

FOR BOARD ACTION

Agenda Item # 7

Meeting Date: 2/28/12

SUBJECT:

MISO Non-Disclosure Agreements

PREPARED BY:

Scott Nickels
Manager of System Operations/Reliability

ITEM DESCRIPTION:

The Midwest Independent System Operator (MISO) serves as Rochester Public Utilities' Reliability Coordinator for all Electric Transmission Operating functions. Examples of the Reliability Coordinator functions provided MISO are Power System Restoration, Transmission Outage Management, and Transmission Congestion Management. In order for RPU's System Operators to gain access to the MISO Extranet portal to obtain critical and confidential information necessary to perform transmission system switching as directed by MISO, RPU must sign the two Non-Disclosure agreements listed below. These agreements have been reviewed by the City Attorney's office.

Two agreements are being presented to the Board for approval. They are:

1. Universal Non-Disclosure and Confidentiality Agreement
2. Critical Energy Infrastructure Information General Non-Disclosure Agreement

Each agreement will be discussed individually.

1. Universal Non-Disclosure and Confidentiality Agreement

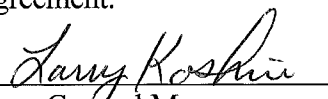
The Universal Non-Disclosure and Confidentiality Agreement obligates all RPU System Operations personnel to adhere to the terms and conditions for handling, communicating, and use of any and all Confidential Information supplied by MISO to RPU for the purpose of performing Transmission Operations, Transmission Planning, Reliability Coordination, or any other functions as directed or required by MISO.

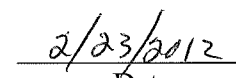
2. Critical Energy Infrastructure Information General Non-Disclosure Agreement

The Critical Energy Infrastructure Information General Non-Disclosure Agreement obligates MISO to provide Critical Energy Infrastructure Information (CEII) to RPU's Chief System Operator Rick Luckadoo that is required for RPU to perform specific Transmission Operation functions. The Critical Energy Infrastructure Information General Non-Disclosure Agreement obligates RPU's Chief System Operator to adhere to the terms and conditions for handling, communicating, and use of the CEII.

UTILITY BOARD ACTION REQUESTED:

The Board is requested to approve the following agreements related to MISO and request the Mayor and City Clerk to execute the Universal Non-Disclosure and Confidentiality Agreement and the Critical Energy Infrastructure Information General Non-Disclosure Agreement.


General Manager


Date

ROCHESTER PUBLIC UTILITIES

UNIVERSAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Universal Non-Disclosure and Confidentiality Agreement (the "Agreement") is entered into on this _____ day of _____, 20____ and effective as of the _____ day of _____, 20____ (the "Effective Date"), by and between Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") and _____, ("Company") whose principal offices are located at _____. Midwest ISO and Company each may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, Midwest ISO is prepared to disclose confidential information under this Agreement to Company in connection with Midwest ISO's business with, or possible engagement of, Company (the "Purpose");

WHEREAS, Company represents that it desires to receive confidential information pursuant to this Agreement; and,

WHEREAS, Midwest ISO and Company desire to set forth in writing the terms and conditions of their agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Confidential Information.** "Confidential Information" as used in this Agreement means all information disclosed to Company by Midwest ISO or its employees, agents, contractors, representatives, consultants and advisors (collectively "Disclosing Party") in connection with the Purpose. Confidential Information includes, without limitation, (i) any and all business, technical, marketing, financial or other information, whether in electronic, oral or written form; (ii) trade secrets, business plans, techniques, methods, or systems, data, know-how, formulae, compositions, designs, sketches, mock-ups, prototypes, photographs, charts, graphs, forms, documents, drawings, samples, inventions, ideas, research and development, customer and vendor lists (including, without limitation, the identity, characteristics, contact persons, product and service needs thereof), rates, price lists, computer software programs and systems, financial statements, and budgets; (iii) all memoranda, summaries, notes, analyses, compilations, studies or those portions of other documents prepared by Company to the extent they contain or reflect such information of, or the contents of discussions with the Disclosing Party ("Company's Material"), including the contents or existence of discussions or negotiations related to the Purpose; (iv) information not generally known or readily ascertainable; (v) information that provides a competitive advantage for Disclosing Party; and (vi) information that is marked "Confidential" or nonpublic information which under the circumstances surrounding disclosure a reasonable person would conclude should be treated as confidential. Confidential Information shall not include information that (a) is or becomes part of the public domain other than as a result of disclosure by Company, (b) becomes available to Company on a non-confidential basis from a source other than Disclosing Party, provided that, to the best of Company's knowledge, such source is not prohibited from transmitting such information by a contractual, legal, or other

obligation, (c) was in Company's possession prior to disclosure of the same by Disclosing Party or (d) is required to be disclosed by the Minnesota Government Data Practices Act.

