

Appendix 2

Confidentiality Agreement

Ladies and Gentlemen,

This letter is a Confidentiality Agreement between The Potomac Edison Company (“Utility”) and _____ (“the Company”) in connection with the Company’s intent to participate in the Request for Proposals (“RFP”) to provide Full Requirements Wholesale Electric Power Supply to serve a portion of the Utility’s Standard Offer Service (SOS). This Confidentiality Agreement also pertains to the rights and obligations of the Utility and the Company in the event the Company ultimately is selected as a winner in the RFP and provides service pursuant to the Full Requirements Service Agreement (“FSA”). Utility and the Company hereby agree to accept, and to be bound by the terms of this Agreement.

DEFINITIONS:

(a) The following terms have the following meanings:

1. “Agreement” is this Confidentiality Agreement.
2. “Maryland PSC” has the meaning set forth in Section 3(b).
3. “Confidential Information” has the meaning set forth in Section 5.
4. “Party” means Utility or the Company.
5. “Parties” means Utility and the Company collectively.
6. “Representatives” means the officers, directors, employees, advisors (including, without limitation consultants and outside auditors), lenders, and other persons, including but not limited to any affiliates who are actively and directly participating in evaluating, responding to, negotiating and consummating the RFP and/or the response to the RFP and/or performing under the FSA. A person or entity is not a “Representative” unless that person or entity agrees to preserve the confidentiality of the Confidential Information in accordance with the terms of this Agreement.

7. “Third Parties” means a party or parties other than Utility, the Company or their respective Representatives.

(b) Other capitalized terms used in this Agreement have the meaning set forth in this Agreement and/or the Request for Proposals dated September 11, 2015 and/or the FSA.

TERMS:

1. Condition Precedent. The Utility and the Company shall execute this Agreement as a condition precedent to Utility’s furnishing to the Company or the Company furnishing to the Utility a copy of any Confidential Information.

2. Purpose. The purpose of this Agreement is to protect the confidentiality of the Confidential Information and to restrict the use and disclosure of that information in the manner set forth below.

3. Limitations on Use and Disclosure. (a) A Party shall use the other Party’s Confidential Information only for the purpose of evaluating, responding to, negotiating and consummating the RFP and/or the response to the RFP, and/or performing under the FSA, and not for any other purpose. Neither Party shall disclose to Third Parties any information about the Utility’s or Company’s participation in the RFP or an FSA, or the terms or conditions or any other facts relating thereto, including the fact that discussions are taking place with respect thereto, the status of those discussions, or the fact that Confidential Information has been made available by or to the Utility or Company or their Representatives. Provided, however, that pursuant to Section 7-510(c)(4)(ii)(5) of the Maryland Public Utility Companies Article, the Utility shall publicly disclose the names of all bidders and the names and load allocation of all successful bidders 90 days after all contracts for supply are approved.

(b) Notwithstanding the foregoing or any other provision of this Agreement, the Utility may share any Confidential Information with the Maryland Public Utility Commission, its Staff, or the Consultant working for the Maryland Public Service Commission pursuant to Section 84 of the Settlement Agreement approved by the Commission in Order No. 78400 (collectively “Maryland PSC”). Any such information shared will be designated as confidential, and the Utility will ask the Maryland PSC to hold and use it on a confidential basis. To the extent that the Maryland Office of People’s Counsel and its representatives and/or consultants (collectively “OPC”) enter into a confidentiality agreement to hold any shared information confidentially, Utility may also share Confidential Information with OPC for the purposes of OPC’s review of the results of the RFP.

(c) Notwithstanding any other provision of this Agreement, a Party may disclose to its Representatives all documents and information furnished by the other Party in connection with this Agreement and/or a FSA entered into pursuant to the RFP, provided that such Representatives have been advised of the confidentiality provisions of this Agreement, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.

(d) Any independent auditor performing an audit on behalf of a Party shall be required to execute a confidentiality agreement with the Party being audited. Such audit information shall be treated as confidential pursuant to this Agreement.

(e) Notwithstanding the foregoing or any other provision of this Agreement, the Company shall be authorized to disclose Confidential Information at the request of a bank examiner in connection with an examination of the Company or its affiliates.

4. Disclosure upon Default. Notwithstanding the foregoing or any other provision of the Agreement, the Utility may disclose Confidential Information in the event of a Supplier Default, as provided for in the FSA. The Utility may disclose to any Company with whom it has executed an FSA and who is not a Defaulting Supplier, the contract price of the Defaulting Supplier for the purpose of allowing the Company to make the election provided for in Section 4.11 of the FSA.

5. Definition of Confidential Information. Confidential Information shall consist of oral, electronic and written information that is confidential, proprietary, or generally not available to the public. Whenever possible, such Confidential Information shall be marked prior to or at the time of disclosure as being “Confidential Information”. Confidential Information in the case of information provided by Utility to the Company shall include, without limitation, all data, reports, interpretations, forecasts or records relating to Utility and/or its customers, and any other document created by Utility or others which directly or indirectly relates to all or any portion of the bid evaluation information provided to the Company by Utility. Confidential Information in the case of information provided by the Company to the Utility shall include, without limitation, all data, reports, interpretations, forecasts, bids, credit information, credit collateral amounts, bidder identity, and shall also include information prepared by the Company that includes directly or indirectly Confidential Information furnished by Utility.

6. Non-Confidential Information. Notwithstanding the provisions of Section 5, information shall not be deemed confidential that (i) becomes generally available to the public; (ii) is already known to the receiving Party at the time of receipt by the receiving Party; or (iii) is acquired after such receipt from a Third Party not known to the receiving Party to be prohibited from making disclosures. In addition, notwithstanding any other provision of this Agreement, the Company may always make public, at its sole discretion, the fact that it has participated in bidding to serve the Utility’s load, whether the Company has been awarded any load, the amount of load awarded, and/or the price to be paid for that service of load. The receiving Party shall give prompt notice to the other Party in the event it believes that any of the other Party’s information in its possession is not Confidential Information as a result of the provisions of this Section 6.

