lawyers agreed to use in a state court proceeding the last time they pursued claims against ERCOT, and (3) standard language utilized in contested cases involving sensitive information before the PUC. *See* May 26, 2016 e-mail from Brandon Gleason to Werner Powers, attached hereto as “Exhibit H;” Ex. B. Plaintiffs refused to provide a revised version of the proposed order in response to ERCOT’s proposed order (the same order attached hereto, except for a revised heading and date line), and instead waited until June 23, 2016 to declare an impasse on the protective order issue.

In an effort to accommodate Plaintiffs’ incessant demands for documents, even though no hearing on ERCOT’s preliminary venue motion has occurred, and in order to keep the discovery process moving along, the parties agreed to abide by the terms of ERCOT’s proposed protective order until a final hearing on the form of order could be had. After the interim agreement regarding the form of protective order was reached, ERCOT began producing classified documents, in addition to thousands of non-classified documents that have been produced both before and after the interim agreement. As of the date of filing of this Motion, ERCOT has produced thousands of documents, consisting of almost one hundred thousand pages. Of the documents produced by ERCOT to date, only 70 documents have been designated as “Attorneys Eyes Only” and only 226 have been designated as “Confidential.”

III. ARGUMENT AND AUTHORITIES

A. *Standard of Review*

The Court has broad discretion concerning discovery issues and the entry of a protective order. Under Texas Rule of Civil Procedure 192.6, “[a] person from whom discovery is sought, and any other person affected by the discovery request, may move . . . for an order protecting that person from the discovery sought.” TEX. R. CIV. P. 192.6(a). “To protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of property rights, the court may . . .” in the interest of justice order that: “(1) the requested discovery not be sought in whole or in part; (2) the extent or subject matter of discovery be limited; (3) the discovery not be undertaken at the time or place specified; (4) the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the court; or (5) the results of discovery be sealed or otherwise protected” TEX. R. CIV. P. 192.6(b).

B. *ERCOT is Mandated by Texas Law Not to Provide “Protected Information” to Plaintiffs*

Plaintiffs have conceded—both on the telephone and by requesting ERCOT agree to form of order their counsel has used in New York—that a protective order is appropriate in this case.⁵ However, Plaintiffs object to the form of ERCOT’s proposed order because it includes an “Attorneys Eyes Only” designation category.⁶ The sole dispute before the Court here turns on whether the “Attorneys Eyes Only” classification should be included in a protective order, which

⁵ Plaintiffs have not articulated an objection to the appropriateness of a “Confidential” designation in this case. Even if they had, ERCOT is entitled to the inclusion of the “Confidential” designation in a protective order. By way of example, documents Bates numbered ERCOT 022615 – ERCOT 022629 is a confidential agreement between ERCOT and one of its independent consultants. Plaintiffs have also requested the employment file of at least one individual—that type of information is unquestionably classified as “Confidential.”

⁶ Separate and apart from the form of order proposed by ERCOT, Plaintiffs claim none of the documents classified by ERCOT as “Attorneys Eyes Only” warrant the designation. The proposed order addresses that concern, as it contains a process by which a party may object to the classification of a particular document.

effectively bars Plaintiffs, but not their attorneys or independent consulting expert, from viewing “Protected Information.”

The integrity of the Texas power market depends on certain resource entity information being restricted from competing resource entities. An “Attorneys Eyes Only” designation is necessary in this case because ERCOT is barred by section 1.3 of the ERCOT Protocols from disclosing “Protected Information” to Plaintiffs. Section 1.3 provides in relevant part:

1.3 Confidentiality

1.3.1 Restrictions on Protected Information

Section 1.3, Confidentiality, applies to Protected Information disclosed by a Market Participant to ERCOT or the Independent Market Monitor (IMM) or by ERCOT to a Market Participant or the IMM. ERCOT, the IMM, or any Market Participant (“Receiving Party”) may not disclose Protected Information received from one of the others (“Disclosing Party”) to any other Entity except as specifically permitted in this Section and in these Protocols. A Receiving Party may not use Protected Information except as necessary or appropriate in carrying out its responsibilities under these Protocols. To disclose means to directly or indirectly disclose, reveal, distribute, report, publish, or transfer Protected Information to any party other than to the Disclosing Party.

1.3.1.1 Items Considered Protected Information

- (1) Subject to the exclusions set out in Section 1.3.1.2, Items Not Considered Protected Information, and in Section 3.2.5, Publication of Resource and Load Information, “Protected Information” is information containing or revealing any of the following:

* * *

- (h) Raw and Adjusted Metered Load (AML) data (demand and energy) identifiable to:

- (i) A specific QSE or Load Serving Entity (LSE). The Protected Information status of this information shall expire 180 days after the applicable Operating Day; or

- (ii) A specific Customer or Electric Service Identifier (ESI ID);

* * *

(l) Information related to generation interconnection requests, to the extent such information is not otherwise publicly available. The Protected Information status of certain generation interconnection request information expires as provided in Section 1.3.3, Expiration of Confidentiality;

(m) Resource-specific costs, design and engineering data;

* * *

(s) Any software, products of software, or other vendor information that ERCOT is required to keep confidential under its agreements;

See ERCOT Zonal Protocols, July 1, 2016 § 1.3 (Confidentiality).⁷

C. The Protective Order Proposed by ERCOT is Warranted because “Protected Information” is contained in Documents Responsive to the Production Request

In the present case, the confidential and sensitive nature of information contained in documents responsive to Plaintiffs’ Production Request warrants a protective order. That’s because it is “Protected Information” as defined by the ERCOT Protocols. For example, a draft 2009 CDR spreadsheet, Bates labeled “ERCOT 028488 - ERCOT 028529,” is classified as “Attorneys Eyes Only” because it contains unit capacities for individual resources in the ERCOT Region. Section 1.3.1.1(1)(m) of the ERCOT Protocols classifies such “Resource-specific cost, design, and engineering data” as “Protected Information” that ERCOT is prohibited from disclosing to Plaintiffs. See ERCOT Zonal Protocols, July 1, 2016 § 1.3.1.1(1)(m). Other spreadsheets that are responsive to the Production Request have been classified as “Attorneys Eyes Only” because they contain (1) names and information concerning generator projects that were contemplated or studied, but that did not progress to an interconnection agreement (the point at which such information becomes public); (2) data identifiable to a specific Private User Network (PUN); and/or (3) various generator specific information like ramp rates, heat rates, or

⁷ In addition to the ERCOT Protocols, section 32.101(c) of PURA is also implicated by the Production Request. That section provides: “The commission shall consider customer names and addresses, prices, individual customer contracts, and expected load and usage data as highly sensitive trade secrets.”

verifiable costs. Such information is considered “Protected Information” under section 1.3.1.1(1) of the ERCOT Protocols. *See* ERCOT Zonal Protocols, July 1, 2016 § 1.3 (Confidentiality). Therefore, because the ERCOT Protocols mandate ERCOT refrain from disclosing “Protected Information” to Plaintiffs, the “Attorneys Eyes Only” designation is appropriate in this case.

D. Plaintiffs are Estopped from Contesting the “Attorneys Eyes Only” designation Because they Agreed to be Bound by the ERCOT Protocols

Counsel for Plaintiffs may claim they are being deprived of an opportunity to meaningfully consult with their clients regarding the documents classified by ERCOT as “Attorneys Eyes Only.” The problem with that argument is two-fold. First, the Panda Market Participants expressly agreed to “comply with, and be bound by, all ERCOT Protocols” when they executed the Standard Form Agreement. *See* Standard Form Agreement § 5(A); Ex. C; Ex. D; Ex. E. The ERCOT Protocols provide that ERCOT not disclose to Plaintiffs “Protected Information” as defined in the ERCOT Protocols. *See* ERCOT Zonal Protocols, July 1, 2016 § 1.3 (Confidentiality). Said differently, the Panda Market Participants consented to not being provided “Protected Information.” Second, Plaintiffs have hired an independent consulting expert to work with their counsel concerning the more technical aspects of this case. Based on the representation of Plaintiffs’ counsel, that expert has signed and agreed to be bound to the protective order proposed by ERCOT. There is no prejudice to Plaintiffs here that justifies disclosure of “Protected Information” in violation of Texas law. Plaintiffs already acknowledged they are not entitled to “Protected Information.” Therefore, the Motion should be granted.

**IV.
PRAYER**

ERCOT respectfully requests the Court enter the protective order submitted herewith, and that it be granted such other and further relief to which it may show itself to be justly entitled.

Respectfully submitted,

By: /s/ Brandon Gleason
Brandon Gleason

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served electronically to the attorneys of record listed below on this the 7th day of July, 2016.

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NO. CV-16-0401

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	§	
Defendant.	§	15TH JUDICIAL DISTRICT

PROTECTIVE ORDER

Having found that good cause exists for issuance of an appropriately-tailored confidentiality order governing the pre-trial phase of this action, it is hereby

ORDERED that any person subject to this Order — including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order — shall adhere to the following terms, upon pain of contempt:

EXHIBIT

A

Classification of Discovery Material

1. Any person subject to this Order who receives from any other person any "Discovery Material" (i.e., information of any kind provided in the course of discovery in this action) that is designated as "Confidential," "For Counsel Only," or "Attorneys Eyes Only" (referred to herein as "Classified Discovery Material") pursuant to the terms of this Order shall not disclose such Classified Discovery Material to anyone else except as expressly permitted hereunder. Classified Discovery Material may only be used in connection with the prosecution of or defense to claims in this case and for no other purpose.

Designation Criteria

2. A party shall designate as Classified Discovery Material only such information that the party in good faith believes in fact is confidential. Information that is generally available to the public, such as public filings, catalogues, advertising materials, and the like, shall not be designated as Classified.

3. Information and documents that may be designated as Classified Discovery Material include, but are not limited to, trade secrets, confidential or proprietary financial information, operational data, business plans, and competitive analyses, personnel files, personal information that is protected by law, and other sensitive information that, if not restricted as set forth in this order, may subject the producing or disclosing person to competitive or financial injury or potential legal liability to third parties. It also includes information that is required to be kept confidential under ERCOT Protocols and/or Public Utility Commission of Texas Rules.

4. Correspondence and other communications between the parties or with nonparties may be designated as Classified Discovery Material if the communication was made

with the understanding or reasonable expectation that the information would not become generally available to the public.

5. The designation “For Counsel Only” or “Attorneys Eyes Only” shall be reserved for information that is believed to be unknown to the opposing party or parties, or any of the employees of a corporate party. For purposes of this order, so-designated information includes, but is not limited to, product formula information, design information, non-public financial information, pricing information, customer identification data, and certain study methodologies. So designated information also includes, but is not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act; (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; or (d) business operations or financial information that is commercially sensitive.

Marking of Documents and Depositions

6. With respect to the Classified portion of any Classified Discovery Material other than deposition transcripts and exhibits, the producing person or that person’s counsel may designate such portion as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only” by stamping or otherwise clearly marking as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only” the protected portion in a manner that will not interfere with legibility or audibility, and by also producing for future public use another copy of said Discovery Material with the confidential information redacted. With respect to deposition transcripts and exhibits, a producing person or that person’s counsel may indicate on the record that a question calls for Classified information, in which case the transcript of the designated testimony shall be bound in

a separate volume and marked "Classified Information Governed by Protective Order" by the reporter.

7. Any party also may designate information disclosed at a deposition as Classified Discovery Material by notifying all parties in writing not later than 20 days of receipt of the transcript of the specific pages and lines of the transcript that should be treated as Classified Discovery Material thereafter. Each party shall attach a copy of each such written notice to the face of the transcript and each copy thereof in that party's possession, custody, or control. All deposition transcripts shall be treated as For Counsel Only for a period of 20 days after initial receipt of the transcript.

8. To the extent possible, the court reporter shall segregate into separate transcripts information designated as Classified Discovery Material with blank, consecutively numbered pages being provided in a nondesignated main transcript. The separate transcript containing Classified Discovery Material shall have page numbers that correspond to the blank pages in the main transcript.

9. Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive Classified Discovery Material pursuant to this Protective Order, but such right of exclusion shall be applicable only during periods of examination or testimony during which Classified Discovery Material is being used or discussed.

10. If at any time prior to the trial of this action, a producing person realizes that some portion[s] of Discovery Material that that person previously produced without limitation should be designated as "Confidential," "For Counsel Only," or "Attorneys Eyes Only" he may so designate by so apprising all parties in writing, and such designated portion[s] of the Discovery Material will thereafter be treated as "Confidential," "For Counsel Only," or "Attorneys Eyes

Only” under the terms of this Order.

Disclosure Restrictions

11. No person subject to this Order other than the producing person shall disclose any of the Classified Discovery Material designated by the producing person as Confidential to any other person whomsoever, except to:

- (a) the parties to this action;
- (b) counsel of record for the parties in this litigation, including their coworkers, paralegals, clerical and other assistants assigned to assist with this matter;
- (c) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
- (d) any witness who counsel for a party in good faith believes may be called to testify at trial or deposition in this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (e) any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (f) stenographers engaged to transcribe depositions conducted in this action; and
- (g) the Court and its support personnel.

12. Prior to any disclosure of any Confidential Discovery Material to any person referred to in subparagraphs 11(d) or 11(e) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that that person has read this Order and agrees to be bound by its terms. Said counsel shall retain each signed Non-Disclosure Agreement, hold it in escrow, and

produce it to opposing counsel either prior to such person being permitted to testify (at deposition or trial) or at the conclusion of the case, whichever comes first.

13. No person subject to this Order other than the producing person shall disclose any of the Classified Discovery Material designated by the producing person as “For Counsel Only” or “Attorneys Eyes Only,” except to:

(a) counsel of record for the parties in this litigation, including their coworkers, paralegals, clerical and other assistants assigned to assist with this matter;

(b) actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, prior to any disclosure of Classified Information to such person, have signed a document agreeing to be bound by the terms of this Protective Order (such signed document to be maintained by the attorney retaining such person) and have been designated in writing by notice to all counsel;

(c) this Court and its staff and any other tribunal or dispute resolution officer duly appointed or assigned in connection with this litigation.

14. Prior to any disclosure of any For Counsel Only or Attorneys Eyes Only Discovery Material to any person referred to in subparagraphs 13(b) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that that person has read this Order and agrees to be bound by its terms. Said counsel shall retain each signed Non-Disclosure Agreement, hold it in escrow, and produce it to opposing counsel either prior to such person being permitted to testify (at deposition or trial) or at the conclusion of the case, whichever comes first.

Classified Discovery Material Filed with the Court

15. If a party wishes to include a document, or portions of a document marked as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only,” in a pleading or other paper to be filed with the Clerk, that party shall serve the pleading or other paper on opposing parties but shall not file it. Service alone shall constitute filing for the purpose of any deadline. For 7 days following service, no party shall file the pleading or other paper with the Clerk except pursuant to a ruling on a motion for a Temporary Sealing Order under Rule 76a. Immediately thereafter, if no motion for a Temporary Sealing Order has been granted, the party who served the pleading or other paper shall file it unsealed with the Clerk

16. If a party wishes to offer a document, or portions of a document marked as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only,” in evidence, any party may, at the time the document is offered, move for a Temporary Sealing Order.

Objections to Classification

17. Any party who objects to any designation of “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only,” may at any time prior to the trial of this action serve upon counsel for the designating person a written notice stating with particularity the grounds of the objection or request. If agreement cannot be reached promptly, counsel for all affected persons will convene a joint telephone call with the Court to obtain a ruling.

18. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Classified Discovery Material introduced in evidence at trial, even if such material has previously been sealed or designated as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only.” The Court also retains unfettered discretion whether or not to afford classified treatment to any Classified Discovery

Material or information contained in any Classified Discovery Material submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court.

Precautions and Inadvertently Disclosed Information

19. Each person who has access to Classified Discovery Material that has been designated as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only” shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

20. If, in connection with this litigation, a party inadvertently discloses information subject to a claim of attorney-client privilege or attorney work product protection (“Inadvertently Disclosed Information”), such disclosure shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection with respect to the Inadvertently Disclosed Information and its subject matter.

21. If a disclosing party makes a claim of inadvertent disclosure, the receiving party shall, within five business days, return or destroy all copies of the Inadvertently Disclosed Information, and provide a certification of counsel that all such information has been returned or destroyed.

22. Within five business days of the notification that such Inadvertently Disclosed Information has been returned or destroyed, the disclosing party shall produce a privilege log with respect to the Inadvertently Disclosed Information.

23. The receiving party may move the Court for an Order compelling production of the Inadvertently Disclosed Information. The motion shall be filed under seal, and shall not assert as a ground for entering such an Order the fact or circumstances of the inadvertent production.

24. The disclosing party retains the burden of establishing the privileged or protected nature of any Inadvertently Disclosed Information. Nothing in this Order shall limit the right of any party to request an in camera review of the Inadvertently Disclosed Information.

25. This Protective Order shall survive the termination of the litigation. Within 30 days of the final disposition of this action, all Classified Discovery Material designated as "Confidential," "For Counsel Only," or "Attorneys Eyes Only," and all copies thereof; shall be promptly returned to the producing person, or, upon permission of the producing person, destroyed.

26. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof. Each party shall have the right to seek changes in this Agreed Protective Order as appropriate.

Signed July __, 2016

THE HONORABLE JAMES P. FALLON

PANDA POWER GENERATION	§	IN THE DISTRICT COURT OF
INFRASTRUCTURE FUND, LLC	§	
D/B/A PANDA POWER FUNDS;	§	
PANDA SHERMAN POWER HOLDINGS,	§	
LLC; PANDA SHERMAN POWER	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA SHERMAN POWER	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
PANDA SHERMAN POWER, LLC;	§	
PANDA TEMPLE POWER HOLDINGS,	§	
LLC; PANDA TEMPLE POWER	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA TEMPLE POWER	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
PANDA TEMPLE POWER, LLC;	§	
PANDA TEMPLE POWER II HOLDINGS,	§	GRAYSON COUNTY, TEXAS
LLC; PANDA TEMPLE POWER II	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA TEMPLE POWER II	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
and PANDA TEMPLE POWER II, LLC,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
ELECTRIC RELIABILITY COUNCIL	§	
OF TEXAS, INC.,	§	
	§	
Defendant.	§	15TH JUDICIAL DISTRICT

NON DISCLOSURE AGREEMENT

I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Classified Discovery Material that have been designated as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only.” I agree that I will not disclose such Classified Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will

return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the courts of the State of Texas for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Signed this ____ day of _____, 2016

By: _____

ES DEC 10 2013

At 158 M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GN-09-003607

ELECTRIC RELIABILITY COUNCIL
OF TEXAS, INC. (ERCOT)
Plaintiff

v.

HWY 3 MHP, LLC
Defendant

§ IN THE DISTRICT COURT OF

§ TRAVIS COUNTY, TEXAS

§ 419th JUDICIAL DISTRICT

AGREED PROTECTIVE ORDER

Upon agreement of the parties through the undersigned counsel for a Protective Order,

It is hereby ORDERED that:

1. All Classified Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.
2. "Classified Information" as used herein, means any information of any type, kind or character which is designated as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"), a party will make such designation only as to that information that it in good faith believes contains confidential information. The parties acknowledge that ERCOT holds and/or has access to certain information on behalf of third parties (including the Public Utilities Commission ("PUC"), as well as participants in the ERCOT market) which is of the most sensitive and confidential nature, and of which HWY 3 MHP would not know or have independent access to. Such information is also understood by the parties to be confidential and protected, and that separate authority and permissions may need to be secured from such third parties and/or the PUC prior to disclosure. Information or material which is available to the public, including catalogues, advertising materials, and the like, shall not be classified.
3. "Qualified Persons," as used herein means:
 - (a) Attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation;
 - (b) Actual or potential staff of HWY 3 MHP, LLC, who have been designated in writing by notice to all counsel prior to any disclosure of "Confidential" or "For

EXHIBIT

B

Counsel Only" (or "Attorneys' Eyes Only") information to such persons and who have signed a document agreeing to be bound by the terms of this Protective Order (the original of such signed document to be maintained by the attorney retaining such person, and a copy forwarded to the opposing counsel of record following signature);

- (c) A consulting or testifying expert (and employees of such expert to whom it is necessary that the material be shown for purposes of this litigation) of a party properly designated pursuant to Tex. Rules of Civil Procedure 194 who has signed a document agreeing to be bound by the terms of this Protective Order (the original of such signed document to be maintained by the attorney retaining such person, and a copy forwarded to the opposing counsel of record following signature);
- (d) Each party and each party's representative (in cases where the party is a legal entity) who shall be designated in writing by the party prior to any disclosure of "Confidential" information to such person and who shall sign a document agreeing to be bound by the terms of this protective order (the original of such signed document to be maintained by the attorney retaining such person, and a copy forwarded to the opposing counsel of record following signature); and
- (e) If this Court so elects, any other person may be designated as a Qualified Person by order of this court, after notice and hearing to all parties.

4. Documents produced in this action may be designated by any party or parties as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information by marking each page of the document(s) so designated with a stamp stating "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only").

In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged. Originals shall be preserved for inspection.

5. Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by any party as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information by indicating on the record at the deposition that testimony is "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") and is subject to the provisions of this Order.

Any party may also designate information disclosed at such deposition as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") by notifying all of the parties in writing within twenty (20) days of receipt of the transcript, of the specific pages and lines of the transcript which should be treated as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") hereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his position, custody or control. All deposition transcripts

shall be treated as "For Counsel Only" (or "Attorneys' Eyes Only") for a period of twenty (20) days after the receipt of the transcript.

6. Disclosure of "Confidential" information and "For Counsel Only" (or "Attorneys' Eyes Only") information is as follows:

- (a) "Confidential" information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons. Information designated as "For Counsel Only" (or "Attorneys' Eyes Only") shall be restricted in circulation to Qualified Persons described in Paragraphs 3(a) and (b) above.**
- (b) Copies of "For Counsel Only" (or "Attorneys' Eyes Only") information provided to a receiving party shall be maintained in the offices of outside counsel for Plaintiff(s) and Defendant(s). Any documents produced in this litigation, regardless of classification, which are provided to Qualified Persons of Paragraph 3(b) above, shall be maintained only at the office of such Qualified Person and only working copies shall be made of any such documents. Copies of documents produced under this Protective Order may be made, or exhibits prepared by independent copy services, printers, or illustrators for the purpose of this litigation.**
- (c) Each party's outside counsel shall maintain a log of all copies of "For Counsel Only" (or "Attorneys' Eyes Only") documents which are delivered to any one or more Qualified Person of Paragraph 3 above.**

7. Documents previously produced shall be retroactively designated by notice in writing of the designated class of each document by Bates number within thirty (30) days of the entry of this order. Documents unintentionally produced without designation as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party. If a receiving party learns of any unauthorized disclosure of "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

8. Nothing herein shall prevent disclosure beyond the terms of this Order if each party designating the information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") consents to such disclosure or, if the court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record from utilizing "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information in the examination or cross-examination of any person who is indicated on the document as being an

author, source or recipient of the "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information, irrespective of which party produced such information.

