

Adelphia Gateway, LLC
Adelphia Project

DOCKET NO. CP18-____-000

Exhibit Z-1

Form of Protective Agreement

PROTECTIVE AGREEMENT

This Protective Agreement (“Protective Agreement”), is made and entered into as of _____, 201_ (“Effective Date”), by and between Adelphia Gateway, LLC, a Delaware limited liability company (“Adelphia”) and [Counterparty], a [jurisdiction and organization type] (“Participant,” and together with Adelphia, the “Parties”).

WHEREAS, a certificate application regarding Adelphia’s Gateway Pipeline Project (“Project”) is currently pending before the Federal Energy Regulatory Commission (“Commission”) in Docket No. CP18-____-000 (“Certificate Proceeding”);

WHEREAS, pursuant to Section 388.112(b) of the Commission’s regulations, 18 C.F.R. § 388.112(b) (2017), this Protective Agreement will apply to requests for a copy of the complete, non-public version of any document filed by Adelphia as privileged or as Critical Energy Infrastructure Information (CEII) in the Certificate Proceeding; and

WHEREAS, Participant is submitting this Protective Agreement as part of its request pursuant to 18 C.F.R. § 388.112(b)(iii) for a complete, non-public version of [name of document(s)] included in the Commission’s eLibrary under Accession No[s]. [_____] (“Protected Materials”) subject to the terms of this Protective Agreement;

NOW, THEREFORE, Adelphia and Participant agree as follows:

1. This Protective Agreement shall govern the use of all Protected Materials produced by, or on behalf of, Adelphia to Participant hereunder. Notwithstanding any order terminating the Certificate Proceeding, this Protective Agreement shall remain in effect until specifically modified or terminated by (i) written agreement of the Parties, (ii) the Commission or (iii) any applicable Presiding Administrative Law Judge (“Presiding Judge”) (which includes the Chief Administrative Law Judge).

2. This Protective Agreement applies to the Protected Materials, as defined in the recitals to this Protective Agreement. Notwithstanding anything herein to the contrary, Adelphia’s delivery of Protected Materials to Participant pursuant to this Protective Agreement shall not affect the Protected Materials’ protected status under the Commission’s regulations and Freedom of Information Act, 5 U.S.C. 552 (“FOIA”).

3. Definitions -- For purposes of this Protective Agreement:

- (a) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in

the Protected Materials. Except as specifically provided in this Protective Agreement, Notes of Protected Materials are subject to the same terms and restrictions as the Protected Materials under this Protective Agreement.

- (b) The term “Non-Disclosure Certificate” shall mean the certificate annexed to this Protective Agreement by which the Reviewing Representative(s) of the Participant who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Agreement, and that such Reviewing Representative has read the Protective Agreement and agrees to be bound by it.
- (c) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is: (i) an attorney who has made an appearance in this Certificate Proceeding for Participant; (ii) attorneys, paralegals, and other employees associated for purposes of this Certificate Proceeding with an attorney described in Paragraph 3(c)(i); (iii) an expert or an employee of an expert retained by Participant for the purpose of advising, preparing for or testifying in this Certificate Proceeding; or (iv) employees or other representatives of Participant appearing in this Certificate Proceeding with significant responsibility for this docket.

4. Protected Materials shall be made available under the terms of this Protective Agreement only to Participant’s Reviewing Representatives; provided that if the Protective Materials include rates, rate-related provisions and/or credit support provisions, Adelphia may redact the rates, rate-related provisions and credit support provisions from the version of the Protected Materials provided to Participant’s Reviewing Representatives. In the event that Adelphia redacts any such information, if requested by Participant the Parties shall meet to discuss the terms and conditions under which one or more of Participant’s Reviewing Representatives may be provided such redacted information. If no agreement is reached, Participant may submit such dispute to the Commission or the Presiding Judge, if any, for resolution.