7. Property of Utility or the Company. Confidential Information belonging to Utility shall consist of Confidential Information supplied by Utility to the Company. Confidential Information belonging to the Company consists of all other Confidential Information supplied by the Company to Utility and includes all analyses, compilations, studies or other documents prepared by the Company or its Representatives. Utility and the Company acknowledge that each Party’s Confidential Information is and at all times remains the sole and exclusive property of that Party, who, it is agreed, has the exclusive right, title, and interest to its Confidential Information. Neither Party grants any right or license, by implication or otherwise, as a result of the provision of

Confidential Information to the receiving Party.

8. Disclosure Prohibited Except Where Explicitly Permitted. Neither Party shall disclose or use the other Party's Confidential Information without the other Party's prior written consent except as explicitly stated in Sections 3, 4, 9 and 10 of this Agreement.

9. Disclosure For Bid Evaluation Purposes. A Party may disclose the other Party's Confidential Information to its Representatives for the purposes set forth in Section 3. The obligations and restrictions under this Agreement that apply to a Party also apply to a Party's Representatives.

10. Disclosure to Governmental Authorities. (a) Notwithstanding any other provision in this Agreement, a Party (the "disclosing Party") may disclose the other Party's Confidential Information it receives in order to comply with any subpoena, ruling or request of any governmental, judicial, legislative, administrative or regulatory authority, body or committee or any self-regulatory body (including any securities or commodities exchange or The Financial Industry Regulatory Authority ("Authority") requiring such Confidential Information; provided that, the disclosing Party will, to the extent permitted, provide the other party hereto prompt notice of such request or requirement so that the other Party, at its own cost, may seek a protective order. If, failing the entry of a protective order the disclosing Party is, in the advice of its counsel, required to disclose Confidential Information, then the disclosing Party may disclose that portion of the Confidential Information and will cooperate with the other Party in its efforts to obtain a protective order or other reliable assurance that only the designated portion of the Confidential Information will be disclosed. The disclosing Party will be entitled to reimbursement of reasonable expenses, including the fees and expenses of counsel, incurred in connection with actions taken pursuant to this provision.

(b) Notwithstanding the foregoing, the Parties agree that:

- (i) either party may be required to provide information, potentially including Confidential Information to FERC in order to comply with FERC Form 1 or FERC transaction reporting requirements. Each Party agrees that to the extent it is required to provide FERC any such Confidential Information, the Party required to provide such Confidential Information will provide only the Confidential Information that is reasonably necessary to comply with such reporting requirements and shall not be required to comply with the provisions of Section 10(a) of this Agreement unless there have been substantive changes to the information required for FERC reporting purposes.
- (ii) either party may be required by law, including but not limited to by operation of Section 7-510(c)(4)(ii)(5) of the Public Utility Companies Article, to publicly disclose Confidential Information. Each Party agrees that to the extent that it is required to disclose such Confidential Information, the Party required to make the disclosure will disclose only the Confidential Information that is reasonably necessary to comply with such legal requirements and shall not be required to comply with the provisions of Section 10(a) of this Agreement.

11. Termination of RFP Participation. If the Company determines that it does not wish to proceed with the RFP, or if the Utility excludes the Company from the RFP for any of the reasons

set forth in the RFP, it will immediately notify the other Party of that decision. In such case, or if the RFP is not consummated, upon the written request of the Party (the “requesting Party”), the other Party (the “receiving Party”) shall not retain and shall promptly return to the requesting Party or destroy all the requesting Party’s written Confidential Information in the possession of the receiving Party or its Representatives, except for the portion (“said portion”) of the requesting Party’s Confidential Information that may be found in analyses, compilations, or other documents prepared by, or for, the receiving Party and its Representatives. The said portion and any oral Confidential Information furnished by the requesting Party and not so requested or returned will be held by the receiving Party and kept subject to the terms of this Agreement, or destroyed to the extent required by law or regulation, to address legal claims that may arise out of receiving Party’s performance under this Agreement, or as required by internal document retention policies.

12. Liability and Relief. A Party or any of its Representatives shall be liable for any breach of this Agreement. In the event a non-breaching Party or its Representatives shall have knowledge of any breach of the confidentiality of, or the misappropriation of, any of the Confidential Information, the non-breaching Party shall promptly give notice thereof to the breaching Party. The non-breaching Party shall be entitled to specific performance or other equitable relief by way of injunction or otherwise, if the other Party or any of its Representatives breach or threaten to breach any of the provisions of this Agreement. Such remedy shall not be deemed to be the exclusive remedy available to the non-breaching Party, but shall be in addition to all other available remedies. Neither failure nor delay by the non-breaching Party, in exercising any of its rights or privileges herein, shall operate as a waiver nor shall any single or partial exercise preclude any other or further exercise of any right, power or privilege.

13. Representatives, Successors and Assigns. This Agreement shall be binding upon and for the benefit of the Parties, and their respective Representatives, successors, and permitted assigns. Neither Party may assign its rights or obligations hereunder without prior written consent of the other Party.

14. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Maryland without regard to conflicts of laws rules or principles

15. Full Compliance Required. The failure in any instance to insist on full compliance with the terms of this Agreement shall not be deemed to be a waiver of the right to insist upon full compliance with these terms thereafter.

16. Signatures. The signatures below establish each Party’s agreement to the terms hereof.

17. Termination. This Agreement shall terminate three years from the date hereof.

COMPANY

By _____

Title _____

UTILITY

By _____

Title Manager, Regulated Commodity Sourcing