2. **Non-Use; Protection and Dissemination of Confidential Information.**

Company agrees not to disclose, discuss, use, reproduce, duplicate, distribute, copy, reconstruct or in any way communicate, directly or indirectly, the Confidential Information for purposes other than in connection with the Purpose. Company shall not disclose, discuss, use, reproduce, duplicate, distribute or in any way communicate, directly or indirectly, the Confidential Information to any other party and will use all reasonable efforts to protect the confidentiality of such information. Company will require that Company's employees, officers, directors, agents, contractors, representatives, consultants and advisors who need to have access to such Confidential Information in order to assist Company in connection with the Purpose (1) are aware of the Company's confidentiality obligation hereunder, and (2) agree to be bound by such confidentiality obligations. Company shall notify Disclosing Party immediately of any loss, misuse, or misappropriation of any Confidential Information of which Company becomes aware.

3. **Ownership and Return.** All Confidential Information, including Company's Material, shall be and remain the property of Disclosing Party, and no right or license is granted to Company with respect to any Confidential Information. No transfer or creation of ownership rights in any intellectual property comprising Confidential Information is intended or shall be inferred by the disclosure of Confidential Information by Disclosing Party, and any and all intellectual property comprising Confidential Information disclosed and any derivations thereof, shall continue to be the exclusive intellectual property of Disclosing Party. Upon the termination by any Party of the Purpose, or sooner if so requested, Company agrees to immediately return all Confidential Information, including Company's Material, to Disclosing Party or to destroy all Confidential Information, including all copies of the same, however, Company shall not be required to destroy Confidential Information that has become embedded in Company's planning models. Upon request, the fact of any such destruction shall be certified in writing to Disclosing Party by Company. Nothing in this Agreement obligates Disclosing Party to disclose any information to Company or creates any agency or partnership relation between them.

4. **Compliance and Protection of Confidential Information.** Company represents and warrants that it has practices and procedures adequate to protect against the unauthorized release of Confidential Information received. Company must educate its employees, agents, and assigns in the provisions of this Agreement and provide to Disclosing Party upon request any information necessary to determine compliance with the terms of this Agreement.

5. **Indemnification.** Company agrees to indemnify, hold harmless and defend Midwest ISO, its employees, principals (owners, partners, shareholders or holders of an ownership interest, as the case may be), agents, contractors, representatives, consultants and/or advisors against any and all liability, loss, costs, damages, expenses, claims or actions, joint or several, arising out of or by reason of any breach of this Agreement by Company and/or Company's employees, agents, contractors, representatives or consultants, or arising out of or by reason of any act or omission of Company and/or Company's employees, agents, contractors, representatives or consultants in the execution, performance, or failure to adequately perform their obligations under this Agreement. For purposes of this Section, to "indemnify" means to defend and pay all expenses (including reasonable attorneys' fees) and satisfy all judgments

(including costs and reasonable attorneys' fees) which may be incurred or rendered against Midwest ISO, its employees, principals (owners, partners, shareholders or holders of an ownership interest, as the case may be), agents, contractors, representatives, consultants and/or advisors.

6. **Compelled Disclosure.** If Company is requested or required by legal or administrative process to disclose any Confidential Information, Company shall promptly notify Disclosing Party of such request or requirement so that Disclosing Party may seek an appropriate protective order or other relief. In any case, Company will (a) disclose only that portion of the Confidential Information that its legal counsel advises is required to be disclosed, (b) use its reasonable efforts to ensure that such Confidential Information is treated confidentially, including seeking an appropriate protective order, and (c) notify Disclosing Party as soon as reasonably practicable of the items of Confidential Information so disclosed.

7. **Remedies.** The Parties acknowledge that remedies at law may be inadequate to protect Disclosing Party against any actual or threatened breach of this Agreement by Company, and, without prejudice to any other rights and remedies otherwise available to Disclosing Party, agree to the immediate granting of preliminary and final injunctive relief (without prior notice and without posting any bond) in favor of Disclosing Party to enjoin and restrain any breach or violation, either actual or anticipatory, of this Agreement.

8. **Purpose.** None of the Parties will be under any legal obligation of any kind whatsoever with respect to the Purpose by virtue of this Agreement, except for the matters specifically agreed to herein. No representation or warranty is made by the Disclosing Party as to the accuracy or completeness of any information provided to the Company.

