



MEMBER CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") dated _____, is entered into by and among SERC Reliability Corporation ("SERC") and City of Columbia, Missouri, a SERC Member ("Member Party"), hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS SERC is an organization formed to augment further the reliability and adequacy of bulk power supply in the areas served by its Member Systems; and

WHEREAS SERC comprises a region that includes 16 States in the Southeastern and Central United States, and has more than 50 Members (hereinafter referred to as "Members") comprising and engaged in all segments of the electric power industry, to include both private and public electric utilities, government-owned utilities, power marketers, and merchant electricity generators and all the utility activities associated therewith; and

WHEREAS in furtherance of SERC's purposes SERC and its Members engage in activities and studies that include, among other things, establishing and measuring reliability policies, standards, principles and guides, and developing and exchanging information with respect to operating and planning matters that relate to adequacy and reliability, all as such relate to bulk power supply (hereinafter referred to as "SERC Functions"); and

WHEREAS SERC pursues and performs SERC Functions primarily through committees and subcommittees made up of employees of its various Members (hereinafter referred to as "Member Employees"); and

WHEREAS during the performance of SERC Functions Member Employees may come into possession of certain Confidential Information, as defined and described below; and

WHEREAS SERC and its Members desire that the SERC Functions be carried out in an atmosphere of full and complete disclosure, but one which also protects the confidential and proprietary nature of information made available to SERC by its Members or otherwise, and made available to Member Employees performing SERC Functions, by putting into place a process that requires the Member Employees to use Confidential Information only to perform SERC Functions and otherwise prohibits disclosure of any such Confidential Information to any other person for any other purpose; and

WHEREAS such process is to be effectuated in part by this Agreement between the Parties;

NOW THEREFORE, the Parties agree as follows:

1. Confidential Information. For purposes of this Agreement, the term "Confidential Information" means any and all proprietary and confidential information in the possession of SERC, whether printed, written, oral, electronic or on software, including

but not limited to information (a) developed or produced by SERC itself, or (b) obtained from one or more of SERC's Members, and in each case made available to SERC Staff or to Member Employees to perform SERC Functions. Such Confidential Information includes, but is not limited to, non-price information involving power and transmission systems planning and operation, power sales and transfers, transmission transactions, and such other information as SERC or its Members in their sole discretion determine is proprietary and/or confidential; provided, however, that such proprietary and/or confidential information whether in written or electronic form, is marked as confidential or, if disclosed orally, is identified as confidential at the time of disclosure and then is promptly confirmed in writing or electronically to the recipient as confidential. The term "Confidential Information" shall not include any information that a Member, or a Member Employee, can demonstrate (a) is or has been independently developed by the Member, or is lawfully received by the Member or Member Employee from another source having the right to furnish such information to either; (b) has become generally available to the public without breach of this Agreement by the Member or the Member Employee engaged in SERC Functions; or (c) which prior to the time of a Member Employee performing SERC Functions, the Member, or Member Employee, can demonstrate, as evidenced by documentation in the possession of either, was rightfully in possession of either for some other lawful purpose and without restrictions on its use.

2. Obligation of Confidentiality. The Member Party shall assure that all Confidential Information to which its employees serving as Member Employees performing SERC Functions have access shall be kept confidential by the Member Employees. Among other things, the Member Party shall ensure that, without the prior written consent of SERC or the appropriate Member, whichever owns such Confidential Information, which consent shall be in the sole discretion of SERC or the appropriate Member, its Member Employee(s) shall not: (a) use or cause to be used the Confidential Information for any purpose whatsoever other than performing SERC Functions; (b) distribute or disclose in any manner whatsoever any Confidential Information; or (c) permit any third party, specifically including, but not limited to, any other employee of a Member (unless such other employee requires access to the Confidential Information to perform the same or another SERC Function) to have access to any Confidential Information. However, the Member Employee may transmit Confidential Information to such other employees of Members, or its attorneys, accountants and financial advisors (collectively "Representatives") who need to know the Confidential Information for the purposes of the Member Employee performing SERC Functions, as set forth in this Agreement, provided that such Representatives be informed of the terms of this Agreement by the Member Party, instructed by the Member Party that they are to comply with those terms and shall acknowledge in writing that they have read the Agreement and understand its terms.
3. Obligations of Members. To meet its obligations under this Agreement, particularly those set out in Section 2, above, the Member Party shall maintain a list of each of its employees who serves as a Member Employee. Each Member Employee on the list shall be informed of and instructed in the terms of this Agreement by the Member Party, instructed by the Member Party that they are to comply with those terms and shall

acknowledge in writing that they have read the Agreement and understand its terms prior to receiving access to any Confidential Information. The Member Party commits that if one of its Member Employees acts in a manner that results in the Member Party and/or Member Employee breaching or otherwise violating the terms of this Agreement the Member Party will (a) immediately upon learning of such breach or violation notify SERC and any Member whose Confidential Information has been wrongfully disclosed, and (b) take such disciplinary action against that Member Employee as it in its sole discretion deems appropriate.

