

SERTP NON-CEII CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (the “Agreement”) is made and entered into by and between the City of Dalton, Georgia (acting by and through the Board of Water, Light & Sinking Fund Commissioners), Georgia Transmission Corporation, Municipal Electric Authority of Georgia, PowerSouth Energy Cooperative, South Mississippi Electric Power Association and Southern Company Services, Inc. (as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company) (collectively, the “SERTP Sponsors”) and _____ (“Requestor”).

WITNESSETH:

WHEREAS, Requestor desires to obtain confidential information for the purpose of participating in the Southeastern Regional Transmission Planning Process (“SERTP”) and replicating SERTP-related transmission planning studies;

WHEREAS, the Federal Energy Regulatory Commission has required that certain confidential information be provided to stakeholders upon request, subject to confidentiality protections;

WHEREAS, the Parties enter into this Confidentiality Agreement in accordance with the foregoing;

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, SERTP Sponsors and Requestor hereby agree as follows:

1. Definition of Confidential Information. “Confidential Information” shall mean any and all documents, materials and information (in any format) that are: (A) commercially sensitive or may provide another person or entity with a competitive advantage (including, but not limited to, information related to resource dispatch, generator heat rates, fuel forecasts, and loads) or are otherwise confidential for reasons other than (or in addition to) being Critical Energy Infrastructure Information (as that term is defined in is defined at § 388.113 of the Federal Energy Regulatory Commission’s regulations) (“CEII”); and (B) that are provided directly by SERTP Sponsors to Requestor pursuant to this Agreement and/or obtained by Requestor through access to the Secure Area of the SERTP website. While SERTP Sponsors will make every reasonable effort to designate Confidential Information as such (*e.g.*, by marking information “Confidential” and/or “Proprietary”, etc.), the lack of such a designation on information received by Requestor from SERTP Sponsors shall not render this Agreement inapplicable to that undesignated information; rather, the Requestor shall make an independent assessment as to whether undesignated information received from SERTP Sponsors is Confidential Information, and if there be any question whatsoever as to whether such information is Confidential Information, Requestor shall contact the SERTP Sponsors to seek guidance in that regard. Confidential Information shall also include information that is copied or transferred to notes from Confidential Information by persons acting pursuant to this

Confidentiality Agreement and that portion of all notes, working copies, computer data storage, digests, summaries or abstracts prepared from this material containing the Confidential Information. Confidential Information does not include (i) information that is now in or hereafter enters the public domain through no action on Requestor's part in violation of the terms or conditions hereof; (ii) information that Requestor can demonstrate was in Requestor's possession at the time of disclosure and was not acquired by Requestor directly or indirectly from SERTP Sponsors on a confidential basis; or (iii) information intentionally disclosed by SERTP Sponsors to others on an unrestricted, non-confidential basis.

2. Request of Confidential Information.

- (A) Requestor must include the following in its request for Confidential Information:
- (i) a specific description of the Confidential Information sought ("Requested Confidential Information");
 - (ii) an explanation of the purposes for which Requestor seeks Requested Confidential Information (including a description of the Requestor's status as a Stakeholder in the SERTP, the Requestor's need of the Requested Confidential Information in order to participate in the SERTP or to replicate a SERTP-related transmission study, and a warranty that any Confidential Information received by Requestor would be used solely in accordance with Section 5 of this Agreement);
 - (iii) a list of persons who will have access to the Requested Confidential Information and an explanation of why access is necessary for each such person, in the form provided in Exhibit 1 attached hereto (the "List");
 - (iv) an executed individual non-disclosure agreement in the form provided in Exhibit 2 attached hereto ("INDA") for each person seeking access; and
 - (v) in the event Requestor seeks Requested Confidential Information which includes CEII (notwithstanding that CEII is to be obtained primarily through the process described in the SERTP), then the Requestor must provide a copy of an executed and currently effective (and effective throughout the term of this Agreement) CEII Confidentiality Agreement pursuant to the SERTP.
- (B) Within twenty (20) business days of receiving Requestor's request for the Requested Confidential Information, the SERTP Sponsors will determine whether Requestor has presented a valid request ("Valid Request") by reviewing Requestor's request to ensure compliance with subsection A of this section and to determine whether the Requestor has sufficiently demonstrated, to the SERTP Sponsors' satisfaction (such satisfaction not to be unreasonably

withheld), Requestor's need for the Requested Confidential Information in order to participate in the SERTP or to replicate a SERTP-related transmission study. A request shall not be a "Valid Request" if the SERTP Sponsors (i) identify any element of the request that is inappropriate, insufficient or lacking; (ii) identify any person designated on the List for whom the need for access is inappropriate or insufficiently justified or explained; or (iii) dispute whether the SERTP Sponsors are obligated to provide any requested information.

- (C) Within five (5) business days of the SERTP Sponsors' approval of a complete and Valid Request, the SERTP Sponsors will notify Requestor in writing of their intent to provide the Requested Confidential Information (in whole or in part) pursuant to this Agreement. If the SERTP Sponsors find that a request is not a "Valid Request," the SERTP Sponsors will so notify Requestor in writing. Should the SERTP Sponsors determine that the request is not a Valid Request, the SERTP Sponsors shall have no obligation to provide the Requested Confidential Information.

3. Form of Confidential Information Provided. The SERTP Sponsors may provide Confidential Information in any reasonable form or format, including any electronic format requiring Requestor's use of reasonably commercially available software and/or hardware. The SERTP Sponsors may include or apply a mark indicating the confidentiality of information, which Requestor shall not remove; however, the absence of such a mark does not indicate that such information is not Confidential Information subject to the requirements of this Agreement. The SERTP Sponsors may use other techniques, including but not limited to, serial numbers, encryption technology, or password protection, to allow the identification of Confidential Information as unique to that provided to Requestor and to help protect Confidential Information from access by unauthorized persons. The SERTP Sponsors have no obligation to explain, interpret, or modify the Confidential Information provided pursuant to this Agreement. However, the SERTP Sponsors may redact or otherwise modify Confidential Information prior to providing it to Requestor to avoid disclosure of information that is not responsive to Requestor's request or not required by the SERTP Process or by applicable legal or regulatory authority. The SERTP Sponsors reserve the right to retain Confidential Information at their place(s) of business and to permit Requestor to access the information only during an on-site visit.

4. Non-disclosure. Requestor acknowledges that improper and/or unauthorized use or disclosure of Confidential Information could cause irreparable harm to SERTP Sponsors. Accordingly, Requestor agrees that all Confidential Information will be kept strictly confidential pursuant to the terms and conditions of this Confidentiality Agreement. Requestor agrees that without the prior written consent of the SERTP Sponsors, Confidential Information will not be disclosed in whole, in part or in any derivative form to any person or entity except as permitted in this Confidentiality Agreement. Requestor agrees that the only individuals who will be permitted access to Confidential Information other than Requestor will be employees, contractors or representatives of Requestor who have first signed a copy of the attached Exhibit 2 and returned such signed copy to SERTP Sponsors; provided, however, that Requestor and each such

employee, contractor or representative granted access to Confidential Information pursuant to this Agreement specifically agree and represent to SERTP Sponsors that each such employee, contractor and/or representative is not engaged in any (i) marketing, purchase or sale of electric energy or energy/ancillary products at wholesale, (ii) negotiations of such purchases or sales, (iii) generation development-related activities, (iv) other wholesale electricity market competition-related activity, (v) direct supervision of any employee that engages in (i)-(iv), or (vi) provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale (collectively, "Competitive Duties") and that (s)he will not disclose any Confidential Information in whole, in part or in any derivative form to any individuals, employees of such individuals, or others that perform Competitive Duties. If any person who has been permitted to receive Confidential Information under this Agreement is subsequently assigned to perform any Competitive Duties, such person shall have no access to Confidential Information, shall immediately dispose of any Confidential Information in that person's possession, and shall continue to comply with the requirements set forth in this Agreement with respect to any Confidential Information to which such person previously had access.

5. Permitted Use. Requestor may use the Confidential Information only for the purpose of participating in the SERTP and/or replicating SERTP-related transmission planning studies. No other uses of the Confidential Information are permissible.

