**MEMORANDUM OF UNDERSTANDING AND NON-DISCLOSURE AGREEMENT**

**FOR COORDINATION OF GAS AND ELECTRIC BLACK START RESTORATION PLANS**

The following participants have agreed to cooperate in accordance with this Memorandum of Understanding (MOU) and to adhere to this Non-Disclosure Agreement (NDA) in connection with the purposes designated in Section 1 below:

* Electric Reliability Council of Texas, Inc. (ERCOT);
* Transmission Service Providers (TSPs) as defined in the ERCOT Protocols;
* Qualified Scheduling Entities (QSEs) representing Black Start Resources (BSRs) as defined in the ERCOT Protocols;
* Resource Entities (REs) representing BSRs as defined in the ERCOT Protocols;
* Gas Transmission Operators (GTOs), which operate natural gas pipelines that transport natural gas to BSRs; and
* Gas Suppliers (GSs), which provide natural gas supply to BSRs either through pipeline systems owned by the Gas Supplier or an affiliate or through third party pipelines.
* Natural gas industry associations that have a member who qualifies for BSGCSG membership

For purposes of this MOU and NDA, individually and/or collectively, such participants shall be designated as “Party” or “Parties.” Each of the Parties, in connection with Confidential Information, as defined below, disclosed by it will be referred to herein as the "Disclosing Party" and in connection with Confidential Information reviewed by it will be referred to herein as the "Reviewing Party.” The Railroad Commission of Texas (RRC) and Public Utility Commission of Texas (PUCT) may each become a Party by executing this MOU and NDA at a future time.

**THE PARTIES AGREE:**

1. **PURPOSE**

The purpose of the MOU is to establish a cooperative working arrangement among the Parties in order to initiate discussions concerning coordination between the participants related to provision of services to BSRs, which may include the disclosure of detailed gas infrastructure information from GTOs and GSs and detailed electric infrastructure information from ERCOT, TSPs, and BSRs subject to the NDA. Such working arrangement may be used for development of Electric Black Start Restoration Plans, Gas Black Start Restoration Plans, other Emergency Operation Plans (such as load restoration), and/or the evaluation of the gas needs to be taken into account in the selection of BSRs for providing Black Start Service (BSS) in the ERCOT Region (Generally referred to below as the “Black Start Coordination”).

The MOU and NDA cover documents and discussions to be used or conducted in connection with Black Start Coordination and may include, but is not limited to, the following: BSS test results; ERCOT’s Black Start Plan, including individual BSR start-up procedures and cranking paths; individual TSP Black Start plans; the provision of contacts for REs, GTOs, and GSs; offsite power to critical gas facilities issues; battery backup issues; identification of time frames for delivery of offsite power to critical gas facilities; coordination efforts between GTOs and GSs; coordination efforts between TSPs; and additional training for Black Start Restoration, if needed.

1. **CONFIDENTIALITY UNDER THE NDA**
2. **CONFIDENTIAL INFORMATION**

For purposes of the NDA, the term “Confidential Information” shall include any information disclosed pursuant to the MOU and not expressly excluded by Section 2.c., including but not limited to, any and all oral information, electronic information, and/or written information and material, in tangible or intangible form (including, without limitation, marketing, technical, engineering, operating, business, gas supply, environmental, project development, economic, and financial information, and reports, analyses, compilations, studies or other documents or records which contain, or otherwise reflect or are generated from such information or data relating to the future, present, or past rates, revenues, expenses, plans or assets of Disclosing Party, which may be proprietary and non-public) relating to Black Start Coordination, which a Disclosing Party provides, whether prepared by Disclosing Party or otherwise, to a Reviewing Party or its employees, agents, and/or representatives hereunder, regardless of whether such information is disclosed intentionally or inadvertently, before or after execution of the NDA. Confidential Information in tangible form must be marked “Confidential” or with a similar designation. Discussions of Confidential Information, whether oral or via electronic means (such as electronic mail), shall be designated Confidential Information by means of verbally stating that the information is confidential or labeling the electronic means as confidential and shall be kept confidential in accordance with the NDA. No Disclosing Party, by the provision of Confidential Information subject hereto, represents or warrants the accuracy, completeness, or fitness for a particular purpose of any such Confidential Information. It is further understood and agreed that no Disclosing Party or its employees, agents, and/or representatives shall have any liability or responsibility from the lawful use of any confidential information so furnished or otherwise provided. All Confidential Information shall be treated in the manner set forth in the NDA.