9. As to information and/or documents designated as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"), it is agreed by the parties that such information is confidential pursuant to TEX. GOV'T CODE § 552.101 and moreover the Court here finds by entry of this Order that such information is confidential. Moreover, as to such information and/or documents designated as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") by either party, it is agreed by the parties that such information is information relating to litigation pursuant to TEX. GOV'T CODE § 552.103 and the Court here finds by entry of this Order that such information is information relating to litigation. Further, the Court by entry of this Order prohibits disclosure of information so designated under this order as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") to any party other than those potentially permitted under Paragraphs 3(a) - 3(e), and as such any so designated information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") cannot be disclosed pursuant to TEX. GOV'T CODE § 552.107. The statutory references in this paragraph are not exclusive and these provisions and findings apply to every similar law of any source.

10. A party shall not be obligated to challenge the propriety of a designation as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") at the time made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation by the designating party of any information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"), or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"). The designating party shall be required to move the Court for an order preserving the designated status of such information within fourteen (14) days of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item.

The parties may, by stipulation, provide for exceptions to this Order and any party may seek an order of this Court modifying this Protective Order.

11. Nothing shall be designated as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information except information of the most sensitive nature, which if disclosed to persons of expertise in the area would reveal significant technical or business advantages of the producing or designating party, and which includes as a major portion subject matter which is believed to be unknown to the opposing party or parties, or any of the employees of the corporate parties. The parties also acknowledge that ERCOT holds and/or has access to certain information on behalf of third parties (including participants in the ERCOT market) which is of the most sensitive and confidential nature, and of which HWY 3 MHP would not know or have independent access too. The parties agree that such information is confidential and to be protected, and that separate authority and permissions may need to be secured from such third parties and/or the PUC prior to disclosure, even if covered and protected by this Protective

Order. However, nothing shall be regarded as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information if it is information that either:

- (a) is in the public domain at the time of disclosure, as evidenced by a written document;
- (b) becomes part of the public domain through no fault of the other party, as evidenced by a written document;
- (c) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure; or
- (d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

12. In the event a party wishes to use any "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information in any affidavits, briefs, memoranda of law, or other papers filed in Court in this litigation, such "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information used therein shall be filed under seal with the Court.

13. The Clerk of this Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the Court in this litigation which have been designated, in whole or in part, as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information by a party to this action.

14. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to documents or any other information in this case shall be subject to the provisions of this order.

15. Within one-hundred twenty (120) days after conclusion of this litigation and any appeal thereof, any document and all reproductions of documents produced by a party, in the possession of any of the persons qualified under Paragraphs 3(a) through (c) shall be returned to the producing party, except as this Court may otherwise order or to the extent such information was used as evidence at the trial. As far as the provisions of any protective orders entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this litigation, except (a) that there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) that a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of such protective orders.

16. This order shall not bar any attorney herein in the course of rendering advice to his client with respect to this litigation from conveying to any party client his evaluation in a general way of "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information produced or exchanged herein; provided, however that in rendering such advice and otherwise

communicating with his client, the attorney shall not disclose the" specific contents of any "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information produced by another party herein, which disclosure would be contrary to the terms of this Protective Order.

17. Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of any such person to observe the terms of this Protective Order.

18. The parties' agreement to this Protective Order, as well as the submission and entry of this Protective Order, shall not operate to prejudice or waive any party's claims, counter-claims, defenses, jurisdictional pleas, discovery objections, privilege assertions, claims of confidentiality, or other protections sought, now or as the subject litigation proceeds. Neither shall this Protective Order usurp or override either party's obligations to provide notice, and secure required permissions, from third parties (those who are not a party to this cause) prior to the release of any information or data that is considered confidential or proprietary to that third-party and/or which applicable law or PUC rule or regulation requires notice and permissions be secured before such information or data is released, whether under the protections of this Protective Order or not.

SIGNED AND ENTERED this 10th day of December, 2013.

L. J. S. Corington
JUDGE PRESIDING

AGREED TO:

Chad V. Seely
Assistant General Counsel
Texas Bar No: 24037466
cseely@ercot.com
Electric Reliability Council of Texas, Inc.
7620 Metro Center Drive
Austin, Texas 78744
Tel. (512) 225-7035
Fax (512) 225-7079

**COUNSEL FOR PLAINTIFF
ELECTIRC RELIABILITY COUNCIL
OF TEXAS, INC. ("ERCOT")**

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**CO-COUNSEL FOR PLAINTIFF
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OF TEXAS, INC. ("ERCOT")**

.....

HAYNES AND BOONE, L.L.P.

By: 

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State Bar No. 17607500
J. Iris Gibson
State Bar No. 24037471
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600 Congress Ave., Suite 1300
Austin TX 78701
(512) 867-8400
(512) 867-8470 facsimile

COUNSEL FOR HWY 3 MHP, LLC

Standard Form Market Participant Agreement
between
Panda Sherman Power, LLC
and
Electric Reliability Council of Texas, Inc.

This Market Participant Agreement ("Agreement"), effective as of the first day of April, 2015 ("Effective Date"), is entered into by and between Panda Sherman Power, LLC, a Delaware limited liability company ("Participant") and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation ("ERCOT").

Recitals

WHEREAS:

- A. As defined in the ERCOT Protocols, Participant is a (check all that apply):
- ☐ Load Serving Entity (LSE)
 - ☐ Qualified Scheduling Entity (QSE)
 - ☐ Transmission Service Provider (TSP)
 - ☐ Distribution Service Provider (DSP)
 - ☐ Congestion Revenue Right (CRR) Account Holder
 - ☒ Resource Entity
 - ☐ Renewable Energy Credit (REC) Account Holder
 - ☐ Independent Market Information System Registered Entity (IMRE)
- B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the "Parties") hereby agree as follows:

Section 1. Notice.

All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or overnight delivery service. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

If to ERCOT:

Electric Reliability Council of Texas, Inc.
Attn: Legal Department
7620 Metro Center Drive
Austin, Texas 78744-1654
Telephone: (512) 225-7000
Facsimile: (512) 225-7079

If to Participant:

Panda Sherman Power, LLC
Darren Hughes, Commercial Operations
4100 Spring Valley Road, Suite 1001
Dallas, Texas 75244
Telephone: (972) 361-1221
Facsimile: (972) 455-3874

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.
- B. "ERCOT Protocols" shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

- A. Term. The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a "Renewal Term") unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement. This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.
- B. Termination by Participant. Participant may, at its option, terminate this Agreement:
- (1) Immediately upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;
 - (2) If the "REC Account Holder" box is checked in Section A of the Recitals section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the Entity approved by the PUCT ("Program Administrator") for carrying out the administrative responsibilities related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(g) without the immediate certification of another Program Administrator under PURA §39.151; or
 - (3) For any other reason at any time upon thirty days written notice to ERCOT.
- C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4: Representations, Warranties, and Covenants.

- A. Participant represents, warrants, and covenants that:
- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in Texas;
 - (2) Participant has full power and authority to enter into this Agreement and perform all obligations, representations, warranties and covenants under this Agreement;
 - (3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which

its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;

- (4) Market Participant's execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;
- (5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4(A)(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;
- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;
- (10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on Participant's performance of its obligations under this Agreement.

B. ERCOT represents, warrants and covenants that:

- (1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;

- (2) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;
- (3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT's obligations, representations, warranties and covenants under this Agreement;
- (4) ERCOT's past, present and future agreements or ERCOT's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT's obligations under this Agreement;
- (5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;
- (6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on ERCOT's performance of its obligations under this Agreement.

Section 5. Participant Obligations.

- A. Participant shall comply with, and be bound by, all ERCOT Protocols.
- B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a "public utility" under the Federal Power Act or ERCOT itself to become a "public utility" under the Federal Power

Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.

Section 6. ERCOT Obligations.

- A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.
- B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a "public utility" under the Federal Power Act, or ERCOT itself to become a "public utility" under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5(B) from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. [RESERVED].

Section 8. Default.

A. Event of Default.

- (1) Failure by Participant to (i) pay when due, any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any agreement with ERCOT ("Payment Breach"), or (ii) designate/maintain an association with a QSE (if required by the ERCOT Protocols) ("QSE Affiliation Breach"), shall constitute a material breach and event of default ("Default") unless cured within one (1) Bank Business Day after ERCOT delivers written notice of the breach to Participant. Provided further that if such a material breach, regardless of whether the breaching Party cures the breach within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.
- (2) A material breach other than a Payment Breach or a QSE Affiliation Breach includes any material failure by Participant to comply with the ERCOT Protocols. A material breach under this subsection shall constitute an event of Default by Participant unless cured within fourteen (14) Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery of the breach notice by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.

A material breach under this subsection shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) Business Days, and Participant:

- (a) Promptly provides ERCOT with written notice of the reasons why the breach cannot reasonably be cured within fourteen (14) Business Days;
 - (b) Begins to work or other efforts to cure the breach within three (3) Business Days after ERCOT's delivery of the notice to Participant; and
 - (c) Prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.
- (3) Bankruptcy by Participant, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings, that is dismissed within 90 days thereafter, shall constitute an event of Default.
- (4) Except as otherwise excused herein, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a Payment Breach, shall constitute a Default by ERCOT unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a 12-month period, the fourth such breach shall constitute a Default.
- (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) ERCOT's Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 10: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice. In the event of Participant's bankruptcy, Participant waives any right to challenge ERCOT's right to set off amounts ERCOT owes to Participant by the amount of any sums owed by Participant to ERCOT, including any amounts owed pursuant to the operation of the Protocols.
- (2) Participant's Remedies for Default.

- (a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 10: Dispute Resolution of this Agreement in the event of a Default by ERCOT, Participant's remedies shall be limited to:
 - (i) Immediate termination of this Agreement upon written notice to ERCOT;
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols; and
 - (iii) Specific performance.
 - (b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.
- (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.

C. Force Majeure.

- (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.
- (2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 8(A)(5) above is still effective.

- D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 9. Limitation of Damages and Liability and Indemnification.

- A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.
- B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.
- C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).
- D. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM's authority arising under or relating to PURA §39.1515 and PUC Subst. R. 25.365, Independent Market Monitor.

Section 10. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.

- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 11. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).

B. Assignment.

- (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):
- (a) Where any such assignment or transfer is to an Affiliate of the Party; or
 - (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
 - (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notice of material breach

pursuant to Section 8(A), notice of Default, and an opportunity for the Financing Person to cure a material breach pursuant to Section 8(A) prior to it becoming a Default.

- (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.
- C. No Third Party Beneficiary. Except with respect to the rights of the Financing Persons in Section 11(B), (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (b) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.
- D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (a) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (b) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.
- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within

fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

- G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. ERCOT's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and for reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any such information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.
- J. Participant's Right to Audit ERCOT. Participant's right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation,

order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.

- M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:
- (1) The singular includes the plural, and the plural includes the singular.
 - (2) The present tense includes the future tense, and the future tense includes the present tense.
 - (3) Words importing any gender include the other gender.
 - (4) The word "shall" denotes a duty.
 - (5) The word "must" denotes a condition precedent or subsequent.
 - (6) The word "may" denotes a privilege or discretionary power.
 - (7) The phrase "may not" denotes a prohibition.
 - (8) References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.
 - (9) References to "writing" include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
 - (10) The words "including," "includes," and "include" are deemed to be followed by the words "without limitation."
 - (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
 - (12) References to articles, Sections (or subdivisions of Sections), exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.

(13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.

(14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.

(15) References to time are to Central Prevailing Time.

O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Electric Reliability Council of Texas, Inc.:

By: B.M. Magness

Name: Bill Magness

Title: Vice President and General Counsel

Date: January 10, 2015

Participant:

By: Michael Poray

Name: Michael Poray

Title: Senior Vice President

Date: January 8, 2015 *See*

Market Participant Name: Panda Sherman Power, LLC

Market Participant DUNS: 078632468

Standard Form Market Participant Agreement
between
Panda Temple Power, LLC
and
Electric Reliability Council of Texas, Inc.