6. Directors, Officers, Employees and Affiliates. Requestor hereby agrees that its directors, officers, employees and affiliates will be bound by this Confidentiality Agreement even if they are not permitted access to the Confidential Information, and Requestor agrees to be responsible for the actions, uses and disclosures of their respective directors, officers, employees, affiliates, consultants and advisors.

7. Compelled Disclosure. If Requestor or any individual authorized to access Confidential Information pursuant to this Agreement becomes legally compelled to disclose any of the Confidential Information, that person will provide SERTP Sponsors with prompt notice so that SERTP Sponsors may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, such person will furnish only that portion of SERTP Sponsors' Confidential Information that is legally required and Requestor will cooperate with SERTP Sponsors to enable SERTP Sponsors to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information that is subject to disclosure.

8. Governing Law. This Confidentiality Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by and under the laws of the State of Georgia (without giving effect to principles of conflicts of laws). Jurisdiction and venue with respect to any dispute arising under this agreement shall lie in any appropriate state or federal court situated in the State of Georgia.

9. Severability. In the event that any provision or portion of this Agreement is determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect to the fullest extent permitted by applicable law.

10. Term. The term of this Confidentiality Agreement shall commence on the date hereof and shall terminate three (3) calendar years from December 31st of the year in which this Agreement is executed; provided, however, that notwithstanding the termination of this Agreement, the confidentiality obligations and covenants of Requestor under this Agreement will survive indefinitely and shall not terminate, or else shall remain in effect as long as permitted by law (provided that, with respect to any Confidential Information that constitutes “trade secret” under applicable law, the covenants herein shall apply for the life of the trade secret). Within five (5) days of the termination of this Agreement, or upon SERTP Sponsors’ request, Requestor and all persons authorized by this Agreement to be in possession of Confidential Information shall return all Confidential Information (including information that is copied or transferred to notes from Confidential Information by persons acting pursuant to this Confidentiality Agreement and all working copies thereof, computer data storage, digests, summaries, or abstracts prepared from this material containing Confidential Information) to SERTP Sponsors and return to SERTP Sponsors an executed certificate in the form found in Exhibit 3 to demonstrate that such Confidential Information has been returned or permanently destroyed.

11. Audit Rights. Requestor agrees that SERTP Sponsors may audit Requestor’s use(s) and disclosure(s) of Confidential Information, both within and outside Requestor’s organization (including affiliates, agents and/or contractors), during normal business hours following reasonable notice to Requestor. Any audit that encompasses Requestor’s competitively sensitive, CEII or proprietary data will be performed by an independent agent. The independent agent auditing such information will be a firm of certified public accountants and will be required to keep all such competitively sensitive, CEII or proprietary data confidential.

12. Remedies. Requestor expressly understands and agrees that in the event of any breach or threatened breach of this Confidentiality Agreement, SERTP Sponsors shall be entitled to all remedies available at law or in equity.

13. Modification and Assignment. This Agreement can only be modified by written agreement signed by the Parties. Requestor may not assign this Agreement without the written consent of the SERTP Sponsors.

14. No Third-Party Beneficiary. This Agreement inures only to the benefit of the SERTP Sponsors and the Requestor and is not intended to benefit any third-party.

15. No Warranty or Representation. The Parties understand and agree that any Confidential Information disclosed to Requestor under this Agreement is provided without any representation or warranty of any kind, expressed or implied, including without limitation any warranties as to the accuracy or completeness of such information, and Requestor shall be solely responsible for its reliance thereon. Neither the SERTP Sponsors nor any of their representatives or agents shall have any liability of any kind (including, without limitation, for direct, indirect, incidental, special, punitive or consequential damages) to Requestor, their representatives, their customers, their members, their affiliates or any other person, group, or entity resulting from or connected with the transmittal, receipt or use of (including, without limitation, for technical, computer, communication or human errors, problems or lapses relating to) Confidential

Information by Requestor or its representatives. Except for direct actual damages incurred by Requestor caused solely by the SERTP Sponsors' intentional wrongdoing with intent to cause harm or willful misconduct in connection with its performance of this Agreement, Requestor expressly waives any and all rights and remedies against the SERTP Sponsors and/or their representatives and agents in any way relating to Confidential Information or this Agreement.

16. Execution. A facsimile or photocopy of Requestor's signature shall have the same force and effect as an original. The SERTP Sponsors' assent to and acceptance of this Agreement shall be evidenced by their performance hereunder.