1. **PROTECTION AND PURPOSE**

The Parties agree that any Reviewing Party that receives Confidential Information subject hereto shall:

* 1. maintain Confidential Information in strict confidence and only use such Confidential Information for the purposes of Black Start Coordination;
	2. not disclose Confidential Information to any person not authorized by this NDA. For purposes of access to Confidential Information, the employees, agents, and/or representatives of a Reviewing Party may be persons: who are participants in Black Start Coordination; who are employees, agents, and/or reviewing representatives of the Reviewing Party; and who have been authorized by the Reviewing Party to review Confidential Information. The Reviewing Party shall limit the number of its employees, agents, and/or representatives that review Confidential Information to the minimum number of persons necessary and on a “need to know” basis. Reviewing employees, agents, and/or representatives include associated attorneys, engineers, accountants, consultants, or other persons employed or retained by a Reviewing Party and engaged directly in Black Start Coordination;
	3. maintain Confidential Information in a secure place that does not allow access to the Confidential Information to persons not authorized to review the Confidential Information;
	4. treat (i) Confidential Information as Protected Information under the ERCOT Protocols; and (ii) any and all information associated with Critical Assets under the NERC Reliability Standards as Confidential Information;
	5. not copy or make public to any third party, in whole or in part, Confidential Information without the prior written consent of the Disclosing Party. Except as expressly provided in this NDA, the Reviewing Party shall maintain a record of all copies, whether paper or electronic, made of Confidential Information and shall provide a copy of such record to the Disclosing Party upon request. The record shall specify the person possessing the copy or copies and the location of the Confidential Information (including storage on electronic media). Limited notes may be made of Confidential Information, and such notes shall themselves be treated as Confidential Information, unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document;
	6. restrict access to copies of Confidential Information. A Disclosing Party may provide one copy of Confidential Information specifically requested by the Reviewing Party to the person designated by the Reviewing Party as a person authorized by the Reviewing Party to review the Confidential Information. Each Reviewing Party shall be responsible for any breach of this NDA by any of its employees, agents, and/or representatives;
	7. return Confidential Information, including, but not limited to, any and all written and electronic originals, copies, abstracts, translations, notes, or any other form of said material, and all documents containing Confidential Information that have been prepared by the Reviewing Party thereof, when they are no longer needed for Black Start Coordination, upon termination of this NDA, or with the agreement of the Disclosing Party, destroy such information and provide a Certificate of Destruction to the Disclosing Party;
	8. notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information, cooperate in any reasonable way to help the Disclosing Party regain possession of the Confidential Information, and use all reasonable efforts to prevent further unauthorized use or disclosure of the Confidential Information;
	9. agree to the following certification: Each Reviewing Party, on behalf of itself and its employees, agents, and/or representatives that review the Confidential Information, expressly agrees to the certification attached hereto as Attachment A and will cause its employees, agents, and/or representatives that will review the Confidential Information to sign the certification and submit it to ERCOT by email to nda@ercot.com before the employee, agent, and/or representative is permitted to review the Confidential Information.
1. **RESTRICTIONS**

The restrictions set forth in Section 2.b. above shall not apply to any particular Reviewing Party with respect to Confidential Information that:

* 1. the Reviewing Party can demonstrate by reference to written records that the Confidential Information was already known or in the possession of the Reviewing Party at the time of receipt from the Disclosing Party;
	2. at the time of disclosure by the Disclosing Party is or becomes a part of the public domain without breach of this NDA by any Reviewing Party;
	3. is or becomes acquired rightfully by the Reviewing Party or its employees, agents, and/or Representatives without obligations of confidentiality or restrictions as to use, from a source other than the Disclosing Party, who to the best knowledge of the Reviewing Party was not under a contractual or other obligation of confidentiality and/or non-use, either directly or indirectly, from the Disclosing Party;
	4. when ERCOT is the Reviewing Party, is expressly designated not to be Protected Information by ERCOT Protocols Section 1.3.1.2, Items Not Considered Protected Information, if applicable, or that, pursuant to ERCOT Protocols Section 1.3.3, Expiration of Confidentiality, is no longer confidential, if applicable;
	5. is independently developed by the Reviewing Party without reliance on, use of, or strategic guidance derived from, the Disclosing Party’s Confidential Information, and the Reviewing Party can document by written records such independent creation; or
	6. with respect to disclosure, the Reviewing Party may be compelled legally to disclose (by oral questions, interrogatories, requests for public information, subpoena of documents, civil investigative demand or similar process or otherwise pursuant to applicable law) pursuant to judicial action or government regulations, provided that the Reviewing Party notifies the Disclosing Party as soon as reasonably possible after receipt of such order/requirement for disclosure and reasonably cooperates with the Disclosing Party in the event that the Disclosing Party elects to contest legally and avoid or limit such disclosure by protective order or other appropriate remedy. If in the absence of a protective order or the receipt of a waiver hereunder the Reviewing Party is compelled to disclose Confidential Information, the Reviewing Party may disclose without liability hereunder only that portion of Confidential Information that, in the opinion of counsel, is legally required; provided, however, that the Reviewing Party shall take reasonable measures to assure that, to the extent possible, confidential treatment will be accorded to any such Confidential Information disclosed.
1. **RIGHTS AND LICENSES OF CONFIDENTIAL INFORMATION**

This NDA and the furnishing of Confidential Information as provided herein shall not be construed as establishing, either expressly or by implication, any grant of rights or licenses to a Reviewing Party with respect to the Confidential Information or any intellectual property of the Disclosing Party.

1. **REMEDIES FOR BREACH OF CONFIDENTIALITY**

The Parties agree that, if a breach of confidentiality pursuant to this NDA occurs by a Reviewing Party, Disclosing Party:

(a) may suffer immediate irreparable harm and significant injury and loss to a degree which would be difficult to ascertain and which would not be fully compensable by damages alone; and

(b) shall have the right to invoke the jurisdiction of the courts to seek immediate temporary or permanent injunctive relief, specific performance, or other equitable relief without bond and without prejudice to any other rights and remedies available to the Disclosing Party.

1. **INTELLECTUAL PROPERTY RIGHTS OF THE PARTIES**

Any intellectual property right which is owned or controlled by a Party hereto prior to the date of this NDA, or which is acquired or developed by a Party independently of its performance under this MOU, shall at all times continue to be owned or controlled by said Party.

1. **THIRD PARTY CLAIMS**

Each Party shall be responsible for third party claims, losses, damages, and expenses, which are proximately caused by the acts or omissions of that Party or its employees, agents, or representatives acting within the scope of their employment.

1. **ENTIRE AGREEMENT**

This MOU and NDA embody the entire agreement between the Parties with regard to the matters described herein and supersede all other communications in these connections, either oral or written. The Parties shall not be bound by, or liable for any statement, representation, promise, inducement or understanding not set forth herein. No amendments or modifications shall be valid unless incorporated by writing and agreed to by each Party to this NDA.

1. **CHOICE OF LAW AND SURVIVAL**

This NDA is to be construed and interpreted in accordance with the laws of the State of Texas without regard to conflict-of-law principles. The Parties consent to the jurisdiction of Texas federal, state, and administrative courts for any actions, suits, or proceedings arising out of or relating to this NDA. The rights and obligations contained in this NDA shall survive any termination of this NDA.

1. **EFFECTIVE DATE, MODIFICATION AND TERMINATION**

This NDA is effective as to a Party on the Party’s date of signature and shall remain in force for twenty-four (24) months from the date of signature of the last Party to sign or upon termination in accordance with the terms set forth herein, whichever comes first.

This NDA may be modified by written agreement and with the consent of all Parties. Any modifications must be signed by the signatory for each Party listed below or the Party’s authorized designee.

This NDA may be terminated at any time with the consent of all Parties. Any Party may withdraw unilaterally as a Party to this NDA by providing thirty (30) days written notice to all other Parties without prejudice to that Party’s obligations with respect to Confidential Information subject hereto that was previously reviewed by such Party.

Notwithstanding the aforementioned, the obligations set forth in Section 2, Confidentiality, shall remain in force indefinitely; however, with respect to any Confidential Information in the form of a document in the possession of Reviewing Party, the obligations set forth in Section 2, Confidentiality, shall remain in force until such time as the Reviewing Party has returned or destroyed such Confidential Information in accordance with Section 2.b.7 hereunder.

1. **CERTIFICATION**

Each Party represents that the person signing below on its behalf has the necessary right and authority to execute this MOU and NDA and bind that Party to the provisions of the NDA. The Parties further agree that this MOU and NDA contain the entire understanding of the Parties with respect to the subject matter hereof and that there are no other agreements or understandings with respect to the subject matter hereof. This MOU and NDA may be executed by facsimile or scanned and electronically transferred signatures. A copy of this MOU and NDA bearing such a signature or signatures shall have the same force and effect as an original agreement with inked original signatures. Once signed, any reproduction of this MOU and NDA made by reliable means (*e.g*., photocopy, scan, facsimile) is considered an original. This MOU and NDA may be executed and delivered in one or more counterparts (and one or more execution pages may be detached from one copy of this MOU and attached to another copy in order to form one or more counterparts), each of which will be deemed an original, and it will not be necessary in making proof of this MOU and NDA or its terms to account for more than one of such counterparts.

**AGREED BY:**

 **Railroad Commission of Texas: Public Utility Commission of Texas:**

 Signed Signed

 Printed Name, Title Printed Name, Title

 Date Date

 **Electric Reliability Council of Texas, Inc.:**

 Signed

 Printed Name, Title

 Date

**Transmission Service Provider (TSP)**

Name of TSP

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed

Printed Name, Title

Date

**Qualified Scheduling Entity (QSE) representing Black Start Resource**

Name of QSE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed

Printed Name, Title

Date

**Resource Entity (RE) representing Black Start Resource**

Name of RE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed

Printed Name, Title

Date

**Gas Transmission Operator (GTO)**

Name of GTO

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed

Printed Name, Title

Date

**Gas Supplier (GS)**

Name of GS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed

Printed Name, Title

Date

**Attachment A – Certification for Non-Disclosure Agreement for Coordination of Gas and Electric Black Start Restoration Plans**

*I hereby certify that the Confidential Information is being provided to me pursuant to the terms and restrictions of the NDA and agree to be bound by it. I understand that the contents of the Confidential Information, any notes, memoranda, or any other form of written or oral information regarding or derived from the Confidential Information shall not be disclosed to anyone other than in conformance with the terms of the NDA and shall be used only for the purpose of Black Start Coordination as described in Section 1 of the MOU. I acknowledge that the obligations imposed by this certification are pursuant to such NDA.*

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:

Printed Name:       Title:

Reviewing Party Name:

STATE OF       §

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COUNTY OF       §

Before me, a notary public, on this day personally appeared      , known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that s/he signed the document in the capacity designated, if any, and further states that s/he has read the agreement and the statements therein contained are true and correct.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public