5. Protected Materials shall remain available to Participant until the later of the date that an order terminating this Certificate Proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected

Materials is concluded and no longer subject to judicial review. If requested to do so in writing after that date, Participant shall, within fifteen (15) days of such request, return the Protected Materials (excluding Notes of Protected Materials) to Adelphia, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Materials may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period, Participant, if requested to do so, shall also submit to Adelphia an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Agreement.

6. All Protected Materials shall be maintained by Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9.

7. Protected Materials shall be treated as confidential by Participant and by the Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9. Protected Materials shall not be used by Participant or a Reviewing Party except as necessary for the conduct of the Certificate Proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative of Participant who is engaged in the conduct of the Certificate Proceeding and who needs to know the information in order to carry out that person's responsibilities in the Certificate Proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) A Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give Participant, any customer or potential customer of Adelphia or any competitor of Adelphia a commercial advantage or for any other purpose other than the prosecution or defense of the proceedings conducted under this Certificate Proceeding.

(b) In the event that Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(c) above, Participant shall seek agreement from Adelphia. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 3(c) above with respect to those materials. If no agreement is reached, Participant may submit the disputed designation to the Commission or the Presiding Judge, if any, for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Agreement unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel employed by the same entity as the attorney and under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for Adelphia prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their instruction, supervision or control comply with this Protective Agreement.

10. Subject to Paragraph 4 above, any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative of Participant as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in this Certificate Proceeding, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(c), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this Certificate Proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the certification.

11. Subject to Paragraph 18, the Commission or Presiding Judge, if any, shall resolve any disputes arising under this Protective Agreement. Prior to presenting any dispute under this Protective Agreement to the Commission or Presiding Judge, the Parties shall use their best efforts to resolve it.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Agreement. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Commission, the Presiding Judge, if any, and the other Party. Any such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release". For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on the other Party and the Presiding Judge, if any. Counsel shall

take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in any submission during this proceeding in such a manner that might require disclosure of such material to other participants in the Certificate Proceeding, Participant shall first notify counsel for Adelphia and the Commission or Presiding Judge, if any, of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Materials will be governed by procedures determined by the Commission or Presiding Judge, if any.

14. Nothing in this Protective Agreement shall be construed as precluding Adelphia from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Protective Agreement shall preclude Participant from requesting the Commission, the Presiding Judge, if any, or any other body having appropriate authority, to find that this Protective Agreement should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Agreement.

16. [Intentionally omitted]

17. All Protected Materials filed with the Commission, the Presiding Judge, if any, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Agreement.

18. If the Commission or Presiding Judge, if any, finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Agreement for three (3) business days from the date of issuance of the Commission or Presiding Judge's determination, and if Adelphia files an interlocutory appeal or, if applicable, requests that the issue be certified to the Commission, for an additional seven (7) business days. Adelphia has not waived its rights to seek additional administrative or judicial remedies after any decision respecting Protected Materials or Reviewing Representatives. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the FOIA for Protected Materials in the files of the Commission.

19. Nothing in this Protective Agreement shall be deemed to preclude either Party from independently seeking through discovery in any other administrative or judicial

proceeding information or materials produced in this proceeding under this Protective Agreement.

20. Adelphia does not waive its right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

21. Participant shall not disclose the contents of Protected Materials or any other form of information that copies or discloses Protected Materials to anyone other than in accordance with this Protective Agreement and only use such contents and information in connection with this Certificate Proceeding. Any violation of this Protective Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a breach of the Protective Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Protective Agreement to be duly executed in several counterparts by their proper officers duly authorized as of the Effective Date.

ADELPHIA GATEWAY, LLC

By _____

Title _____

[COUNTERPARTY]

By _____

Title _____

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Agreement between Adelfia Gateway, LLC and [Counterparty] dated _____, 201_, that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Agreement. I acknowledge that a violation of this certificate constitutes a breach of the Protective Agreement.

By: _____

Printed Name: _____

Title: _____

Representing: Date: _____