This Market Participant Agreement ("Agreement"), effective as of the first day of April, 2015 ("Effective Date"), is entered into by and between Panda Temple Power, LLC, a Delaware limited liability company ("Participant") and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation ("ERCOT").

Recitals

WHEREAS:

- A. As defined in the ERCOT Protocols, Participant is a (check all that apply):
- ☐ Load Serving Entity (LSE)
 - ☐ Qualified Scheduling Entity (QSE)
 - ☐ Transmission Service Provider (TSP)
 - ☐ Distribution Service Provider (DSP)
 - ☐ Congestion Revenue Right (CRR) Account Holder
 - ☒ Resource Entity
 - ☐ Renewable Energy Credit (REC) Account Holder
 - ☐ Independent Market Information System Registered Entity (IMRE)
- B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the "Parties") hereby agree as follows:



Section 1. Notice.

All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or overnight delivery service. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

If to ERCOT:

Electric Reliability Council of Texas, Inc.
Attn: Legal Department
7620 Metro Center Drive
Austin, Texas 78744-1654
Telephone: (512) 225-7000
Facsimile: (512) 225-7079

If to Participant:

Panda Temple Power, LLC
Darren Hughes, Commercial Operations
4100 Spring Valley Road, Suite 1001
Dallas, Texas 75244
Telephone: (972) 361-1221
Facsimile: (972) 455-3874

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.
- B. "ERCOT Protocols" shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

- A. Term. The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a "Renewal Term") unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement. This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.
- B. Termination by Participant. Participant may, at its option, terminate this Agreement:
- (1) Immediately upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;
 - (2) If the "REC Account Holder" box is checked in Section A of the Recitals section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the Entity approved by the PUCT ("Program Administrator") for carrying out the administrative responsibilities related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(g) without the immediate certification of another Program Administrator under PURA §39.151; or
 - (3) For any other reason at any time upon thirty days written notice to ERCOT.
- C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4. Representations, Warranties, and Covenants.

- A. Participant represents, warrants, and covenants that:
- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in Texas;
 - (2) Participant has full power and authority to enter into this Agreement and perform all obligations, representations, warranties and covenants under this Agreement;
 - (3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which

its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;

- (4) Market Participant's execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;
- (5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4(A)(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;
- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;
- (10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on Participant's performance of its obligations under this Agreement.

B. ERCOT represents, warrants and covenants that:

- (1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;

- (2) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;
- (3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT's obligations, representations, warranties and covenants under this Agreement;
- (4) ERCOT's past, present and future agreements or ERCOT's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT's obligations under this Agreement;
- (5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;
- (6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on ERCOT's performance of its obligations under this Agreement.

Section 5. Participant Obligations.

- A. Participant shall comply with, and be bound by, all ERCOT Protocols.
- B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a "public utility" under the Federal Power Act or ERCOT itself to become a "public utility" under the Federal Power

Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.

Section 6. ERCOT Obligations.

- A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.
- B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a "public utility" under the Federal Power Act, or ERCOT itself to become a "public utility" under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5(B) from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. [RESERVED].

Section 8. Default.

A. Event of Default.

- (1) Failure by Participant to (i) pay when due, any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any agreement with ERCOT ("Payment Breach"), or (ii) designate/maintain an association with a QSE (if required by the ERCOT Protocols) ("QSE Affiliation Breach"), shall constitute a material breach and event of default ("Default") unless cured within one (1) Bank Business Day after ERCOT delivers written notice of the breach to Participant. Provided further that if such a material breach, regardless of whether the breaching Party cures the breach within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.
- (2) A material breach other than a Payment Breach or a QSE Affiliation Breach includes any material failure by Participant to comply with the ERCOT Protocols. A material breach under this subsection shall constitute an event of Default by Participant unless cured within fourteen (14) Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery of the breach notice by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.

A material breach under this subsection shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) Business Days, and Participant:

- (a) Promptly provides ERCOT with written notice of the reasons why the breach cannot reasonably be cured within fourteen (14) Business Days;
 - (b) Begins to work or other efforts to cure the breach within three (3) Business Days after ERCOT's delivery of the notice to Participant; and
 - (c) Prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.
- (3) Bankruptcy by Participant, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings, that is dismissed within 90 days thereafter, shall constitute an event of Default.
 - (4) Except as otherwise excused herein, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a Payment Breach, shall constitute a Default by ERCOT unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a 12-month period, the fourth such breach shall constitute a Default.
 - (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) ERCOT's Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 10: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice. In the event of Participant's bankruptcy, Participant waives any right to challenge ERCOT's right to set off amounts ERCOT owes to Participant by the amount of any sums owed by Participant to ERCOT, including any amounts owed pursuant to the operation of the Protocols.
- (2) Participant's Remedies for Default.

(a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 10: Dispute Resolution of this Agreement in the event of a Default by ERCOT, Participant's remedies shall be limited to:

(i) Immediate termination of this Agreement upon written notice to ERCOT;

(ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols; and

(iii) Specific performance.

(b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.

(3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.

C. Force Majeure.

(1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.

(2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 8(A)(5) above is still effective.

D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 9. Limitation of Damages and Liability and Indemnification.

- A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.
- B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.
- C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).
- D. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM's authority arising under or relating to PURA §39.1515 and PUC Subst. R. 25.365, Independent Market Monitor.

Section 10. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.

- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 11. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).

- B. Assignment.

- (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):

- (a) Where any such assignment or transfer is to an Affiliate of the Party; or
- (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
- (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notice of material breach

pursuant to Section 8(A), notice of Default, and an opportunity for the Financing Person to cure a material breach pursuant to Section 8(A) prior to it becoming a Default.

- (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.

- C. No Third Party Beneficiary. Except with respect to the rights of the Financing Persons in Section 11(B), (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (b) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.
- D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (a) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (b) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.
- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within

fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

- G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. ERCOT's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and for reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any such information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.
- J. Participant's Right to Audit ERCOT. Participant's right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation,

order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.

- M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:
- (1) The singular includes the plural, and the plural includes the singular.
 - (2) The present tense includes the future tense, and the future tense includes the present tense.
 - (3) Words importing any gender include the other gender.
 - (4) The word "shall" denotes a duty.
 - (5) The word "must" denotes a condition precedent or subsequent.
 - (6) The word "may" denotes a privilege or discretionary power.
 - (7) The phrase "may not" denotes a prohibition.
 - (8) References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.
 - (9) References to "writing" include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
 - (10) The words "including," "includes," and "include" are deemed to be followed by the words "without limitation."
 - (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
 - (12) References to articles, Sections (or subdivisions of Sections), exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.

(13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.

(14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.

(15) References to time are to Central Prevailing Time.

O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Electric Reliability Council of Texas, Inc.:

By: Bill Magness

Name: Bill Magness

Title: Vice President and General Counsel

Date: January 20, 2015

Participant:

By: Michael Poray

Name: Michael Poray

Title: Senior Vice President

Date: January 8, 2015

Market Participant Name: Panda Temple Power, LLC
Market Participant DUNS: 968872999

Standard Form Market Participant Agreement
between
Panda Temple Power II, LLC
and
Electric Reliability Council of Texas, Inc.

This Market Participant Agreement ("Agreement"), effective as of the first day of April, 2015 ("Effective Date"), is entered into by and between Panda Temple Power II, LLC, a Delaware limited liability company ("Participant") and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation ("ERCOT").

Recitals

WHEREAS:

- A. As defined in the ERCOT Protocols, Participant is a (check all that apply):
- ☐ Load Serving Entity (LSE)
 - ☐ Qualified Scheduling Entity (QSE)
 - ☐ Transmission Service Provider (TSP)
 - ☐ Distribution Service Provider (DSP)
 - ☐ Congestion Revenue Right (CRR) Account Holder
 - ☒ Resource Entity
 - ☐ Renewable Energy Credit (REC) Account Holder
 - ☐ Independent Market Information System Registered Entity (IMRE)
- B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and
- C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the "Parties") hereby agree as follows:

Section 1. Notice.

All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or overnight delivery service. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

If to ERCOT:

Electric Reliability Council of Texas, Inc.
Attn: Legal Department
7620 Metro Center Drive
Austin, Texas 78744-1654
Telephone: (512) 225-7000
Facsimile: (512) 225-7079

If to Participant:

Panda Temple Power II, LLC
Darren Hughes, Commercial Operations
4100 Spring Valley Road, Suite 1001
Dallas, Texas 75244
Telephone: (972) 361-1221
Facsimile: (972) 455-3874

Section 2. Definitions.

- A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.
- B. "ERCOT Protocols" shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

- A. Term. The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a "Renewal Term") unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement. This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.
- B. Termination by Participant. Participant may, at its option, terminate this Agreement:
- (1) Immediately upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;
 - (2) If the "REC Account Holder" box is checked in Section A of the Recitals section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the Entity approved by the PUCT ("Program Administrator") for carrying out the administrative responsibilities related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(g) without the immediate certification of another Program Administrator under PURA §39.151; or
 - (3) For any other reason at any time upon thirty days written notice to ERCOT.
- C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4. Representations, Warranties, and Covenants.

- A. Participant represents, warrants, and covenants that:
- (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in Texas;
 - (2) Participant has full power and authority to enter into this Agreement and perform all obligations, representations, warranties and covenants under this Agreement;
 - (3) Participant's past, present and future agreements or Participant's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which

its assets or properties are bound do not materially affect performance of Participant's obligations under this Agreement;

- (4) Market Participant's execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;
- (5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;
- (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4(A)(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;
- (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;
- (10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and
- (11) Participant acknowledges and affirms that the foregoing representations, warranties and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on Participant's performance of its obligations under this Agreement.

B. ERCOT represents, warrants and covenants that:

- (1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;

- (2) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;
- (3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT's obligations, representations, warranties and covenants under this Agreement;
- (4) ERCOT's past, present and future agreements or ERCOT's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT's obligations under this Agreement;
- (5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;
- (6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;
- (7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
- (8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and
- (9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, "materially affecting performance" means resulting in a materially adverse effect on ERCOT's performance of its obligations under this Agreement.

Section 5. Participant Obligations.

- A. Participant shall comply with, and be bound by, all ERCOT Protocols.
- B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a "public utility" under the Federal Power Act or ERCOT itself to become a "public utility" under the Federal Power

Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.

Section 6. ERCOT Obligations.

- A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.
- B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a "public utility" under the Federal Power Act, or ERCOT itself to become a "public utility" under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5(B) from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. [RESERVED].

Section 8. Default.

A. Event of Default.

- (1) Failure by Participant to (i) pay when due, any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any agreement with ERCOT ("Payment Breach"), or (ii) designate/maintain an association with a QSE (if required by the ERCOT Protocols) ("QSE Affiliation Breach"), shall constitute a material breach and event of default ("Default") unless cured within one (1) Bank Business Day after ERCOT delivers written notice of the breach to Participant. Provided further that if such a material breach, regardless of whether the breaching Party cures the breach within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.
- (2) A material breach other than a Payment Breach or a QSE Affiliation Breach includes any material failure by Participant to comply with the ERCOT Protocols. A material breach under this subsection shall constitute an event of Default by Participant unless cured within fourteen (14) Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery of the breach notice by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.

A material breach under this subsection shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) Business Days, and Participant:

- (a) Promptly provides ERCOT with written notice of the reasons why the breach cannot reasonably be cured within fourteen (14) Business Days;
 - (b) Begins to work or other efforts to cure the breach within three (3) Business Days after ERCOT's delivery of the notice to Participant; and
 - (c) Prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.
- (3) Bankruptcy by Participant, except for the filing of a petition in involuntary bankruptcy, or similar involuntary proceedings, that is dismissed within 90 days thereafter, shall constitute an event of Default.
- (4) Except as otherwise excused herein, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a Payment Breach, shall constitute a Default by ERCOT unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a 12-month period, the fourth such breach shall constitute a Default.
- (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

- (1) ERCOT's Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 10: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice. In the event of Participant's bankruptcy, Participant waives any right to challenge ERCOT's right to set off amounts ERCOT owes to Participant by the amount of any sums owed by Participant to ERCOT, including any amounts owed pursuant to the operation of the Protocols.
- (2) Participant's Remedies for Default.

