

PANDA POWER GENERATION	§	IN THE DISTRICT COURT
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.	§	15 th JUDICIAL DISTRICT

PROTECTIVE ORDER

WHEREAS, the Court has determined that discovery demands in this action may require Plaintiffs 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,

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 and Defendant Electric Reliability Council of Texas, Inc., hereafter referred to as “the Parties,” to produce or disclose materials that could include trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Court is inclined to enter a protective order limiting disclosure thereof:

THEREFORE, it is hereby ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL.” The word “CONFIDENTIAL” shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the word “CONFIDENTIAL” shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL.”
2. With respect to documents, information or material designated “CONFIDENTIAL” or “RESTRICTED - ATTORNEYS’ EYES ONLY” (“DESIGNATED MATERIAL”),¹

¹ The term DESIGNATED MATERIAL is used throughout this Protective Order to refer

subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Texas Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

3. A designation of Protected Material (i.e., “CONFIDENTIAL” or “RESTRICTED - ATTORNEYS’ EYES ONLY”) may be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment provided that written notice of the inadvertent production is given within 10 business days of when the producing Party discovers or in the reasonable exercise of diligence should have discovered the inadvertent production. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction or sequestration of that Protected Material by notifying the recipient(s), , and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy or sequester all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.

4. “CONFIDENTIAL” documents, information and material may be disclosed only to the

to the class of materials designated as “CONFIDENTIAL” or “RESTRICTED - ATTORNEYS’ EYES ONLY,” both individually and collectively.

following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 12 herein:

- (a) outside counsel of record in this Action for the Parties;
- (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
- (c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action;
- (d) current officers, directors and employees of the Parties,
- (e) former officers, directors, and employees of the designating Party;
- (f) the Independent Market Monitor for ERCOT ;
- (g) the Public Utilities Commission of Texas and its staff;
- (h) as to any document, its author, addressee or any other person who previously received a copy;
- (i) outside consultants or experts (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that before access is given, the consultant or expert has completed the Acknowledgement attached as Exhibit A hereto;
- (j) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action;
- (k) any non-party witness who counsel for a Party in good faith believes may be called to testify at trial or deposition in this action, provided that counsel first requests the witness to execute the Acknowledgement attached as Exhibit A hereto;
- (l) process servers and designated agents for service of process;
- (m) the Court and its personnel;
- (n) any federal or state court handling matters related to or ancillary to this Action;
and

- (o) Any discovery master or mediator appointed by the Court
5. A Party shall designate documents, information or material as “CONFIDENTIAL” only upon a good faith belief that the documents, information or material contains confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.
 6. Documents, information or material produced pursuant to any discovery request in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties in connection with this Action or in connection with any ancillary or related legal proceeding and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.
 7. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination would provide the receiving Party with a meaningful and current competitive advantage, the producing Party may designate such Protected Material “RESTRICTED -- ATTORNEYS’ EYES ONLY.” This material shall be treated in the same manner as Confidential Material with the additional restriction imposed by the following paragraph.
 8. Prior to trial, officers, directors, and employees of the receiving Party shall not have

access to Protected Material designated RESTRICTED -- ATTORNEYS' EYES ONLY unless the Protected Material involves, mentions, refers, or discusses the receiving Party.

- In-house counsel who have a decision making role in the Action but who exercise no competitive decision-making authority on behalf of the client may have access to Protected Material designated RESTRICTED -- ATTORNEYS' EYES ONLY.

9. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege or the work product doctrine. If documents, information or other material subject to a claim of attorney-client privilege, or work product doctrine is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege provided that written notice is given within 10 business days from when the inadvertent production was discovered or could have been discovered with due diligence. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege or work product may obtain the return or sequestration of such documents, information or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall sequester or gather and return all copies of such documents, information or other material to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be sequestered or destroyed and certified as such to the producing Party. Once the receiving Party obtains notice of the inadvertent production, it shall not use the information for any

purpose pending a further ruling by the Court.

10. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized to have access thereto to any person who is not authorized for such access under this Order. The Parties are hereby ORDERED to safeguard all such documents, information and material to protect against disclosure to any unauthorized persons or entities.
11. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing.
12. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as "CONFIDENTIAL" or "RESTRICTED - ATTORNEY' EYES ONLY" pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as confidential.
13. Any DESIGNATED MATERIAL that is filed with the Court prior to trial shall be filed under temporary seal. . The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend "FILED UNDER TEMPORARY SEAL PURSUANT TO PROTECTIVE ORDER" above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall be redacted to the extent necessary and the pleading or

exhibit filed publicly with the Court. The filing party shall immediately comply with Rule 76a of the Texas Rules of Civil Procedure and secure a hearing on the temporarily sealed matter not later than 14 days from filing. The temporary seal order will dissolve fourteen days from when the Designated Material is filed with the Court unless a written Order is entered by the 14th day as described in Rule 76a(6).

14. The Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at the trial of this Action, or from using any information contained in DESIGNATED MATERIAL at the trial of this Action, subject to any pretrial order issued by this Court.
15. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) days of receipt of the written request, the requesting Party may apply to the Court for relief. Upon any such application to the Court, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Texas Rules of Civil Procedure 215, subject to the Rule's provisions relating to sanctions. In making such application, the requirements of the Texas Rules of Civil Procedure and the Local Rules of the Court shall be met. Pending the Court's determination of the application, the designation of the designating Party shall be maintained
16. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this

Order.

17. To the extent that any discovery is taken of persons who are not Parties to this Action (“Third Parties”) and in the event that such Third Parties contend the discovery sought involves trade secrets, confidential business information, or other proprietary information, then such Third Parties may agree to be bound by this Order.
18. To the extent that discovery or testimony is taken of Third Parties, the Third Parties may designate as “CONFIDENTIAL” or “RESTRICTED -- ATTORNEYS’ EYES ONLY” any documents, information or other material, in whole or in part, that could otherwise be so designated by the Parties. The Third Parties shall have ten (10) days after production of such documents, information or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as “CONFIDENTIAL” in accordance with this Order.
19. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall at the producing Party’s election either be returned to the producing Party or be destroyed. The receiving Party shall verify the return or destruction by affidavit furnished to the producing Party, upon the producing Party’s request.
20. The failure to designate documents, information or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the

filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.

21. Any Party knowing or believing that any other party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.
22. Production of DESIGNATED MATERIAL by each of the Parties shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.
23. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.
24. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

JUDGE PRESIDING

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

**EXHIBIT A
ACKNOWLEDGMENT OF PROTECTIVE ORDER**

I, _____, declare that:

1. My address is _____.
My current employer is _____.
My current occupation is _____.
2. I have received a copy of the Protective Order in this action. I have carefully read and

understand the provisions of the Protective Order.

3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL” or “RESTRICTED -- ATTORNEYS’ EYES ONLY” that is disclosed to me.
4. Promptly upon termination of these actions, I will return all documents and things designated as “CONFIDENTIAL” or “RESTRICTED -- ATTORNEYS’ EYES ONLY” that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the party by whom I am employed.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____