

## NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT

This Non-Disclosure and Use of Information Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the California Independent System Operator Corporation ("ISO") and \_\_\_\_\_ ("Receiving Party").

WHEREAS, Receiving Party seeks to obtain certain confidential or proprietary information from the ISO pertinent to the Congestion Revenue Rights Studies and Locational Marginal Price Studies performed by the ISO; and

WHEREAS, the ISO is willing to provide such materials to the Receiving Party under suitable contractual limits and protection concerning the disclosure and use of confidential or proprietary information.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the ISO and the Receiving Party agree as follows:

1. Purpose, Scope and Definition. The purpose of this Agreement is to permit the Receiving Party to review and use Confidential Information disclosed by the ISO, solely in connection with the Receiving Party's review and analysis of the potential impacts of implementing Locational Marginal Prices in the ISO Control Area. Confidential Information under this Agreement consists of (i) the ISO's supporting data for the Congestion Revenue Rights Studies and Locational Marginal Price Studies, (ii) all written materials marked "Confidential", "Proprietary" or with words of similar import provided to Receiving Party, and (iii) all observations of equipment (including computer screens) and oral disclosures related to the ISO's systems, operations and activities that are indicated as such at the time of observation or disclosure, respectively (collectively, "Confidential Information"). Confidential Information includes portions of documents, records and other material forms or representations which Receiving Party may create, including but not limited to handwritten notes or summaries, that contain or are derived from such Confidential Information.

2. Non-Disclosure. Subject to Paragraph 4 below, the Receiving Party shall keep Confidential Information in strict confidence and shall not disclose such information or otherwise make it available, in any form or manner, to any other person or entity (a "third party") other than its employees, without the prior written consent of the ISO. The Receiving Party will cause each of its employees who will have access to Confidential

Information to acknowledge that they have read this Agreement and agree to abide by all of its terms regarding use and disclosure of Confidential Information by execution of Exhibit A.

3. Use of Confidential Information. The Receiving Party shall use Confidential Information received hereunder only for the purposes identified herein. Any other use shall be only with the prior written consent of the ISO.

a. It is understood and agreed by Receiving Party that the Confidential Information constitutes confidential and/or proprietary information of the ISO. Receiving Party shall maintain the Confidential Information in strict confidence and shall not disclose, duplicate, or otherwise reproduce the Confidential Information, directly or indirectly, in whole or part. Further, Receiving Party understands that California Public Utilities Code Section 352.7 may apply to the terms of this Agreement.

4. Exceptions to Non-Disclosure. Notwithstanding Paragraph 2 above, a party to this Agreement shall not have breached any obligation under this Agreement if Confidential Information is disclosed to a third party when the Confidential Information:

(a) was in the public domain at the time of such disclosure or is subsequently made available to the public consistent with the terms of this Agreement; or

(b) had been received by the Receiving Party at the time of disclosure through other means without restriction on its use, or had been independently developed by the Receiving Party as shown through documentation; or

(c) is subsequently disclosed to the Receiving Party by a third party without restriction on use and without breach of any agreement or legal duty; or

(d) subject to the provisions of Paragraph 5, is used or disclosed pursuant to statutory duty or an order, subpoena or other lawful process issued by a court or other governmental authority of competent jurisdiction.

5. Notice of Pending Third Party Disclosure.

In the event that a court or other governmental authority of competent jurisdiction issues an order, subpoena or other lawful process requiring the disclosure of Confidential Information, the Receiving Party shall notify the ISO immediately upon receipt thereof to facilitate the ISO's efforts to prevent such disclosure, or otherwise preserve the confidentiality of the Confidential Information. The Receiving Party shall not be in violation of this Agreement if it complies with an order of such court or governmental authority to disclose Confidential Information, after the ISO either has sought to maintain the confidentiality of such information as provided herein, or has notified the Receiving Party in writing that it will take no action to maintain such confidentiality.

6. Term. This Agreement shall remain in effect unless and until the ISO provides ten (10) days prior written notice to the Receiving Party. Termination shall not extinguish any claim, liability or cause of action under this Agreement existing at the time of termination.

7. Provisions Surviving Termination. The provisions of Paragraphs 2, 3, 4, and 5 shall survive the termination of this Agreement for a period of ten (10) years. The provisions of Paragraph 8 shall continue after termination until satisfied.

8. Return or Destruction of Confidential Information. Upon termination of this Agreement, all Confidential Information in the possession or control of the Receiving Party, including its employees, shall be returned to ISO, including all copies of such information in any form whatsoever, unless otherwise instructed in writing by the ISO. In lieu of return, the Receiving Party may certify to the ISO in writing that all such information, in any form whatsoever, has been destroyed.