- (a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 10: Dispute Resolution of this Agreement in the event of a Default by ERCOT, Participant's remedies shall be limited to:
 - (i) Immediate termination of this Agreement upon written notice to ERCOT;
 - (ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols; and
 - (iii) Specific performance.
 - (b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.
- (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.

C. Force Majeure.

- (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.
- (2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 8(A)(5) above is still effective.

- D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 9. Limitation of Damages and Liability and Indemnification.

- A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.
- B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.
- C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).
- D. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM's authority arising under or relating to PURA §39.1515 and PUC Subst. R. 25.365, Independent Market Monitor.

Section 10. Dispute Resolution.

- A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.

- B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 11. Miscellaneous.

- A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).

B. Assignment.

- (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):

- (a) Where any such assignment or transfer is to an Affiliate of the Party; or
- (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or
- (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notice of material breach

pursuant to Section 8(A), notice of Default, and an opportunity for the Financing Person to cure a material breach pursuant to Section 8(A) prior to it becoming a Default.

- (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party's obligations be enlarged, in whole or in part, by reason thereof.
- C. No Third Party Beneficiary. Except with respect to the rights of the Financing Persons in Section 11(B), (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (b) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.
- D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (a) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (b) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.
- E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.
- F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement; and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within

fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

- G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.
- H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.
- I. ERCOT's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and for reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any such information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.
- J. Participant's Right to Audit ERCOT. Participant's right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.
- K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.
- L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation,

order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.

- M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:
- (1) The singular includes the plural, and the plural includes the singular.
 - (2) The present tense includes the future tense, and the future tense includes the present tense.
 - (3) Words importing any gender include the other gender.
 - (4) The word "shall" denotes a duty.
 - (5) The word "must" denotes a condition precedent or subsequent.
 - (6) The word "may" denotes a privilege or discretionary power.
 - (7) The phrase "may not" denotes a prohibition.
 - (8) References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.
 - (9) References to "writing" include printing, typing, lithography, and other means of reproducing words in a tangible visible form.
 - (10) The words "including," "includes," and "include" are deemed to be followed by the words "without limitation."
 - (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.
 - (12) References to articles, Sections (or subdivisions of Sections), exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.

(13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.

(14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.

(15) References to time are to Central Prevailing Time.

O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

Electric Reliability Council of Texas, Inc.:

By: Bill Magness

Name: Bill Magness

Title: Vice President and General Counsel

Date: January 10, 2015

Participant:

By: Michael Poray

Name: Michael Poray

Title: Senior Vice President

Date: January 8, 2015

Market Participant Name: Panda Temple Power II, LLC
Market Participant DUNS: 078860522

NO. CV-16-0401

PANDA POWER GENERATION
INFRASTRUCTURE FUND, LLC
D/B/A PANDA POWER FUNDS;
PANDA SHERMAN POWER HOLDINGS,
LLC; PANDA SHERMAN POWER
INTERMEDIATE HOLDINGS I, LLC;
PANDA SHERMAN POWER
INTERMEDIATE HOLDINGS II, LLC;
PANDA SHERMAN POWER, LLC;
PANDA TEMPLE POWER HOLDINGS,
LLC; PANDA TEMPLE POWER
INTERMEDIATE HOLDINGS I, LLC;
PANDA TEMPLE POWER
INTERMEDIATE HOLDINGS II, LLC;
PANDA TEMPLE POWER, LLC;
PANDA TEMPLE POWER II HOLDINGS,
LLC; PANDA TEMPLE POWER II
INTERMEDIATE HOLDINGS I, LLC;
PANDA TEMPLE POWER II
INTERMEDIATE HOLDINGS II, LLC;
and PANDA TEMPLE POWER II, LLC.

Plaintiffs,

V.

ELECTRIC RELIABILITY COUNCIL
OF TEXAS, INC.,

Defendant.

IN THE DISTRICT COURT

GRAYSON COUNTY, TEXAS

15th JUDICIAL DISTRICT

PLAINTIFF PANDA SHERMAN POWER HOLDINGS, LLC'S
FIRST SET OF REQUESTS FOR PRODUCTION TO ERCOT

Pursuant to Texas Rule of Civil Procedure 196, Plaintiff Panda Sherman Power Holdings, LLC ("Panda Holdings") requests that Defendant Electric Reliability Council of Texas, Inc. ("Defendant" or "ERCOT") respond to the following First Set of Requests for Production within thirty (30) days of service as follows:

**PLAINTIFF PANDA SHERMAN POWER HOLDINGS, LLC'S
FIRST SET OF REQUESTS FOR PRODUCTION TO ERCOT**

EXHIBIT

F

I. INSTRUCTIONS

1. You are instructed to respond to the First Set of Requests for Production in the manner provided for by the Texas Rules of Civil Procedure and the Local Rules of the Civil Courts of Grayson County, Texas.

2. The Requests contained herein are continuing in nature, and you are required by Rule 193.5 of the Texas Rules of Civil Procedure to seasonably amend your responses if you learn that any prior response is in some material respect incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to Plaintiff during the discovery process or in writing.

3. Consistent with Rule 196 of the Texas Rules of Civil Procedure, you are requested to produce documents responsive to the requests for production included herein at the offices of Haynes and Boone, LLP, 2323 Victory Ave., Suite 700, Dallas, Texas 75219.

4. You are further requested to produce electronic or magnetic data, including e-mails, attachments, and other electronically stored information responsive to Plaintiff's requests for production, as electronically Bates labeled single-page TIFF images with corresponding metadata and load files, provided that spreadsheet, database and multi-media files should be produced in native form.

II. DEFINITIONS

1. As used herein, "ERCOT" shall refer to Electric Reliability Council of Texas, Inc., as well as any of its agents, representatives, attorneys, and employees.

2. As used herein, "CDRs" shall refer to the Capacity, Demand and Reserve Reports published by ERCOT.

3. As used herein "Itron" shall refer to Itron, Inc., as well as its agents, representatives, attorneys, officers, directors, and employees.

4. As used herein, "capacity," "demand," and "reserves" refer respectively to the capacity to supply electric power, the demand for electric power, and electric power held in reserves.

5. As used herein the term "document(s)" includes:

- (a) all manner of written, typed, printed, reproduced, filmed or recorded material;
- (b) all information either stored in or created by a computer (including e-mail); and
- (c) all photographs, pictures, videotapes, audiotapes, laser disks, disks (including CD-ROM disks), plans or other representations of anything concerning, describing, referring or relating, directly or indirectly, in whole or in part, to the subject matter to the discovery request at issue.

The term "document(s)" also includes, without limitation:

- (a) originals and all non-identical copies different from the original by reason of marginal notations or other markings; and
- (b) all drafts and notes that are typed, handwritten, or otherwise made or prepared in connection with such documents, whether or not used.

The term "document(s)" also includes all discussions, conversations, interviews, negotiations, cablegrams, mailgrams, telegrams, telexes, cables, electronic mail, or other forms of written or verbal interchange, however transmitted, including reports, notes, memoranda, lists, agenda, and other documents and records of communications. The term "document(s)" further includes any letter, intra-company communication, note, memorandum, diary entry, calendar entry, report, summary record, instruction, work assignment, notebook, manual, specification, blueprint, worksheet, drawing, sketch, photograph, chart, advertisement, catalogue, brochure, news release,

trade publication, pamphlet, circular, invoice, shipping paper, purchase order, minutes or record of a meeting, opinion, agreement, contract, draft or revision, translation, or any other written, recorded, taped, electronic, computer printout, or graphic material and, in the absence of the original, a copy thereof and any copy bearing markings not present in or on other tangible data compilation within the customary broad sense, whether or not confidential, privileged, or internal, which is within your possession, custody, or control.

6. As used herein, "Communication" shall mean and include any oral or written utterance, notation, or statement of any nature whatsoever, including, but not limited to: correspondence, personal conversations, telephone calls, dialogs, discussions, interviews, consultations, telegrams, telexes, cables, memoranda, agreements, notes, and oral, written or other understandings or agreements.

II. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents requested to be identified in the Plaintiff's First Set of Interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

All documents reviewed or consulted by you in responding to Plaintiff's First Set of Interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

All preliminary versions or drafts of CDRs from January 1, 2007 through 2014.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:

All manuals, guidelines, rules, instructions, handbooks, or similar documents that governed, assisted, or were used by those preparing or reviewing CDR's from January 1, 2007 through 2014.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

At some point in time, ERCOT Protocols were changed or added to address more than a requirement to publish CDRs on a periodic basis. In this context, produce all documents that discuss, refer, or relate to any proposals or decisions to have the actual formulas, reserve margins, or inputs used in preparing CDR's reflected or memorialized in the ERCOT Protocols. This Request includes documents relating to NPRR 489. This request also includes documents that reflect concerns about not having done so at an earlier time.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6:

At some point in time, ERCOT began formally inviting comments or input from members or market participants about the CDRs before the CDRs became final and before they were published in final form on the ERCOT website. In this context, produce all documents that discuss, refer or relate to any proposals, decisions, or concerns about soliciting comments or input relating to CDRs from members or market participants before the forecasts of capacity, demands and reserves became final and published on the ERCOT website. This request specifically includes documents that reflect concerns about not having done so earlier.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

Documents sufficient to show when ERCOT or any ERCOT employee first became aware that the forecasts contained in CDRs were not corresponding with actual historical experience.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:

Documents reflecting or relating to concerns that the data and forecasts contained in the CDRs were not corresponding with actual, historical experience.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:

All studies, analyses or similar documents that relate to or attempt to explain or analyze the reasons or causes for why the forecasts contained in CDRs were not corresponding with actual experience.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

Documents that discuss, refer, or relate to the need or a desire to engage an outside professional, firm or economist to advise or assist ERCOT relative to ERCOT's assessments of capacity, demand or reserve margins.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11:

All documents relating to or discussing the work performed by Itron.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12:

Documents referring or relating to Itron's review of ERCOT's assessment or forecast of capacity, demand, and reserves.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13:

All work papers generated in connection with Itron's performance of its contract with ERCOT.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14:

All documents related to The Brattle Group.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15:

Documents referring or relating to The Brattle Group's analysis of ERCOT.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16:

Analyses, studies, or similar documents concerning actual or perceived surpluses of power in the ERCOT territory at any time between from 2007 until 2014.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17:

Analyses, studies or similar documents that concern actual or perceived shortages of power in ERCOT's territory from 2007 until 2014.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18:

All documents that reflect, discuss, refer, or relate to disclaimers or limitations of liability relating to or concerning the reliability or use of the CDRs or the data on which the CDRs are based. This Request includes all drafts of disclaimers and any documents touching upon any of the following issues:

- a. The express negligence doctrine as it might apply to the CDRs;
- b. Whether to have viewers of the material on the internet agree to any disclaimer or limitation of liability before their use or downloading of the material, such as through a "click to agree" feature or otherwise;
- c. Whether and to what extent ERCOT can document that anyone outside ERCOT accessing the ERCOT website has opened or clicked on a page containing a disclaimer or limitation of liability;

- d. Restricting or conditioning the reproduction of the CDRs or the information reflected in the CDRs through media other than the ERCOT web site by officers or employees of ERCOT. For example, this would include any instructions by ERCOT to officers or employees not to publish the CDR's or the capacity, reserves or demand information contained therein to persons outside of ERCOT without a disclaimer or limitation of liability; or
- e. Any protocol or other action by the Public Utility Commission of Texas authorizing ERCOT to disclaim liability or responsibility or to limit its liability for negligently or fraudulently preparing CDRs or negligently or fraudulently communicating or publishing the CDRs to others.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19:

All documents created between 2009 and 2014 that reproduced or summarized CDRs (or which reflected forecasts of capacity, demand or reserves like those contained in the CDRs) without any disclaimers or limitations of liability. This includes seminar handouts, power points, and press releases. You need not produce all documents if you produce a sample of each document that was provided to those outside of ERCOT. This Request does not include documents that were used or distributed solely within ERCOT for internal use.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20:

Documents that discuss, refer, or relate to whether CDRs encourage or signal to energy producers or investors when to build or develop power resources. This includes any documents that reflect an awareness by ERCOT or any employee of ERCOT that rating agencies such as Moody's and S & P, or energy consultants like Navigant, rely or use CDRs in assessing the feasibility of power plants or the ability of those plants to pay for the cost of construction.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21:

Documents that discuss, refer, or relate to any actual or proposed modification or adjustment of a to-be-published CDR for the purpose in whole or in part of influencing supply or price or to address concerns voiced by any elected representative or official of the state of Texas or any anyone associated with Federal Energy Regulatory Commission or North American Electric Reliability Corporation.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22:

Any analysis, study or similar document relating to the reliability of energy produced or generated by wind.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23:

Any analysis, study or similar document of a capacity market in Texas.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24:

Any analysis, study or similar document addressing the benefits or the potential effects of a capacity market in Texas.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25:

Any analysis, study or similar document addressing the relationship between economic growth and electric demand.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26:

Antitrust compliance manuals or programs and drafts thereof.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27:

All charts, diagrams or similar documents reflecting ERCOT forecasts as compared to actual historical experience.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28:

Documents describing the quality controls in place regarding preparation of CDRs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29:

Documents that describe any sensitivity tests conducted relative to CDRs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 30:

A computer screen shot of the folders kept on the hard drives of Mr. Doggett and Mr. Lasher.

RESPONSE:

REQUEST FOR PRODUCTION NO. 31:

Organization charts depicting committees or units within ERCOT from 2007 to present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32:

All ERCOT document retention programs in effect at any time between 2007 and the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 33:

All requests for proposal, solicitations of interest or similar documents sent by ERCOT at any time between 2007 to the present to outside consultants with expertise in assessing or projecting capacity, demand, or reserves.

RESPONSE:

REQUEST FOR PRODUCTION NO. 34:

Mr. Lasher's calendar and diary entries from 2007 through 2014 reflecting any meetings or conferences dealing with the preparation or publication of CDRs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 35:

Mr. Doggett's calendar and diary entries from 2007 through 2014 reflecting any meetings or conferences dealing with the preparation or publication of CDRs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 36:

Directories of ERCOT personnel from 2007 to present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 38:

All documents that specifically discuss or refer to any of the Plaintiffs. (You need not produce documents routinely generated in connection with sale of power.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 39:

All documents that specifically discuss or refer to any of the power plants at issue in this lawsuit. (You need not produce documents routinely generated in connection with sale of power.)

RESPONSE:

REQUEST FOR PRODUCTION NO. 40:

All documents that specifically discuss or refer to any investors (in their capacity as such) in any of the plants at issue in this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 41:

The protocols concerning CDRs in effect at any time between 2010 and 2012 that you maintain relate to this lawsuit.

RESPONSE:

REQUEST FOR PRODUCTION NO. 42:

All documents that discuss, refer or relate to the meeting with Mr. Lasher described in the live Petition. This includes any handwritten notes or tape recordings.

RESPONSE:

Respectfully submitted,

/s/ Werner A. Powers

Werner A. Powers

State Bar No. 16218800

werner.powers@haynesboone.com

Laurel Brewer

State Bar No. 24084381

laurel.brewer@haynesboone.com

HAYNES AND BOONE, LLP

2323 Victory Avenue, Suite 700

Dallas, Texas 75219-7673

Telephone: (214) 651-5000

Telecopier: (214) 651-5940

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served on all counsel of record in accordance with the Texas Rules of Civil Procedure on this the 14th day of April, 2016.

Laurel Brewer
Laurel Brewer

15678242_1

NO. CV-16-0401

PANDA POWER GENERATION	§	IN THE DISTRICT COURT OF
INFRASTRUCTURE FUND, LLC	§	
D/B/A PANDA POWER FUNDS;	§	
PANDA SHERMAN POWER HOLDINGS,	§	
LLC; PANDA SHERMAN POWER	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA SHERMAN POWER	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
PANDA SHERMAN POWER, LLC;	§	
PANDA TEMPLE POWER HOLDINGS,	§	
LLC; PANDA TEMPLE POWER	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA TEMPLE POWER	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
PANDA TEMPLE POWER, LLC;	§	
PANDA TEMPLE POWER II HOLDINGS,	§	GRAYSON COUNTY, TEXAS
LLC; PANDA TEMPLE POWER II	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA TEMPLE POWER II	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
and PANDA TEMPLE POWER II, LLC,	§	
Plaintiffs,	§	
v.	§	
ELECTRIC RELIABILITY COUNCIL	§	
OF TEXAS, INC.,	§	
Defendant.	§	15TH JUDICIAL DISTRICT

**DEFENDANT'S RESPONSE TO PANDA SHERMAN POWER HOLDINGS, LLC'S
FIRST SET OF REQUESTS FOR PRODUCTION TO ERCOT**

To: Plaintiffs, by and through their counsel of record, Werner Powers, HAYNES AND BOONE, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219; Gregory Salton, HAYNES AND BOONE, LLP, 600 Congress Avenue, Suite 1300, Austin, Texas 78701; and Roger D. Sanders, SANDERS, O'HANLON & MOTLEY, 111 S. Travis Street, Sherman, Texas 75090.

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant Electric Reliability Council of Texas, Inc. serves its Response to Panda Sherman Power Holdings, LLC's First Set of Requests for Production to ERCOT.

EXHIBIT

G

Respectfully submitted,

By: /s/ Brandon Gleason
Brandon Gleason

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OF TEXAS, INC.**
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Telephone: (512) 225-7000
Facsimile: (512) 225-7079

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served electronically to the attorneys of record listed below on this the 17th day of May, 2016.

Werner A. Powers
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219

Gregory Salton
HAYNES AND BOONE, LLP
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Austin, Texas 78701

Roger D. Sanders
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111 S. Travis Street
Sherman, Texas 75090

/s/ Brandon Gleason
Brandon Gleason

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

1. ERCOT objects to the time and place of production designated by Plaintiffs. ERCOT agrees to produce responsive documents electronically beginning on or before May 27, 2016, and will seasonably supplement its production as necessary.
2. ERCOT objects to the requests to the extent they fail to identify the period of time during which responsive documents are being requested.
3. ERCOT objects to the definition of "ERCOT" because it includes its attorneys.
4. ERCOT objects to the definition of the term "Document(s)" to the extent it purports to require anything beyond a reasonable search for documents, including the extent it seeks the production of documents maintained on backup tapes or similar archived media, or in other locations that are not readily accessible, on the grounds that it would be unduly burdensome for ERCOT to search for and produce such documents.
5. ERCOT objects to the requests to the extent they seek confidential information that is properly subject to a protective order and will produce such non-privileged and relevant information only after the entry of a mutually acceptable protective order.

RESPONSE TO FIRST SET OF REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

, All documents requested to be identified in the Plaintiffs First Set of Interrogatories.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope, and hereby incorporates the objections asserted in response to Plaintiffs' First Set of Interrogatories. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce each document identified by it in response to Plaintiffs' First Set of Interrogatories, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 2:

All documents reviewed or consulted by you in responding to Plaintiffs First Set of Interrogatories.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome and overbroad, and hereby incorporates the objections asserted in response to Plaintiffs' First Set of Interrogatories. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce each document identified by it in response to Plaintiffs' First Set of Interrogatories (Interrogatory No. 2), electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 3:

All preliminary versions or drafts of CDRs from January 1, 2007 through 2014.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 4:

All manuals, guidelines, rules, instructions, handbooks, or similar documents that governed, assisted, or were used by those preparing or reviewing CDR's from January 1, 2007 through 2014.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome and overbroad, and to the extent the documents requested are already available to Plaintiffs from another source. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis, and/or will make such documents available for inspection and copying at a mutually convenient place and time.

REQUEST FOR PRODUCTION NO. 5:

At some point in time, ERCOT Protocols were changed or added to address more than a requirement to publish CDRs on a periodic basis. In this context, produce all documents that discuss, refer, or relate to any proposals or decisions to have the actual formulas, reserve margins, or inputs used in preparing CDR's reflected or memorialized in the ERCOT Protocols. This Request includes documents relating to NPRR 489. This request also includes documents that reflect concerns about not having done so at an earlier time.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT also objects to the request because it fails to identify with particularity the specific documents requested. ERCOT further objects to this request because it requests documents or information that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. ERCOT objects to the phrase "relate to" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 6:

At some point in time, ERCOT began formally inviting comments or input from members or market participants about the CDRs before the CDRs became final and before they were published in final form on the ERCOT website. In this context, produce all documents that discuss, refer or relate to any proposals, decisions, or concerns about soliciting comments or input relating to CDRs from members or market participants before the forecasts of capacity, demands and reserves became final and published on the ERCOT website. This request specifically includes documents that reflect concerns about not having done so earlier.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT also objects to the request because it fails to identify with particularity the specific documents requested. ERCOT further objects to this request because it requests documents or information that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. ERCOT objects to the phrase "relate to" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 7:

Documents sufficient to show when ERCOT or any ERCOT employee first became aware that the forecasts contained in CDRs were not corresponding with actual historical experience.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 8:

Documents reflecting or relating to concerns that the data and forecasts contained in the CDRs were not corresponding with actual, historical experience.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "relating to" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 9:

All studies, analyses or similar documents that relate to or attempt to explain or analyze the reasons or causes for why the forecasts contained in CDRs were not corresponding with actual experience.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "relate to" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 10:

Documents that discuss, refer, or relate to the need or a desire to engage an outside professional, firm or economist to advise or assist ERCOT relative to ERCOT's assessments of capacity, demand or reserve margins.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "relate to" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 11:

All documents relating to or discussing the work performed by Itron.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "relating to" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 12:

Documents referring or relating to Itron's review of ERCOT's assessment or forecast of capacity, demand, and reserves.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "relating to" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 13:

All work papers generated in connection with Itron's performance of its contract with ERCOT.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "in connection with" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 14:

All documents related to The Brattle Group.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. The request constitutes an impermissible fishing expedition and fails to identify any relationship between this case and The Brattle Group. ERCOT objects to the phrase "related to" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 15:

Documents referring or relating to The Brattle Group's analysis of ERCOT.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. The request constitutes an impermissible fishing expedition and fails to identify any relationship between this case and The Brattle Group. ERCOT objects to the phrases "relating to" and "analysis" on the ground that they are vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 16:

Analyses, studies, or similar documents concerning actual or perceived surpluses of power in the ERCOT territory at any time between from 2007 until 2014.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "concerning" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 17:

Analyses, studies or similar documents that concern actual or perceived shortages of power in ERCOT's territory from 2007 until 2014.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "concern" on the ground that it is vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 18:

All documents that reflect, discuss, refer, or relate to disclaimers or limitations of liability relating to or concerning the reliability or use of the CDRs or the data on which the CDRs are based. This Request includes all drafts of disclaimers and any documents touching upon any of the following issues:

- a. The express negligence doctrine as it might apply to the CDRs;
- b. Whether to have viewers of the material on the internet agree to any disclaimer or limitation of liability before their use or downloading of the material, such as through a "click to agree" feature or otherwise;
- c. Whether and to what extent ERCOT can document that anyone outside ERCOT accessing the ERCOT website has opened or clicked on a page containing a disclaimer or limitation of liability;
- d. Restricting or conditioning the reproduction of the CDRs or the information reflected in the CDRs through media other than the ERCOT web site by officers or employees of ERCOT. For example, this would include any instructions by ERCOT to officers or employees not to publish the CDR's or the capacity, reserves or demand information contained therein to persons outside of ERCOT without a disclaimer or limitation of liability; or
- e. Any protocol or other action by the Public Utility Commission of Texas authorizing ERCOT to disclaim liability or responsibility or to limit its liability for negligently or fraudulently preparing CDRs or negligently or fraudulently communicating or publishing

the CDRs to others.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. The request constitutes an impermissible fishing expedition. ERCOT objects to the phrases “relating to,” “concerning,” and “touching upon” on the ground that they are vague and overbroad. ERCOT further objects to the extent protocols or documents reflecting other actions of the Public Utility Commission of Texas are equally available to Plaintiffs. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 19:

All documents created between 2009 and 2014 that reproduced or summarized CDRs (or which reflected forecasts of capacity, demand or reserves like those contained in the CDRs) without any disclaimers or limitations of liability. This includes seminar handouts, power points, and press releases. You need not produce all documents if you produce a sample of each document that was provided to those outside of ERCOT. This Request does not include documents that were used or distributed solely within ERCOT for internal use.