AGREED AND EXECUTED BY:

REQUESTOR: _____
By _____
(signature): _____
Its (title): _____
Name: _____
Address: _____

Telephone: _____
E-mail: _____
Date: _____

EXHIBIT 1

LIST OF PERSONS WITH ACCESS TO CONFIDENTIAL INFORMATION

DATE: _____

This Exhibit 1 provides the list referenced in Section 2 of the “SERTP Confidentiality Agreement” between the City of Dalton, Georgia (acting by and through the Board of Water, Light & Sinking Fund Commissioners), Georgia Transmission Corporation, Municipal Electric Authority of Georgia, PowerSouth Energy Cooperative, South Mississippi Electric Power Association, and Southern Company Services, Inc. (as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company) (collectively, the “SERTP Sponsors”) and _____ (“Requestor”), originally dated _____ (as may have been subsequently renewed, modified or replaced, the “Agreement”). This Exhibit 1 is part of the Agreement, and terms used herein have the same meaning as in the Agreement. The persons (who Requestor agrees do not and will not perform or engage in Competitive Duties for purposes of Section 4 of the Agreement and for whom Requestor seeks access to Requested Confidential Information) and the explanation of why access is necessary for such persons are as follows:

Name: _____
Organization: _____
Address: _____

Telephone: _____
E-mail: _____

Name: _____
Organization: _____
Address: _____

Telephone: _____
E-mail: _____

Name: _____
Organization: _____
Address: _____

Telephone: _____
E-mail: _____

Name: _____
Organization: _____
Address: _____

Telephone: _____
E-mail: _____

EXPLANATION (ATTACH ADDITIONAL PAGES AS NEEDED): _____

EXHIBIT 2

INDIVIDUAL NON-DISCLOSURE AGREEMENT (“INDA”)

The undersigned acknowledges and agrees as follows:

1. The City of Dalton, Georgia (acting by and through the Board of Water, Light & Sinking Fund Commissioners), Georgia Transmission Corporation, Municipal Electric Authority of Georgia, PowerSouth Energy Cooperative, South Mississippi Electric Power Association and Southern Company Services, Inc. (as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company) (collectively, the “SERTP Sponsors”), and _____ (“Requestor”) have entered into the “SERTP Confidentiality Agreement”, originally dated _____ (as may have been subsequently renewed, modified, supplemented or replaced, the “Agreement”).

2. This Exhibit 2 is a part of the Agreement. All terms used herein have the same meaning as in the Agreement.

3. I understand and acknowledge that the Requested Confidential Information to be provided pursuant to the Agreement is confidential, proprietary, and valuable, and may include CEII.

4. I have read the entire Agreement. I acknowledge all obligations which apply to Requestor under the Agreement, and I agree that they apply to and may be enforced against me personally and specifically. Those obligations include (but are not limited to) the obligations of confidentiality under Section 4 (including the commitment that I do not engage in Competitive Duties, as defined in that Section) and the limitations on use of Confidential Information under Section 5, which continue indefinitely under Section 10 even if the Agreement expires or terminates.

5. I understand that I may not disclose Confidential Information to anyone, in any way, including persons employed or retained by Requestor, except as authorized by the Agreement. I agree to be bound by this duty and all other duties and obligations imposed by the Agreement.

[NEXT PAGE IS SIGNATURE PAGE]

Initial _____

AGREED AND EXECUTED by:

Signature: _____

Name: _____

Organization: _____

Address: _____

Telephone: _____

E-mail: _____

Date: _____

EXHIBIT 3

CERTIFICATE AS TO RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

The undersigned, a duly authorized representative for Requestor (or a successor thereof as permitted in Section 13 of the Agreement) acknowledges and agrees that, in accordance with the provisions of the Agreement effective _____, after reasonable investigation and to the best of his or her knowledge, that all originals and copies of the Confidential Information as defined in the Agreement and provided by SERTP Sponsors to Requestor pursuant to the terms of the Agreement, including any and all copies, reproductions and excerpts thereof, have been timely returned or permanently destroyed as required in the Agreement.

Dated this ___ day of _____, _____.

Requestor

By: _____

Print Name: _____

Title: _____