

Transmission Owner Agreement – Administrative Committee (TOA-AC)

Non-Disclosure Agreements

Summary & Recommendations

Draft: 9/1/16

The PJM Transmission Owners and PJM have developed and executed various Non-Disclosure Agreements (NDAs) to govern the disclosure of Confidential Information and Critical Energy Infrastructure Information (CEII)¹ in accordance with Section 9.15.2 of the Consolidated Transmission Owners Agreement (CTOA). Section 9.15.2 of the CTOA states:

9.15.2 Maintenance of Confidential Information.

In the course of performing functions under this Agreement, the Parties may from time to time receive from each other or from PJM information that a Party or PJM may designate as confidential, or which is subject to FERC's Standards of Conduct for Transmission Providers, or Critical Energy Infrastructure Information, as amended from time to time. The Parties shall treat such information as confidential in accordance with a nondisclosure agreement adopted by the Administrative Committee. Information subject to FERC's Standards of Conduct for Transmission Providers or Critical Energy Infrastructure Information shall not be disclosed or shared except as permitted thereby.

Background

The first TOA-AC NDA, dated January 17, 2006, was executed by the PJM Transmission Owners and PJM to govern disclosures and discussions of Confidential Information in the course of performing the tasks assigned by the TOA-AC to working groups or committees, or in the course of performing Administrative Committee functions. The NDA also protects the Confidential Information from disclosure to third parties. The NDA requires execution by each PJM Transmission Owner and PJM. It also requires that each Reviewing Representative (person receiving the Confidential Information) sign an NDA Certificate indicating that he/she has read the agreement and agrees to abide by its terms. The signed NDA and the list of Reviewing Representatives that have signed the NDA Certificate are posted on the TOA-AC page of PJM's website. This original NDA did not specifically address CEII.

In November of 2014, in order to protect the exchange of Confidential Information that includes CEII, the TOA-AC developed a special purpose NDA. This special purpose NDA was needed so the newly formed Physical Security Working Group (PSWG) could complete its assigned tasks related to NERC CIP-014 which required the exchange of CEII. Each Transmission Owner and PJM executed the special purpose NDA and each PSWG member signed the associated certificate.

¹ Confidential Information includes information defined as "Critical Energy Infrastructure Information" ("CEII") in accordance with the Commission's regulations at 18 C.F.R. § 388.113.

Another special purpose NDA was created and executed in April of 2015 to govern the exchange of Energy Management System (EMS) Model Data, also considered CEII, among PJM and the PJM Transmission Owners. Once again, each Transmission Owner executed the NDA. The certificates associated with this NDA are managed by PJM in the EMS Model user interface where users, once verified that they are able to receive such information, must electronically sign the associated certificate prior to receiving the EMS Model Data.

In the fall of 2015, after the TOA-AC commissioned the PHI/PJM Root Cause/Relay Design Review team that also required the exchange of CEII, the TOA-AC decided based on the recommendation of the Legal Issues Team that a better course of action would be to amend the original 2006 TOA-AC NDA to govern the exchange of CEII rather than develop yet another special purpose NDA. The TOA-AC developed an Amended NDA, dated October 20, 2015. The Amended NDA contains provisions to protect CEII and therefore obviates the need to create additional special purpose NDAs. Similar to the original NDA, the Amended NDA requires Reviewing Representatives to sign the NDA Certificate for the exchange of confidential information. In addition, the Amended NDA contains a Special Purpose NDA Certificate which Reviewing Representatives need to sign prior to receiving CEII. The Reviewing Representative must indicate the sole purpose for receiving the CEII by listing on the Certificate the specific TOA-AC working group for which the CEII is required. Transmission Owners that participated in the PHI/PJM Root Cause/Relay Design Review team executed the Amended NDA and each Reviewing Representative (team member) signed the newly created NDA Special Purpose CEII Certificate. In addition, individual Reviewing Representatives of PJM are not required to execute certificates as the provisions for the treatment of confidential information under PJM’s Operating Agreement and Tariff, or otherwise pursuant to a FERC order, apply.

List of NDAs

The current list of existing NDAs is shown in the following table. These NDAs do not expire.

DATE	NAME	INFORMATION PROTECTED	LOCATION OF NDA AND CERTIFICATES	NOTES
January 17, 2006	Non-Disclosure Agreement	Confidential	PJM Executed NDA and list of Certificate signatories posted on PJM Website (http://www.pjm.com/committees-and-groups/committees/toa-ac.aspx)	Each Reviewing Representative signs NDA Certificate
November 24, 2014	Non-Disclosure Agreement For Confidential Information Disclosed And Discussed In The Context Of The Physical Security Working Group	Confidential/CEII	PSWG Chair	Each Reviewing Representative signs NDA Certificate
April 28, 2015	Non-Disclosure Agreement For The Exchange Of Energy Management System Model Data	Confidential/CEII	PJM Certificates are electronic via EMS Model User Interface	Each Reviewing Representative electronically signs NDA Certificate monthly?
October 20, 2015	Amended Non-Disclosure	Confidential/CEII	TOA-AC Chair, PJM Website	Each Reviewing

<p>Agreement</p> <p>(Amends the January 17, 2006 NDA)</p>	<p>posting of master NDA with signatories and listing of individuals who have signed NDA certificates</p>	<p>Representative signs NDA Certificate for Confidential Information and/or Special Purpose NDA Certificate for CEII. (Used by PHI/PJM Root Cause/Relay Design Review team and the Transmission Owners Planning Working Group (TOPWG) for the exchange of CEII)</p>
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Discussion

Original NDA and Amended NDA

The Legal Issues Team and PJM reviewed the requirements of the original 2006 TOA-AC NDA and the Amended NDA. The Amended NDA states it “will govern future disclosures of Confidential Information between the Parties without affecting the continuing terms and conditions by which Confidential Information has been provided pursuant to the Non-Disclosure Agreement dated January 17, 2006”. Since the original NDA also remains in effect, the LIT and PJM discussed several options for managing both the original and Amended NDA moving forward. One option is for PJM to maintain and keep active two separate lists of Certificate Signatories – one for the original NDA and one for the Amended NDA. The advantage of this approach is that those that executed the original NDA Certificate would not need to execute another Certificate. However, the major disadvantage is the upkeep and confusion created by maintaining two separate lists of Certificate Signatories. The LIT recommended, and the TOA-AC agreed, that the most efficient and straight-forward approach would be to freeze the list of Certificate Signatories from the original NDA (such that no new Certificate Signatories will be added to the list) and require that all Reviewing Representatives from each company sign the Amended NDA Certificate. An advantage of this approach is that it also prompts each Transmission Owner to review the NDA provisions and ensure their list of Reviewing Representatives is current and is familiar with the terms of the amended NDA. The list of Certificate Signatories for the original NDA would be given a date certain by which no new Certificate Signatories could be added, however will still remain posted (along with the NDA itself) on PJM’s website since the original NDA does not terminate.

Special Purpose NDAs

The Special Purpose NDAs also remain in existence. They should, however, be maintained by PJM similar to the way the Amended NDA will be maintained. For example, the PSWG NDA and Certificates should be managed by PJM rather than the PSWG chair.

Recommendations

Following are the recommendations for improving the NDA process:

1. Freeze the list of Certificate Signatories from the original NDA, dated January 17, 2006, that's posted on the PJM website.
2. Ensure that each PJM Transmission Owner and PJM have executed the signature page of the Amended NDA dated October 20, 2015.
3. Request that all PJM Transmission Owners work within their companies to have each Reviewing Representative (TOA-AC representatives, TOA-AC subgroup representatives and others) that could receive Confidential Information in the course of performing tasks assigned by the TOA-AC sign the Amended NDA Certificate.
4. Work with PJM to develop a process for managing all of the NDAs listed in the above table.² The process should include:
 - a. A procedure to ensure that new PJM Transmission Owners execute the Amended NDA;
 - b. A procedure for each PJM Transmission Owner and PJM to update their list of Certificate Signatories to reflect personnel changes and to require a periodic review at least annually;
 - c. The creation of a secure section on the TOA-AC page of the PJM website for housing the executed NDAs and lists of Certificate Signatories. Since the NDAs contain information about sensitive matters being undertaken by the TOA-AC, the section that houses the NDAs and lists of Certificate Signatories should be secure and accessible only by TOA-AC members; and
 - d. Blank copies of general and special purpose certificates should be provided by the TOA-AC to PJM and available on the TOA-AC website for download by participants.
5. Other?

² As set forth in the Amended NDA, PJM is responsible for collecting and maintaining the various Non-Disclosure Certificates. In addition, any entity that becomes a party to the CTOA may become a Party to the NDA by executing a copy, providing an executed copy to PJM and giving notice to all Parties. There are similar provisions in the other NDAs.