RESPONSE:

ERCOT will produce responsive information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 20:

Documents that discuss, refer, or relate to whether CDRs encourage or signal to energy producers or investors when to build or develop power resources. This includes any documents that reflect an awareness by ERCOT or any employee of ERCOT that rating agencies such as Moody's and S & P, or energy consultants like Navigant, rely or use CDRs in assessing the feasibility of power plants or the ability of those plants to pay for the cost of construction.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase “relate to” on the ground that it is

vague and overbroad. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 21:

Documents that discuss, refer, or relate to any actual or proposed modification or adjustment of a to-be-published CDR for the purpose in whole or in part of influencing supply or price or to address concerns voiced by any elected representative or official of the state of Texas or any anyone associated with Federal Energy Regulatory Commission or North American Electric Reliability Corporation.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "relate to" on the ground that it is vague and overbroad. ERCOT further objects to the extent the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 22:

Any analysis, study or similar document relating to the reliability of energy produced or generated by wind.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT objects to the phrase "relating to" on the ground that it is vague and overbroad. ERCOT further objects to the extent the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 23:

Any analysis, study or similar document of a capacity market in Texas.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects to the extent the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 24:

Any analysis, study or similar document addressing the benefits or the potential effects of a capacity market in Texas.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects to the extent the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 25:

Any analysis, study or similar document addressing the relationship between economic growth and electric demand.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects to the extent the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 26:

Antitrust compliance manuals or programs and drafts thereof.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects to the extent the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 27:

All charts, diagrams or similar documents reflecting ERCOT forecasts as compared to actual historical experience.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects that the request to the extent it seeks confidential information that is properly subject to a mutually agreeable protective order.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 28:

Documents describing the quality controls in place regarding preparation of CDRs.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects to the extent it seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 29:

Documents that describe any sensitivity tests conducted relative to CDRs.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects to the extent it seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 30:

A computer screen shot of the folders kept on the hard drives of Mr. Doggett and Mr. Lasher.

RESPONSE:

ERCOT objects to this request because it is overbroad and not properly limited in scope. The request is an impermissible fishing expedition. ERCOT also objects because the request purports to require ERCOT to create documents that do not already exist.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be

located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 31:

Organization charts depicting committees or units within ERCOT from 2007 to present.

RESPONSE:

ERCOT will produce responsive information within its possession, custody, and control that can be located after a reasonable search conducted in good faith for each year requested. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 32:

All ERCOT document retention programs in effect at any time between 2007 and the present.

RESPONSE:

ERCOT will produce responsive information within its possession, custody, and control that can be located after a reasonable search conducted in good faith for each year requested. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 33:

All requests for proposal, solicitations of interest or similar documents sent by ERCOT at any time between 2007 to the present to outside consultants with expertise in assessing or projecting capacity, demand, or reserves.

RESPONSE:

ERCOT objects to this request because it is overbroad and not properly limited in time and/or scope. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 34:

Mr. Lasher's calendar and diary entries from 2007 through 2014 reflecting any meetings or conferences dealing with the preparation or publication of CDRs.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome. Subject to and without waiving the foregoing objection, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 35:

Mr. Doggett's calendar and diary entries from 2007 through 2014 reflecting any meetings or conferences dealing with the preparation or publication of CDRs.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome. Subject to and without waiving the foregoing objection, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 36:

Directories of ERCOT personnel from 2007 to present.

RESPONSE:

ERCOT will produce responsive information within its possession, custody, and control that can be located after a reasonable search conducted in good faith for each year requested. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 38:

All documents that specifically discuss or refer to any of the Plaintiffs. (You need not produce documents routinely generated in connection with sale of power.)

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis. ERCOT also refers Plaintiffs to www.ercot.com.

REQUEST FOR PRODUCTION NO. 39:

All documents that specifically discuss or refer to any of the power plants at issue in this lawsuit. (You need not produce documents routinely generated in connection with sale of power.)

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 40:

All documents that specifically discuss or refer to any investors (in their capacity as such) in any of the plants at issue in this lawsuit.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome, overbroad, and not properly limited in time and/or scope. ERCOT further objects because the term "investors" is undefined. ERCOT further objects to the extent that the request seeks confidential information that is properly subject to a mutually agreeable protective order. ERCOT further objects to this request to the extent it inquires into privileged attorney-client communications and/or documents protected by the work product doctrine.

Subject to and without waiving the foregoing objections, ERCOT will produce relevant, responsive, non-privileged information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.

REQUEST FOR PRODUCTION NO. 41:

The protocols concerning CDRs in effect at any time between 2010 and 2012 that you maintain relate to this lawsuit.

RESPONSE:

ERCOT objects to this request because it is unduly burdensome given that the documents requested are publicly and equally available to Plaintiffs. ERCOT refers Plaintiffs to the protocol libraries available at www.ercot.com.

REQUEST FOR PRODUCTION NO. 42:

All documents that discuss, refer or relate to the meeting with Mr. Lasher described in the live Petition. This includes any handwritten notes or tape recordings.

RESPONSE:

ERCOT will produce responsive information within its possession, custody, and control that can be located after a reasonable search conducted in good faith. ERCOT will produce such documents, if any, electronically and on a rolling basis.



Brandon Gleason <bgleason@skeltonwoody.com>

Panda v. ERCOT - Various Issues

Brandon Gleason <bgleason@skeltonwoody.com>

Thu, May 26, 2016 at 9:19 AM

To: "Powers, Werner A." <werner.powers@haynesboone.com>

Cc: "Salton, Gregory" <Gregory.Salton@haynesboone.com>, Roger Sanders <rsanders@somlaw.net>, Jennifer Beyer <jennifer.beyer@somlaw.net>, Clyde Siebman <clydesiebman@siebman.com>, Denise Lovelace <deniselovelace@siebman.com>, Hamp Skelton <hskelton@skeltonwoody.com>

Werner,

I write in response to the various emails concerning ERCOT's discovery responses during the past few days, and as a follow up to my conversation with Mr. Salton Tuesday morning.

Protective Order

Thank you for providing the form protective order utilized by the federal court in New York. In the attached draft, I made some revisions, drawing from the form order utilized in the Western District of Texas and in Travis County District Courts, as well as some of the standard language utilized by the Public Utility Commission of Texas ("PUCT") in administrative proceedings involving ERCOT and market participants. There is a possibility that documents produced in our case warrant greater protection than that associated with a standard "confidential" designation. ERCOT's goal is not to create unnecessary issues with the protective order, but instead to ensure appropriate classifications are available. I do not anticipate there will be any significant issues with the draft order attached. At your convenience, please let me know your comments and/or proposed revisions.

Document Production Format

I reviewed your firm's proposed format for document production. While those parameters were not included with Plaintiffs' requests for production, after working with ERCOT's IT department and our vendor I believe we can accommodate all of Plaintiffs' requests, except the custodian field. That's because ERCOT emails and most other documents are stored on central or shared storage systems. Said differently, the "custodian" is ERCOT. The remaining parameters and fields, including author, recipient, etc. should not be an issue. GMT is also acceptable if that is what your firm prefers.

Document Production Timeline

ERCOT is on schedule to start delivering documents on Friday. I will email counsel for Plaintiffs an FTP link that will enable them to access and download the documents into your review platform. Once we have the protective order signed and entered, I will email counsel for Plaintiffs a second FTP link that will contain the remainder of ERCOT's non-email production. At that point ERCOT's non-email production in response to Plaintiffs' first request for production will be substantially complete. Plaintiffs should notify counsel for ERCOT if, after review, any discoverable documents appear to be lacking.

Emails are taking more time. ERCOT is in the process of gathering and reviewing potentially responsive emails in response to Plaintiffs' broad discovery requests. Tens of thousands of potentially responsive emails have been collected. ERCOT's goal is to complete review and production of the emails (including attachments) in 2-3 weeks, with production following the same format described above. ERCOT anticipates some of the emails may include attorney client privileged communications and/or work product. To the extent required by the Texas Rules of Civil Procedure, those will be identified on a privilege log after production of the non-privileged and work product emails, if any.

Documents "dripped" Over Time

I do not know the reason Plaintiffs contend production on a "rolling basis" is problematic. Perhaps they have encountered attorneys that

EXHIBIT

H

prefer to engage in unnecessary delay. That is not the case here. Bottom line is that Plaintiffs should assume production on a "rolling basis" means production on a diligent schedule, after appropriate time for a quality and good faith collection, review, and production, like the process and timeline outlined above.

Draft CDRs

Plaintiffs' contention that ERCOT is refusing to produce draft CDRs is premature. Plaintiffs will receive each draft of the CDRs, other than those that contain attorney client privileged communications, if any.

Email Custodians

Plaintiffs also indicated a desire to discuss email custodians. As indicated above, the "custodian" of ERCOT emails is a centralized storage system. The following authors and recipients, which include each individual identified in response to Plaintiffs' first set of interrogatories, are included in ERCOT's email harvest and will be included in its e-mail production: Bill Bojorque, Trip Doggett, John Dumas, Kevin Hanson, Wayne Hoffman, Julie Jin, Warren Lasher, Joel Mickey, Doug Murray, Calvin Opheim, Linda Shirey, Chris Stecklein, Pete Warnken, Dan Woodfin, and Eddie Zarruck.

Purported Documents in Possession of Other Law Firms

Plaintiffs made an inquiry as to how ERCOT is handling documents in possession of law firms. Specifically, Plaintiffs inquired about documents purportedly in the possession of Mr. Magness' former law partners. It is unclear what documents you are referring to, but ERCOT did not outsource any legal analysis concerning the CDRs at issue (including the disclaimer language Plaintiffs apparently ignored) to any outside law firm. Of course, Plaintiffs would not be entitled to that information even if it did exist. Mr. Magness' representation of ERCOT in system administration fee cases before the PUCT years ago has nothing to do with this case.

PUCT Representation

Skelton & Woody does not represent the PUCT or any PUCT board member.

Should you have any other questions or concerns regarding ERCOT's discovery responses, please articulate them in writing and we will of course do our best to answer.

Thank you,

Brandon

Brandon Gleason
Skelton & Woody
248 Addie Roy Road, Suite B-302
Austin, TX 78746
Phone: (512) 651-7000
Fax: (512) 651-7001

IMPORTANT NOTICE: CONFIDENTIAL MATERIAL

This message and the documents attached to it, if any, are intended only for the use of the addressee(s) and may contain information that is PRIVILEGED and CONFIDENTIAL, and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of the message and its attachments, destroy any hard copies you may have created, and notify me

immediately at (512) 651-7000.



Agreed Protective Order (Draft).docx
37K

PANDA POWER GENERATION
INFRASTRUCTURE FUND, LLC
D/B/A PANDA POWER FUNDS;
PANDA SHERMAN POWER HOLDINGS,
LLC; PANDA SHERMAN POWER
INTERMEDIATE HOLDINGS I, LLC;
PANDA SHERMAN POWER
INTERMEDIATE HOLDINGS II, LLC;
PANDA SHERMAN POWER, LLC;
PANDA TEMPLE POWER HOLDINGS,
LLC; PANDA TEMPLE POWER
INTERMEDIATE HOLDINGS I, LLC;
PANDA TEMPLE POWER
INTERMEDIATE HOLDINGS II, LLC;
PANDA TEMPLE POWER, LLC;
PANDA TEMPLE POWER II HOLDINGS,
LLC; PANDA TEMPLE POWER II
INTERMEDIATE HOLDINGS I, LLC;
PANDA TEMPLE POWER II
INTERMEDIATE HOLDINGS II, LLC;
and PANDA TEMPLE POWER II, LLC.

Plaintiffs,

Y.

ELECTRIC RELIABILITY COUNCIL
OF TEXAS, INC.,

Defendant.

IN THE DISTRICT COURT OF

GRAYSON COUNTY, TEXAS

15TH JUDICIAL DISTRICT

AGREED PROTECTIVE ORDER

The parties having agreed to the following terms of confidentiality, and the Court having found that good cause exists for issuance of an appropriately-tailored confidentiality order governing the pre-trial phase of this action, it is therefore hereby

ORDERED that any person subject to this Order — including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties

providing discovery in this action, and all other interested persons with actual or constructive notice of this Order — shall adhere to the following terms, upon pain of contempt:

Classification of Discovery Material

1. Any person subject to this Order who receives from any other person any “Discovery Material” (i.e., information of any kind provided in the course of discovery in this action) that is designated as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only” (referred to herein as “Classified Discovery Material”) pursuant to the terms of this Order shall not disclose such Classified Discovery Material to anyone else except as expressly permitted hereunder. Classified Discovery Material may only be used in connection with the prosecution of or defense to claims in this case and for no other purpose.

Designation Criteria

2. A party shall designate as Classified Discovery Material only such information that the party in good faith believes in fact is confidential. Information that is generally available to the public, such as public filings, catalogues, advertising materials, and the like, shall not be designated as Classified.

3. Information and documents that may be designated as Classified Discovery Material include, but are not limited to, trade secrets, confidential or proprietary financial information, operational data, business plans, and competitive analyses, personnel files, personal information that is protected by law, and other sensitive information that, if not restricted as set forth in this order, may subject the producing or disclosing person to competitive or financial injury or potential legal liability to third parties. It also includes information that is required to be kept confidential under ERCOT Protocols and/or Public Utility Commission of Texas Rules.

4. Correspondence and other communications between the parties or with nonparties may be designated as Classified Discovery Material if the communication was made with the understanding or reasonable expectation that the information would not become generally available to the public.

5. The designation "For Counsel Only" or "Attorneys Eyes Only" shall be reserved for information that is believed to be unknown to the opposing party or parties, or any of the employees of a corporate party. For purposes of this order, so-designated information includes, but is not limited to, product formula information, design information, non-public financial information, pricing information, customer identification data, and certain study methodologies. So designated information also includes, but is not limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act; (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; or (d) business operations or financial information that is commercially sensitive.

Marking of Documents and Depositions

6. With respect to the Classified portion of any Classified Discovery Material other than deposition transcripts and exhibits, the producing person or that person's counsel may designate such portion as "Confidential," "For Counsel Only," or "Attorneys Eyes Only" by stamping or otherwise clearly marking as "Confidential," "For Counsel Only," or "Attorneys Eyes Only" the protected portion in a manner that will not interfere with legibility or audibility, and by also producing for future public use another copy of said Discovery Material with the confidential information redacted. With respect to deposition transcripts and exhibits, a

producing person or that person's counsel may indicate on the record that a question calls for Classified information, in which case the transcript of the designated testimony shall be bound in a separate volume and marked "Classified Information Governed by Protective Order" by the reporter.

7. Any party also may designate information disclosed at a deposition as Classified Discovery Material by notifying all parties in writing not later than 20 days of receipt of the transcript of the specific pages and lines of the transcript that should be treated as Classified Discovery Material thereafter. Each party shall attach a copy of each such written notice to the face of the transcript and each copy thereof in that party's possession, custody, or control. All deposition transcripts shall be treated as For Counsel Only for a period of 20 days after initial receipt of the transcript.

8. To the extent possible, the court reporter shall segregate into separate transcripts information designated as Classified Discovery Material with blank, consecutively numbered pages being provided in a nondesignated main transcript. The separate transcript containing Classified Discovery Material shall have page numbers that correspond to the blank pages in the main transcript.

9. Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive Classified Discovery Material pursuant to this Protective Order, but such right of exclusion shall be applicable only during periods of examination or testimony during which Classified Discovery Material is being used or discussed.

10. If at any time prior to the trial of this action, a producing person realizes that some portion[s] of Discovery Material that that person previously produced without limitation should be designated as "Confidential," "For Counsel Only," or "Attorneys Eyes Only" he may so

designate by so apprising all parties in writing, and such designated portion[s] of the Discovery Material will thereafter be treated as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only” under the terms of this Order.

Disclosure Restrictions

11. No person subject to this Order other than the producing person shall disclose any of the Classified Discovery Material designated by the producing person as Confidential to any other person whomsoever, except to:

- (a) the parties to this action;
- (b) counsel of record for the parties in this litigation, including their coworkers, paralegals, clerical and other assistants assigned to assist with this matter;
- (c) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
- (d) any witness who counsel for a party in good faith believes may be called to testify at trial or deposition in this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (e) any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (f) stenographers engaged to transcribe depositions conducted in this action; and
- (g) the Court and its support personnel.

12. Prior to any disclosure of any Confidential Discovery Material to any person referred to in subparagraphs 11(d) or 11(e) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed

as an Exhibit hereto stating that that person has read this Order and agrees to be bound by its terms. Said counsel shall retain each signed Non-Disclosure Agreement, hold it in escrow, and produce it to opposing counsel either prior to such person being permitted to testify (at deposition or trial) or at the conclusion of the case, whichever comes first.

13. No person subject to this Order other than the producing person shall disclose any of the Classified Discovery Material designated by the producing person as "For Counsel Only" or "Attorneys Eyes Only," except to:

(a) counsel of record for the parties in this litigation, including their coworkers, paralegals, clerical and other assistants assigned to assist with this matter;

(b) actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, prior to any disclosure of Classified Information to such person, have signed a document agreeing to be bound by the terms of this Protective Order (such signed document to be maintained by the attorney retaining such person) and have been designated in writing by notice to all counsel;

(c) this Court and its staff and any other tribunal or dispute resolution officer duly appointed or assigned in connection with this litigation.

14. Prior to any disclosure of any For Counsel Only or Attorneys Eyes Only Discovery Material to any person referred to in subparagraphs 13(b) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that that person has read this Order and agrees to be bound by its terms. Said counsel shall retain each signed Non-Disclosure Agreement, hold it in escrow, and produce it to opposing counsel either prior to such person

being permitted to testify (at deposition or trial) or at the conclusion of the case, whichever comes first.

Classified Discovery Material Filed with the Court

15. If a party wishes to include a document, or portions of a document marked as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only,” in a pleading or other paper to be filed with the Clerk, that party shall serve the pleading or other paper on opposing parties but shall not file it. Service alone shall constitute filing for the purpose of any deadline. For 7 days following service, no party shall file the pleading or other paper with the Clerk except pursuant to a ruling on a motion for a Temporary Sealing Order under Rule 76a. Immediately thereafter, if no motion for a Temporary Sealing Order has been granted, the party who served the pleading or other paper shall file it unsealed with the Clerk

16. If a party wishes to offer a document, or portions of a document marked as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only,” in evidence, any party may, at the time the document is offered, move for a Temporary Sealing Order.

Objections to Classification

17. Any party who objects to any designation of “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only,” may at any time prior to the trial of this action serve upon counsel for the designating person a written notice stating with particularity the grounds of the objection or request. If agreement cannot be reached promptly, counsel for all affected persons will convene a joint telephone call with the Court to obtain a ruling.

18. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Classified Discovery Material introduced in evidence at trial, even if such material has previously been sealed or designated as

“Confidential,” “For Counsel Only,” or “Attorneys Eyes Only.” The Court also retains unfettered discretion whether or not to afford classified treatment to any Classified Discovery Material or information contained in any Classified Discovery Material submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court.

Precautions and Inadvertently Disclosed Information

19. Each person who has access to Classified Discovery Material that has been designated as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only” shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

20. If, in connection with this litigation, a party inadvertently discloses information subject to a claim of attorney-client privilege or attorney work product protection (“Inadvertently Disclosed Information”), such disclosure shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection with respect to the Inadvertently Disclosed Information and its subject matter.

21. If a disclosing party makes a claim of inadvertent disclosure, the receiving party shall, within five business days, return or destroy all copies of the Inadvertently Disclosed Information, and provide a certification of counsel that all such information has been returned or destroyed.

22. Within five business days of the notification that such Inadvertently Disclosed Information has been returned or destroyed, the disclosing party shall produce a privilege log with respect to the Inadvertently Disclosed Information.

23. The receiving party may move the Court for an Order compelling production of the Inadvertently Disclosed Information. The motion shall be filed under seal, and shall not

assert as a ground for entering such an Order the fact or circumstances of the inadvertent production.

24. The disclosing party retains the burden of establishing the privileged or protected nature of any Inadvertently Disclosed Information. Nothing in this Order shall limit the right of any party to request an in camera review of the Inadvertently Disclosed Information.

25. This Protective Order shall survive the termination of the litigation. Within 30 days of the final disposition of this action, all Classified Discovery Material designated as "Confidential," "For Counsel Only," or "Attorneys Eyes Only," and all copies thereof, shall be promptly returned to the producing person, or, upon permission of the producing person, destroyed.

26. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof. Each party shall have the right to seek changes in this Agreed Protective Order as appropriate.

Signed May ___, 2016

THE HONORABLE JAMES P. FALLON

PANDA POWER GENERATION	§	IN THE DISTRICT COURT OF
INFRASTRUCTURE FUND, LLC	§	
D/B/A PANDA POWER FUNDS;	§	
PANDA SHERMAN POWER HOLDINGS,	§	
LLC; PANDA SHERMAN POWER	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA SHERMAN POWER	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
PANDA SHERMAN POWER, LLC;	§	
PANDA TEMPLE POWER HOLDINGS,	§	
LLC; PANDA TEMPLE POWER	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA TEMPLE POWER	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
PANDA TEMPLE POWER, LLC;	§	
PANDA TEMPLE POWER II HOLDINGS,	§	GRAYSON COUNTY, TEXAS
LLC; PANDA TEMPLE POWER II	§	
INTERMEDIATE HOLDINGS I, LLC;	§	
PANDA TEMPLE POWER II	§	
INTERMEDIATE HOLDINGS II, LLC;	§	
and PANDA TEMPLE POWER II, LLC,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
ELECTRIC RELIABILITY COUNCIL	§	
OF TEXAS, INC.,	§	
	§	
Defendant.	§	15TH JUDICIAL DISTRICT

NON DISCLOSURE AGREEMENT

I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Classified Discovery Material that have been designated as “Confidential,” “For Counsel Only,” or “Attorneys Eyes Only.” I agree that I will not disclose such Classified Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will

return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the courts of the State of Texas for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Signed this ____ day of _____, 2016 By: _____