9. **Term and Termination.** Company's obligations under this Agreement shall be effective on the date set forth above and shall be perpetual, notwithstanding any expiration, cancellation or termination of this Agreement. Upon termination of the Agreement, Company shall either promptly (1) deliver or cause to be delivered to Disclosing Party or (2) certify to the Disclosing Party the destruction of, all Confidential Information, including all copies of the Confidential Information in Company's possession or control including, without limitation, originals and copies of documents, customer lists, prospect lists, price lists, operations manuals, and all other documents reflecting or referencing the Confidential Information, as well as all other materials furnished to or acquired by Company to facilitate the Purpose of the Agreement.

10. **Agency.** This Agreement is binding on Company, its employees, agents, contractors, representatives, consultants, advisors, successors and assigns. In the event of a dispute regarding liability for breach of this Agreement, common law agency principles apply.

11. **Waiver.** No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by an authorized representative of the Party making the waiver. The failure of either Party in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasion.

12. **Modification.** This Agreement may not be amended except in a writing signed by authorized representatives of both Parties.

13. **Governing Law.** Except for the Minnesota Government Data Practices Act, Indiana law shall govern the interpretation and implementation of the Agreement and the resolution of any dispute between the parties regarding the effect of the Agreement without giving effect to principles of conflicts of law, and shall supplement, but not replace, the Uniform Trade Secrets Act as enacted by the State of Indiana. Each Party hereby submits itself for the sole purpose of this Agreement and any controversy arising hereunder to the exclusive jurisdiction of the federal or state courts located in the State of Indiana serving the counties of Hamilton and Marion, and any courts of appeal therefrom, and waives any objection (on the grounds of lack of jurisdiction, or forum not convenient or otherwise) to the exercise of such jurisdiction over it by any such courts.

14. **Severability and Survival.** Should any clause, portion or paragraph of this Agreement be unenforceable or invalid for any reason, such unenforceability or invalidity will not affect the enforceability or validity of the remainder of this Agreement, and any court having jurisdiction is specifically authorized and encouraged by the Parties to hold inviolate all portions of this Agreement that are valid and enforceable without consideration of any invalid or unenforceable portions hereof. The headings of the sections in this Agreement are for the purposes of convenient reference only and are not intended to be part of this Agreement, or to limit or affect the meaning or interpretation of any of the terms hereof.

15. **Assignment and Succession.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. Any successor to or assignee of Midwest ISO shall assume its rights and obligations under this Agreement with or without notice to Company. Company may not assign its rights hereunder without the written permission of Midwest ISO.

16. **Attorney's Fees.** If Company breaches or defaults in the performance of any of the covenants, agreements, representations, or warranties described in this Agreement, then in addition to any and all of the rights and remedies which Midwest ISO may have against Company, Company will also be liable to and pay Midwest ISO its court costs and reasonable attorney's fees incurred in enforcing Midwest ISO's covenants, agreements, representations and warranties herein.

17. **Employees Bound by Agreement.** The representative executing this Agreement hereby acknowledges and agrees that he/she is duly authorized to execute this Agreement on behalf of Company and that this Agreement shall bind and be enforceable by and against the employees, agents, or consultants of Company. The authorized representative of Company further acknowledges and agrees that only those employees who are listed on the attached Appendix A incorporated herein shall be authorized to receive Confidential Information directly from Midwest ISO and that he/she will notify Midwest ISO in writing of any modification to Appendix A prior to releasing Confidential Information to those employees listed on Appendix A.

18. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgment of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

if to Midwest ISO, to: P.O. Box 4202
Carmel, Indiana 46082
Attn: General Counsel
Facsimile No.: (317) 249-5912

if to _____, to: _____

Facsimile No.: _____

19. **Entire Agreement.** The Parties agree that this Agreement, including Appendix A incorporated herein and as modified, constitute their entire agreement with respect to the subject matter hereof and that it supersedes any prior agreements or understandings between them, whether written or oral.

Company acknowledges that it has read the Agreement, had the opportunity to discuss it with counsel, and is executing it with an understanding of its provisions. This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same document.

remainder of page left intentionally blank

[signatures appear on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, effective as of the day, month and year written above.