4. Ownership of Confidential Information. All Confidential Information furnished to SERC by a Member shall be and will remain the property of the submitting Member. All Confidential Information developed or produced by SERC shall be and will remain the property of SERC.
5. Disclosures Required by Court Order or Law. In the event that any Member and/or Member Employee receives a request to disclose any or all of the Confidential Information under the terms of (a) a state freedom of information act, public records act or similar statute, (b) the Federal Freedom of Information Act, (c) a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body or agency, or (d) pursuant to an appropriate request for production of documents in any proceeding before an administrative agency or court of competent jurisdiction, the Member and/or Member Employee agrees to notify SERC, or, if the Confidential Information at issue was submitted by a Member, the submitting Member as well as SERC, immediately of the existence, terms and circumstances surrounding such a request so that SERC and/or the submitting Member may seek an appropriate protective order, take such other action as it deems appropriate to protect against the release of Confidential Information or waive compliance by the Member and/or Member Employee with the appropriate provisions of this Agreement. If the Member and/or Member Employee is compelled to disclose any of the Confidential Information, only that portion thereof compelled to be disclosed will be disclosed, and the Member and/or Member Employee shall use reasonable best efforts to obtain an order or other reliable assurance that confidential treatment shall be accorded to the Confidential Information so disclosed.
6. Remedies. Each Party agrees that any threatened or existing violation of this Agreement would cause SERC or the Member submitting Confidential Information to SERC irreparable harm for which it would not have an adequate remedy at law, and that SERC or such Member shall be entitled to seek immediate injunctive relief prohibiting such violation. In the event that Confidential Information is disclosed in violation of this Agreement, nothing contained herein shall preclude any Member from pursuing an action for damages or for enforcement of any other rights or remedies they shall have at law or in equity.

7. No Licenses Implied. Nothing contained in this Agreement shall be construed as granting or conferring upon either Party any rights by license or otherwise, express or implied, to the Confidential Information.
8. Return of Confidential Information. Upon the request of SERC, either written or electronically transmitted, all documents, records, materials and similar repositories of Confidential Information, including any and all copies thereof in possession of a Member or Member Employee obtained by such Member or Member Employee in the course of performing SERC Functions, whether prepared by or obtained from SERC, shall be promptly surrendered and delivered to SERC. Likewise, upon request of SERC, a Member or Member Employee shall ensure the destruction of all notes, analyses and other information prepared or extracted by a Member or Member Employee and/or Representatives from Confidential Information, and shall certify such destruction to SERC in writing. In the event that any Member or Member Employee is unable to comply with such a request, the Member shall immediately inform SERC and the requesting party of the reasons for the inability to comply with the request.
9. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties concerning the subject matter hereof, and no representations, promise, inducement or statement of intention not set forth in this Agreement has been made by or on behalf of any Party hereto.
10. Prior Agreements. This Agreement shall supersede any and all Confidentiality Agreements previously entered into between SERC and a Member Employee and all terms and conditions of this Agreement will apply to any Confidential Information (as defined in any previous Confidentiality Agreements) obtained under any such previous Confidentiality Agreements; provided however, that the foregoing shall not apply to any individual not designated as a Member Employee on the list described in Section 3 of this Agreement.
11. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provisions shall be fully severable and this Agreement shall be construed as if the illegal, invalid and unenforceable provision had never been a part of this Agreement and the remaining provisions of this Agreement shall be given full force and effect.
12. Survival. The restrictions and obligations of this Agreement shall survive any expiration, termination or cancellation of this Agreement and shall continue to bind the Parties and their successors and permitted assigns.
13. Assignment. No Member Party shall assign any of its rights or delegate any of its duties hereunder to a third party without the required written consent of SERC, which consent shall be at the sole discretion of SERC.



SERC RELIABILITY CORPORATION

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to its principles of conflicts of laws.
15. Termination. Either Party may terminate this Agreement by providing sixty (60) days written notice to the other. Notwithstanding any such termination, all rights and obligations in this Agreement shall survive with respect to any Confidential Information disclosed prior to the effective date of such termination.

IN WITNESS WHEREOF, each of the Parties, intending to be legally bound by the provisions of this Confidentiality Agreement, has caused its duly authorized representatives to execute this Confidentiality Agreement as of the date set forth above.

SERC RELIABILITY CORPORATION

CITY OF COLUMBIA, MISSOURI

Member Company Name

By: _____

By: _____ 

Its: _____

Title: City Manager

Printed Name: De'Carlon Seewood

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor