

## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**THIS CONFIDENTIALITY AND NON DISCLOSURE AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between American Transmission Company LLC (ATC), by its corporate manager, ATC Management Inc. (collectively "ATC") and \_\_\_\_\_ (Company). In this Confidentiality and Non Disclosure Agreement, ATC or Company may also be referred to as "Party" or "Parties" as the context may require.

### **Representations of the Parties:**

1. ATC is an electric utility under the laws of the State of Wisconsin and is engaged in the business of owning, operating, and maintaining an integrated electric transmission system (Transmission System) in primarily the eastern half of the state of Wisconsin, as well as portions of the States of Michigan and Illinois. ATC is subject to the regulations of the Federal Energy Regulatory Commission (FERC), and in particular the rules adopted pursuant to Order No. 889 of the FERC which limits ATC's disclosure of certain electric transmission-related operational and reliability related information.

2. Company has made a request for interconnection of certain generation under interconnection request GIC\_\_ in the queue maintained for generator requests by ATC. ATC has performed certain studies associated with such interconnection request which have been posted on the open access same time (OASIS) system maintained by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to whom ATC has transferred operational control over the Transmission System. In performing such studies, ATC has utilized certain analytical tools and data sets, known generally as Base Cases for performing the analyses. ATC has included in such Base Cases information relating to other generation requests, and other potentially commercially sensitive information that is subject to the rules of the FERC.

3. Company has requested the Base Cases associated with the power flow analyses done by ATC. ATC is willing to provide the Base Cases associated with such power flow analyses, but only under certain terms, conditions, and limitations.

### **Therefore, the Parties agree, as follows:**

1. Confidential Information. ATC hereby agrees to provide the Base Cases utilized by ATC in performing the power flow and stability analyses associated with GIC\_\_ but only if such Base Cases, and any data associated with such Base Cases are deemed confidential, and only if such Base Cases are utilized in accordance with the terms of this Confidentiality and Non Disclosure Agreement. All information supplied by ATC in association with such Base Cases, and any associated data relating in any manner to ATC's Transmission System and the equipment, facilities or generators of any other party, shall be deemed "Confidential Information" including but not limited to any business, technical, marketing, financial, operational, electric transmission reliability or other information, whether in electronic, oral or written form, and all memoranda, summaries, notes, analyses, compilations, studies or those portions of other documents prepared by ATC or others to the extent they contain or reflect such

information or are incorporated in any manner in the Base Cases. The contents of or discussions or negotiations relating to the Base Cases shall also constitute Confidential Information. Confidential Information shall not include (a) the results of analyses performed utilizing the Base Cases, or information that (b) is or becomes part of the public domain other than as a result of disclosure of information supplied pursuant to this Confidentiality and Non Disclosure Agreement, (c) becomes available to Company on a nonconfidential basis from a source other than ATC, provided that, to the best of Company's knowledge, such source is not prohibited from transmitting such information by a contractual, legal, or other obligation, or (d) was possessed by Company prior to its disclosure by ATC, or (e) is determined by the FERC to be either (i) non-confidential, or (ii) to be made available to companies seeking to interconnection generation to transmission systems.

2. Non-Use; Protection and Dissemination of Confidential Information. ATC shall disclose the Base Cases and other Confidential Information only to one representative of Company, who, upon the execution of this Confidentiality and Non-Disclosure Agreement shall be designated in writing by Company to receive such information. Company, and the person so designated, agrees not to use any Confidential Information, including the Base Cases for such power flow analyses for purposes other than conducting analyses associated with the interconnection of the generating facilities identified in GIC \_\_\_ to the Transmission System. Company and its designated representative shall not disclose Confidential Information to any other party without the express written consent of ATC and shall use all reasonable commercial efforts to protect the Confidential Information from any unauthorized disclosure. It is expressly understood that the representative designated by Company shall not be entitled to disclose the Confidential Information incorporated into the Base Cases to any other individual employed by Company, whether as a officer, director, employee or agent of Company or to any other entity.

3. Ownership and Return. All Confidential Information shall be and remain the property of ATC, and no right or license is granted to Company or with respect to any Confidential Information. Upon the termination by either Party of this Confidentiality and Non-Disclosure Confidentiality and Non Disclosure Agreement, Company and Company's designated representative agrees to immediately return all Confidential Information, and all Bases Cases provided, or to destroy all Confidential Information including the Base Cases, including all copies. Upon request, an officer of Company shall certify the fact of any such destruction in writing to ATC. Company's counsel may retain one copy of such Confidential Information and Base Cases for retention purposes only, and not for any other purpose.

4. Compelled Disclosure. If Company is requested or required by legal or administrative process to disclose any Confidential Information; Company shall promptly notify ATC of such request or requirement so that ATC may seek an appropriate protective order or other relief. In any case, Company will (a) disclose only that portion of the Confidential Information which it's counsel advises is required to be disclosed, (b) use its reasonable efforts to ensure that such Confidential Information is treated confidentially, and (c) notify ATC as soon as reasonably practicable of the items of Confidential Information so disclosed.

5. Remedies. Both Parties acknowledge that remedies at law may be inadequate to protect Disclosing Party against any actual or threatened breach of this Confidentiality and Non

Disclosure Agreement, and, without prejudice to any other rights and remedies otherwise available to Disclosing Party, agree to the granting of injunctive relief in favor of ATC.

6. Purpose. No representation or warranty is made by ATC as to the accuracy or completeness of any information disclosed, or any data incorporated into the Base Cases. Further, no license to any proprietary software upon which the Base Cases must be run is conveyed, or implied, and any further right to obtain copies of or the right to utilize such software is the obligation of Company.

7. Term and Termination. This Confidentiality and Non Disclosure Agreement, and the obligation to refrain from disclosing Confidential Information will continue in effect for a period of three years from the date of this Confidentiality and Non Disclosure Agreement and will continue to apply to any Confidential Information disclosed under this Confidentiality and Non Disclosure Agreement. Either Party may terminate this Confidentiality and Non Disclosure Agreement at any time. However, the obligation to continue to keep confidential the Confidential Information shall continue for three years following the date set forth above.

8. Miscellaneous. This Confidentiality and Non Disclosure Agreement shall inure to the benefit of and shall be binding upon the Parties' respective successors and permitted assigns. In the event that any one of the provisions contained in this Confidentiality and Non Disclosure Agreement should be found to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity, legality or enforceability of the remaining provisions contained in this Confidentiality and Non Disclosure Agreement shall not in any way be affected or impaired by such a finding. No waiver of any provisions of this Confidentiality and Non Disclosure Agreement shall be valid unless the same is in writing and signed by the Party against whom such waiver is sought to be enforced. A waiver or consent given by either Party on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion. This Confidentiality and Non Disclosure Agreement contains the entire Confidentiality and Non Disclosure Agreement of the parties, supersedes any and all prior Confidentiality and Non Disclosure Agreements, written or oral, between them relating to the subject matter hereof, and may not be amended unless agreed to in writing by each Party. This Confidentiality and Non Disclosure Agreement shall be governed by and interpreted in accordance with the laws of the State of Wisconsin (without regard to its conflict of laws provisions).

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**THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT IS ENTERED INTO AS OF THE DATE SET FORTH BELOW BY THE AUTHORIZED REPRESENTATIVES OF THE PARTIES.**

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**American Transmission Company LLC, by its corporate manager, ATC Management Inc.**

**By:** \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_