9. Notices.

(a) Representatives and Addresses.

All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing, unless otherwise agreed by the Parties, and shall be delivered in person or sent by certified mail, postage prepaid, by overnight delivery, or by electronic facsimile transmission with an original sent immediately thereafter by postage prepaid mail, and properly addressed as follows:

Receiving Party:

ISO: James Price  
California Independent System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Telephone: (916) 608-5725  
Facsimile: (916) 351-2267

and

Christine Kirsten  
California Independent System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Telephone: (916) 608-7013  
Facsimile: (916) 608-7296

(b) Changed Representatives and Addresses. A party hereto may from time to time change its representative or address for the purpose of notices to that party by a similar notice specifying a new representative or address, but no such change shall be deemed to have been given until such notice is actually received by the party being so notified.

(c) Effective Date of Notices. All notices and other communications required or permitted under this Agreement that are addressed as provided in this Paragraph 9 shall be effective upon delivery if delivered personally, by overnight delivery or by facsimile transmission; if delivered by mail, such notices shall be effective three days following deposit in the United States mail, postage prepaid.

10. Complete Agreement; No Other Rights.

(a) This Agreement contains the complete and exclusive agreement of the Parties with respect to the subject matter thereof, and

supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, and writings prior to the date of this Agreement, with respect to its subject matter. No change to this Agreement shall be effective unless agreed to in writing by the parties hereto. Any conflict between the language of this Agreement and any mark, stamp, annotation or other language identifying something received hereunder as Confidential Information shall be resolved in favor of this Agreement.

(b) This Agreement is not intended to create any right in or obligation of any party or third party other than those expressly stated herein.

11. No Warranties or Representations. Any Confidential Information disclosed by the ISO under this Agreement carries no warranty or representation of any kind, either express or implied. The Receiving Parties shall not be entitled to rely on the accuracy, completeness or quality of Confidential Information, even for the purpose stated in Paragraph 1.

12. Injunctive Relief. Receiving Party agrees that, in addition to whatever other remedies may be available to the ISO under applicable law, the ISO shall be entitled to obtain injunctive relief with respect to any actual or threatened violation of this Agreement by Receiving Party or any third party. Receiving Party agrees that it shall bear all costs and expenses, including reasonable attorneys' fees, that may be incurred by the ISO in enforcing the provisions of this paragraph.

13. Receiving Party. The Receiving Party agrees to comply in all respects with any governmental laws, orders or other restrictions which may be imposed from time to time by the government of the United States ("Export Laws") to assure that Confidential Information nor any direct product thereof are (i) exported, directly or indirectly, in violation of the Export Laws, or (ii) are intended to be used for any purposes prohibited by the Export Laws, including without limitation, nuclear, chemical or biological weapons proliferation. Receiving Party certifies that it will not transfer or export any product, process or service that is a direct product of Confidential Information.

14. Governing Law. This Agreement is made in the State of California and shall be governed by and interpreted in accordance with its laws.

15. Assignment. This Agreement shall be binding upon the parties, their successors, and

assigns. Receiving Party shall not assign this Agreement without the ISO's prior written consent.

16. Construction Of Agreement. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against any party, but shall be construed in the manner that most accurately reflects the parties' intent as of the date they executed this Agreement.

17. Signature Authority. Each person signing below warrants that he or she has been duly authorized by the party for whom he or she signs to execute this Agreement on behalf of that party.

18. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION

By: \_\_\_\_\_  
Name: Jim Detmers  
Title: Vice President of Operations  
Date:

RECEIVING PARTY:

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:  
Title:  
Date:

Exhibit A

INDIVIDUAL AGREEMENT TO BE BOUND BY NON-DISCLOSURE AND  
USE OF INFORMATION AGREEMENT

The undersigned, \_\_\_\_\_ (print or type name), employed by \_\_\_\_\_, hereby acknowledges that he or she has received a copy of the Non-Disclosure and Use of Information Agreement dated \_\_\_\_\_ between the California Independent System Operator Corporation and the Receiving Party designated therein ("Agreement"). The undersigned hereby acknowledges that the undersigned has read the Agreement and understands the importance of maintaining the confidentiality of Confidential Information (as defined in the Agreement), the provisions of the Agreement relating to such confidentiality, and the limitations on the use of Confidential Information. In consideration thereof, the undersigned agrees to be bound by all of the provisions of the Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_