**Midwest Independent Transmission
System Operator, Inc.**

Company:

By: _____

By: _____

Print name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

APPENDIX A

TO UNIVERSAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

Company, _____ Employees, Agents, or Consultants subject to
Confidentiality Agreement as of this _____ day of _____, 20 ____ :

	<u>Print Name</u>	<u>Title</u>	<u>E-mail Address</u>	Function (Transmission/Reliability, <u>Merchant/Market, or N/A*</u>)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

(Attach Additional Pages If Necessary)

* An individual who is an employee of a Transmission Provider (as defined in 18 C.F.R. § 358.3(k)) may not be subject to the FERC functional separation requirements (*i.e.*, "N/A" designation) under certain circumstances in accordance with FERC Order No. 717 and the FERC regulations therein adopted. If an individual would receive information subject to this Agreement, the copy of this Appendix A execute for that individual must be accompanied by **written confirmation** from Company stating the following: (1) the designated individual is not engaged in transmission or marketing functions (*i.e.*, day-to-day duties and responsibilities for planning, directing, organizing or carrying out operations); (2) the individual has received training on the Standards of Conduct; and (3) the individual undertakes to comply with such Standards, including in particular the "no conduit rule" set forth in 18 C.F.R. § 358.6.

NOTE: Any changes to the information on this Appendix A must be sent immediately by e-mail to the Midwest ISO Client Relations Department at clientrelations@midwestiso.org.

**CRITICAL ENERGY INFRASTRUCTURE INFORMATION
GENERAL NON-DISCLOSURE AGREEMENT**

WHEREAS, Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") is prepared to disclose Critical Energy Infrastructure Information ("CEII") under this Critical Energy Infrastructure Information General Non-Disclosure Agreement ("NDA") to _____ ("Recipient"), an individual employed with _____, in connection with a legitimate need for the CEII (the "Purpose") (Midwest ISO and Recipient may be collectively referred to as "Parties" or singly as "Party");

WHEREAS, Recipient represents that he/she has a legitimate purpose for requesting the CEII pursuant to this Agreement; and,

WHEREAS, Midwest ISO and Recipient desire to set forth in writing the terms and conditions of their agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions - For purposes of these provisions:
 - a. The term "CEII" shall include specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure. Narratives such as the descriptions of facilities and processes are generally not CEII unless they describe specific engineering and design details of critical infrastructure.
 - b. The term "Recipient" means someone who has executed this NDA and is approved to receive CEII.
2. A Recipient certifies that it is his/her understanding that access to CEII is provided pursuant to the terms and restrictions of the provisions in this NDA, and that such Recipient has read the provisions and agrees to be bound by them.
3. Recipient may only discuss CEII with another Recipient of the identical CEII. A Recipient may check with the Midwest ISO to determine whether another individual is a Recipient of the identical CEII.
4. A Recipient of CEII may use CEII as foundation for advice provided to others, but may not disclose CEII to another individual unless that individual is an approved Recipient of the same CEII.

Initials: _____
Date: _____

5. A Recipient will not knowingly use CEII for an illegal or non-legitimate purpose.
6. All CEII shall be maintained by Recipient in a secure place. Access to those materials shall be limited to other Recipients of the identical material. Recipients may make copies of CEII, but such copies become CEII and subject to these same procedures. Recipients may make notes of CEII, which shall be treated as CEII notes if they contain CEII.
7. Recipients must return CEII to the Midwest ISO or destroy CEII within fifteen days of a written request by the Midwest ISO to do so, except that CEII notes may be retained in accordance with Paragraph 6, above. Within such time period, each Recipient, if requested to do so, shall also submit to the Midwest ISO an affidavit stating that, to the best of his or her knowledge, all CEII has been returned or destroyed and that CEII notes have either been returned, destroyed or are being maintained by Recipient in accordance with Paragraph 6.
8. The Recipient remains bound by these provisions unless the Midwest ISO rescinds the provisions or a court of competent jurisdiction finds that the information does not qualify as CEII.
9. The Midwest ISO may reasonably audit the Recipient's compliance with this NDA.
10. Violation of this NDA will be reported to the Federal Energy Regulatory Commission (the "Commission") which in turn may result in criminal or civil sanctions against the Recipient.
11. I hereby certify my understanding that access to CEII is provided to me pursuant to the terms and restrictions of the above CEII provisions, that I have been given a copy of and have read the provisions, and that I agree to be bound by them. I understand that the contents of the CEII, any notes or other memoranda, or any other form of information that copies or discloses CEII shall not be disclosed to anyone other than another person who has been granted access to these same materials. I acknowledge that a violation of this NDA may result in criminal or civil sanctions, including the suspension of my ability to appear before the Commission pursuant to 18 C.F.R. § 385.2102. I agree that my compliance with this NDA is subject to reasonable audit by the Midwest ISO.

By: _____
Signature

Print Name: _____

Title: _____

Representing: _____

Date: _____



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the following agreements and request the Mayor and the City Clerk to execute the Agreements:

1. Universal Non-Disclosure and Confidentiality Agreement
2. Critical Energy Infrastructure Information General Non-Disclosure Agreement

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 28th day of February, 2012.

President

Secretary