

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Chalk Point Power, LLC)	Docket No. ER21-573-000
Dickerson Power, LLC)	Docket No. ER21-574-000
Lanyard Power Marketing, LLC)	Docket No. ER21-575-000
Morgantown Power, LLC)	Docket No. ER21-577-000
Morgantown Station, LLC)	Docket No. ER21-578-000
)	

PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission’s Rules and Regulations,¹ and Order Nos. 816 and 861,² Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),³ submits this protest to the applications for market based rates authorization submitted by Chalk Point Power, LLC; Dickerson Power, LLC; Lanyard Power Marketing, LLC; Morgantown Power, LLC; Morgantown Station, LLC; all of which are wholly owned direct and indirect subsidiaries of

¹ 18 CFR § 385.211 (2019).

² See *Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, FERC Stats. & Regs. ¶ 31,374 (2015) (“Order No. 816”), *order on reh’g*, Order No 816-A, 155 FERC ¶ 61,188 (2016); *Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets*, 168 FERC ¶ 61,040 at P 21 (July 18, 2019) (“Any objections to a Seller’s market-based rate authority can and should occur as a direct response to an initial application, a change in status filing, a triennial update, or in a proceeding instituted under FPA section 206. The Commission will consider all relevant information in the record when determining whether the Seller can obtain or retain market-based rate authority. This will continue to occur notwithstanding the existence of Commission-approved monitoring and mitigation.”) (“Order No. 861”); *order on reh’g*, Order No. 861-A, 170 FERC ¶ 61,106 (2020).

³ Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”), the PJM Operating Agreement (“OA”) or the PJM Reliability Assurance Agreement (“RAA”).

GenOn Holdings, LLC, on December 4, 2020 (“Chalk Point Resources”), in this proceeding. The protest is limited to the extent that such market based rates authorization applies or may apply to sales of energy or capacity in PJM markets.

This proceeding concerns a new application for authorization to charge market based rates. Chalk Point Resources rely on effective PJM market power mitigation to address any market power that it may possess.⁴ The current approach to market power mitigation is insufficient to support market based rate authorizations.

Unless and until the deficiencies in PJM’s market power mitigation in the capacity market are corrected, the Commission should authorize participation in the PJM capacity market at market based rates only on the condition that market sellers offer their resources in the PJM capacity market at or below the competitive capacity offer, defined consistent with the mathematics of the PJM capacity performance design and the actual number of PAI. Currently, such offers are equal to the Avoidable Cost Rate adjusted for expected Capacity Performance penalties and bonuses.

Unless and until the deficiencies in PJM’s market power mitigation in the energy market are corrected, the Commission should authorize participation in the PJM energy market at the competitive offer in the energy market, which is a cost-based offer in the PJM energy market with operating parameters that are at least as flexible as the defined unit specific parameter limits in the PJM energy market.

In the confidential Attachment A to this filing, the Market Monitor provides evidence that PJM market power mitigation is insufficient to ensure competitive market outcomes for its resources. Because the information in Attachment A is confidential and market sensitive, the Market Monitor also includes a proposed PJM Markets Protective Agreement in Attachment B for use in this proceeding. The proposed PJM Markets

⁴ Chalk Point Resources at 16.

Protective Order is substantially identical to the protective order relied upon in *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, Docket No. EL19-27-000.⁵

I. COMMENTS

A. Market Based Rates Authorization in PJM Depends on Market Power Mitigation.

Pursuant to Order No. 816 and Order No. 861, market sellers in PJM rely on the market power mitigation in the PJM Market Rules in asserting that their participation in the PJM markets at market based rates does not raise horizontal market power concerns.⁶ Order No. 861 (at P 21) recognizes that an intervenor may challenge the presumption that market power mitigation is sufficient by presenting evidence, including that provided in the Market Monitors' reports. Such evidence is contained in the Market Monitor's State of the Market Reports for PJM and in the complaint filed by the Market Monitor regarding the capacity market seller offer cap.⁷

Order No. 861 also requires a demonstration by intervenors that sellers have market power in the relevant markets.⁸ Order No. 861 recognizes that the intervenors may not

⁵ Differences include (i) deletion of references to PJM, (ii) deletion of references to Non-Disclosure Certificates from a prior PJM Markets Protective Order; and (iii) addition of a provision allowing the Commission to resolve disputes when there is no Presiding Judge.

⁶ Order No. 861 at P 22 ("The public and the Commission will continue to have access to a Seller's ownership information, vertical market power analysis, asset appendix, and EQRs, as well as to the market monitors' reports. For example, PJM IMM notes that its quarterly State of the Market reports contain a comprehensive listing of market power concerns. Anyone may use this information in support of a challenge to a Seller's market-based rate authority. The Commission would then consider this and other information to determine whether the Seller may obtain or retain market-based rate authority. In addition, contrary to Public Citizen's argument that "once [market-based rate] authority is granted, [the Commission] is unlikely to take it away," the standard for obtaining and retaining market-based rate authority is the same. The Commission can and does institute FPA section 206 proceedings when potential market power concerns arise.").

⁷ See Docket No. EL19-47-000.

⁸ Order No. 861 at P 26.

provide indicative screens.⁹ Analysis of PJM markets shows that all PJM sellers have the potential to have and exercise local market power at any time based on transmission constraints or reliability needs that may arise in any location in the PJM market for a variety of reasons. Without adequate market power mitigation, passing indicative market power screens does not provide customers protection from the effects of market power on prices. It serves no useful purpose for the Commission to request indicative screens. In this case, rather than indicative screens, the Market Monitor provides actual market power results from the PJM energy market. Actual market results are a better indication of structural market power than indicative screens. Even without demonstrating that market power exists based on historical market results, the Commission cannot be assured that market power is sufficiently mitigated unless PJM has effective market power mitigation that can be relied on in all future scenarios when market power may arise.

B. The PJM Capacity Market Is Not Competitive Due to Inadequate Market Power Mitigation.

The Market Monitor has provided ample evidence that the PJM capacity market is not competitive due to inadequate market power mitigation. The Market Monitor explained its findings regarding the Market Seller Offer Cap and provided evidence of noncompetitive behavior in its report analyzing the 2021/2022 RPM Base Residual Auction.¹⁰ In its subsequent State of the Market Reports, the Market Monitor described the issues and found that the PJM capacity market is not competitive.¹¹ On February 21, 2019, the Market Monitor filed a complaint explaining that the Market Seller Offer Cap is

⁹ *Id.* at P 27.

¹⁰ See Monitoring Analytics, LLC, *Analysis of the 2021/2022 RPM Base Residual Auction: Revised* (August 24, 2018), included as Attachment A.

¹¹ See Monitoring Analytics, LLC, *2020 Quarterly State of the Market Report for PJM: January through June*, Section 5: Capacity Market, included as Attachment B.

overstated, allowing market power to be exercised by some sellers.¹² ¹³ Based on the evidence provided, the Market Monitor rebuts the presumption that PJM's market power mitigation is adequate to support market based rates in the PJM capacity market.

C. The PJM Energy Market Results Are Competitive Overall, but Market Power Mitigation Is Inadequate in Many Circumstances.

The Market Monitor has provided ample evidence of the inadequacies of PJM energy market power mitigation in its State of the Market Reports.¹⁴ Some sellers that fail the structural market power test, the Three Pivotal Supplier test ("TPS test"), are able to set prices with a substantial markup over their cost-based offer.¹⁵ Some sellers that fail the TPS test are able to operate, set prices, and collect uplift payments with operating parameters that are less flexible than their defined parameter limits.¹⁶ Based on the evidence provided, the Market Monitor rebuts the presumption that PJM market power mitigation is adequate to support market based rates in the PJM energy market.

D. Cost-based Offers and Parameter Limits Should Be Required Until Market Power Mitigation Is Adequate in PJM.

Based on the evidence provided by the Market Monitor, market based rate authorization for PJM market sellers in this proceeding should only permit offers in the PJM capacity market at or below the competitive capacity offer, defined consistent with the

¹² Complaint of the Independent Market Monitor for PJM, Docket No. EL19-47-000 (February 21, 2019).

¹³ Comments of the Independent Market Monitoring for PJM, Docket No. ER15-623 & EL15-29 (December 17, 2020).

¹⁴ See Monitoring Analytics, LLC, *2020 Quarterly State of the Market Report for PJM: January through June*, Section 3: Energy Market, included as Attachment C.

¹⁵ *Id.* at Table 3-110.

¹⁶ *Id.* at Table 3-16 and Table 3-17.

mathematics of the PJM capacity performance design and the actual number of PAI.¹⁷ Currently, such offers are equal to the Avoidable Cost Rate adjusted for expected Capacity Performance penalties and bonuses.¹⁸ Market based rate authorizations should permit only offers at or below the competitive offer in the energy market, which are cost-based offers in the PJM energy market with operating parameters that are at least as flexible as the defined unit specific parameter limits in the PJM energy market.^{19 20}

This approach is similar to the approach taken by the Commission in its 2016 authorization of market based rates for Arizona Public Service Co., where the Commission found the California ISO's market power mitigation insufficient to address market power concerns in the Energy Imbalance Market.²¹ In that case, the Commission restricted participation to cost-based offers as defined in the tariff.²²

Reliance on competitive, cost-based offers should be removed only when the application of market power mitigation in the PJM capacity market and the application of

¹⁷ The competitive offer should also be consistent with any minimum offer price rule approved by the Commission.

¹⁸ See Attachment A to the Complaint of the Independent Market Monitor for PJM, Docket No. EL19-47-000 (February 21, 2019).

¹⁹ See OA Schedule 2.

²⁰ See OA Schedule 1 § 6.6.

²¹ *Arizona Public Service Co.*, 156 FERC ¶ 61,148 at P 26 (2016) (“[W]e authorize APS’s participation in the EIM at market-based rates on the condition that it offer its units that are participating in the EIM at or below each unit’s Default Energy Bid, as detailed below. Such a condition should reduce the potential adverse effects on the market should withholding occur.”); see also *Nevada Power Company*, 153 FERC ¶ 61,206 (2015), *order on reh’g*, 155 FERC ¶ 61,186 (2016) (market-based rates authorization for EIM conditioned on seller offering their units that are participating in the EIM at or below each unit’s Default Energy Bid”).

²² *Id.* at P 39.

market power mitigation in the PJM energy market are modified consistent with the explicit recommendations of the Market Monitor.²³

The Market Monitor recommends, in accordance with the applicable policies on market based rate authorizations, that the Commission institute “a separate section 206 proceeding to investigate whether the existing RTO/ISO mitigation continues to be just and reasonable.”²⁴ Under this defined process, flaws in PJM’s market power mitigation can be addressed and restrictions on individual market based rates authorizations can be lifted, consistent with the public interest.

²³ See Monitoring Analytics, LLC, *2020 Quarterly State of the Market Report for PJM: January through June*, Section 2: Recommendations, included as Attachment D.

²⁴ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697-A, 123 FERC ¶ 61,055 at P 5 (April 21, 2008).

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this protest.

Respectfully submitted,



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Dated: December 24, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 24th day of December, 2020.



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Attachment B

**UNITED STATES OF AMERICA
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PJM MARKETS PROTECTIVE AGREEMENT

1. Participants in this proceeding(s) may exchange documents or material that are deemed to contain Privileged Material and/or Critical Energy/Electric Infrastructure Information (CEII), as those terms are defined herein produced by, or on behalf of, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (IMM) for PJM, or other party in the above-captioned proceedings.

2. The Commission's regulations¹ and its policy governing the labelling of controlled unclassified information (CUI)² establish and distinguish the respective designations of Privileged Material and CEII. As to these designations, this PJM Markets Protective Agreement provides that a party *may* designate as Privileged Material any material which customarily is treated by that Participant as market sensitive, commercially sensitive or proprietary or material subject to a legal privilege, which is not otherwise available to the public, and which, if disclosed, would subject the IMM, the PJM markets or PJM Members to risk of harm, reduction in competition, competitive disadvantage or other business injury.

3. For the purposes of this PJM Markets Protective Agreement, the listed terms are defined as follows:

A. Participant(s): As defined at 18 C.F.R. § 385.102(b).

B. Privileged Material:³

¹ Compare 18 C.F.R. § 388.112 with 18 C.F.R. § 388.113

² Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff, 82 Fed. Reg. 18632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

³ The Commission's regulations state that "[f]or the purposes of the Commission's filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA . . . will be referred to as privileged material." 18 C.F.R. § 388.112(a). The regulations further state that "[f]or material filed in proceedings set for trial-type hearing or settlement judge proceedings, a participant's access to material for which privileged treatment is claimed is governed by the presiding official's protective order." 18 C.F.R. § 388.112(b)(2)(v).

- i. Material (including depositions) provided by a party in response to discovery requests or filed with the Commission, and that is not public and that is designated as Privileged Material by the producing party;
- ii. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Privileged Material by the producing party;⁴
- iii. Any information contained in or obtained from such designated material;
- iv. Any other material which is made subject to this PJM Markets Protective Agreement by the Presiding Administrative Law Judge (Presiding Judge) or the Chief Administrative Law Judge (Chief Judge) in the absence of the Presiding Judge or where no presiding judge is designated, the Federal Energy Regulatory Commission (Commission), any court, or other body having appropriate authority, or by agreement of the Participants (subject to approval by the relevant authority);
- v. Notes of Privileged Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Privileged Material);⁵ or
- vi. Copies of Privileged Material.
- vii. Privileged Material does not include
 - a. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court;
 - b. Information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this PJM Markets Protective Agreement; or
 - c. Any information or document labeled as “Non-Internet Public” by a Participant, in accordance with Paragraph 30 of FERC Order No. 630.⁶

⁴ The Commission’s regulations state that “[a] presiding officer may, by order . . . restrict public disclosure of discoverable matter in order to . . . [p]reserve a privilege of a participant. . . .” 18 C.F.R. § 385.410(c)(3). To adjudicate such privileges, the regulations further state that “[i]n the absence of controlling Commission precedent, privileges will be determined in accordance with decisions of the Federal courts with due consideration to the Commission’s need to obtain information necessary to discharge its regulatory responsibilities.” 18 C.F.R. § 385.410(d)(1)(i).

⁵ Notes of Confidential or Privileged Material are subject to the same restrictions for Confidential or Privileged Material.

⁶ FERC Stat. & Reg. ¶ 31,140.

- C. Critical Energy/Electric Infrastructure Information (CEII): As defined at 18 C.F.R. §§ 388.113(a), (c).
- D. Non-Disclosure Certificate: The certificate attached to this PJM Markets Protective Agreement, by which Participant representatives granted access to Privileged Material and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this PJM Markets Protective Agreement, and that such Participants have read the PJM Markets Protective Agreement and agree to be bound by it. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for this proceeding.
- E. Reviewing Representative: A person who has signed a Non-Disclosure Certificate, who declares that he or she does not and does not plan to engage in any of the activities identified in Paragraph 7, and who is:
 - i. Commission Trial Staff assigned to this proceeding or an IMM employee;
 - ii. An attorney who has made an appearance in this proceeding for a Participant;
 - iii. Attorneys, paralegals, and other employees associated for purposes of this case with an attorney who has made an appearance in this proceeding on behalf of a Participant;
 - iv. An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding;
 - v. A person designated as a Reviewing Representative by order of the Presiding Judge, the Chief Judge, or the Commission; or
 - vi. Employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket.

4. Privileged Material and/or CEII shall be made available under the terms of this PJM Markets Protective Agreement only to Participants and only to their Reviewing Representatives as provided in Paragraphs 6–10 of this PJM Markets Protective Agreement. The contents of Privileged Material, CEII or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with this PJM Markets Protective Agreement and shall be used only in connection with this specific proceeding.

5. All Privileged Material and/or CEII must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to Paragraphs 7–9 of this PJM Markets Protective Agreement.

6. Privileged Material and/or CEII must be handled by each Participant and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this PJM Markets Protective Agreement. Privileged Material and/or CEII shall not be used except as necessary for the conduct of this proceeding, nor shall they (or the

substance of their contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Privileged Material and/or CEII, but such copies automatically become Privileged Material and/or CEII. Reviewing Representatives may make notes of Privileged Material, which shall be treated as Notes of Privileged Material if they reflect the contents of Privileged Material.

7. If a person's scope of employment includes any of the activities listed under this Paragraph 7, such person may not become a Reviewing Representative and may not receive information contained in any Privileged Material and/or CEII obtained in this proceeding for any purpose (e.g., to avoid giving a Participant or competitor of any Participant a commercial advantage):

- A. Energy marketing;
- B. Direct supervision of any employee or employees whose duties include energy marketing; or
- C. The provision of consulting services to any person whose duties include energy marketing.

8. In the event that a Participant wishes to designate a person not described in Paragraph 3.E above as a Reviewing Representative, the Participant must first obtain written agreement from the IMM. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3.D of this Protective Order with respect to the specified materials, which may be less than all of the Privileged Materials in this proceeding.

If no agreement is reached, the matter must be submitted to the Presiding Judge, if designated, or the Commission for resolution.

9. Except for those Reviewing Representatives designated in accordance with Paragraph 3(E)(i), a Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Privileged Material and/or CEII pursuant to this PJM Markets Protective Agreement until three business days after that Reviewing Representative first has executed and served a Non-Disclosure Certificate.⁷ Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this PJM Markets Protective Agreement, and must take all reasonable precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for the proceeding.

⁷ During this three day period, a Participant may file an objection with the Presiding Judge or the Commission contesting that an individual qualifies as a Reviewing Representative, and the individual shall not receive access to the Privileged Material and/or CEII until resolution of the dispute.

10. Any Reviewing Representative may disclose Privileged Material and/or CEII to any other Reviewing Representative as long as both Reviewing Representatives have executed a Non-Disclosure Certificate. In the event any Reviewing Representative to whom Privileged Material and/or CEII are disclosed ceases to participate in this proceeding, or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative under Paragraph 3.D of this PJM Markets Protective Agreement, access to such materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this PJM Markets Protective Agreement and the Non-Disclosure Certificate for as long as the PJM Markets Protective Agreement is in effect.⁸

11. All Privileged Material and/or CEII in this proceeding filed with the Commission, submitted to the Presiding Judge, or submitted to any Commission personnel after the date this PJM Markets Protective Agreement issues, must comply with the Commission's Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff.⁹ Consistent with those requirements:

- A. Documents that contain Privileged Material must include a top center header on each page of the document with the following text: CUI//PRIV. Any corresponding electronic files must also include the following text in the file name: CUI-PRIV.
- B. Documents that contain CEII must include a top center header on each page of the document with the following text: CUI//CEII. Any corresponding electronic files must also include the following text in the file name: CUI-CEII.
- C. Documents that contain both Privileged Material and CEII must include a top center header on each page of the document with the following text: CUI//CEII/PRIV. Any corresponding electronic files must also include the following text in the file name: CUI-CEII-PRIV.
- D. The specific content on each page of the document that constitutes Privileged Material and/or CEII must also be clearly identified. For example, lines or individual words or numbers that include both Privileged Material and CEII shall be prefaced and end with "BEGIN CUI//CEII/PRIV" and "END CUI//CEII/PRIV".

12. The Secretary shall place any Privileged Material and/or CEII filed with the Commission in a non-public file. By placing such documents in a non-public file, the Commission is not making a determination concerning any claim of privilege or CEII status. The Commission retains the right to make determinations with regard to any privilege or CEII claim, as well as the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff, the notification procedures specified at 18 C.F.R. § 388.112 must be followed before making public any Privileged Material.

⁸ See *infra* P 18.

⁹ 82 Fed. Reg. 18632 (April 20, 2017) (issued by Commission April 14, 2017).

13. A Participant shall not include, utilize, or refer to Privileged Material or information derived from Privileged Material in testimony or other exhibits during the hearing in this proceeding in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, unless explicitly authorized by the Presiding Judge after the IMM has been afforded reasonable opportunity to explain any objections.

14. Nothing in this PJM Markets Protective Agreement shall be construed as precluding any Participant from objecting to the production or use of Privileged Material and/or CEII on any appropriate ground.

15. Subject to Paragraph 16, the Commission shall resolve any disputes arising under this Protective Order pertaining to Privileged Material according to the following procedures. Prior to presenting any such dispute to the Commission, the Participants to the dispute shall employ good faith best efforts to resolve it.

- A. Any Participant that contests the designation of material as Privileged Material shall notify the designating party by specifying in writing the material for which the designation is contested.
- B. In any challenge to the designation of material as Privileged Material, the burden of proof shall be on the Participant seeking disclosure. If the Presiding Judge, the Chief Judge, or the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 16 shall apply.
- C. The procedures described above shall not apply to material designated by a Participant as CEII. Material so designated shall remain subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

16. The IMM, or other party will have five (5) business days in which to respond to any pleading requesting disclosure of Privileged Material. Should the Commission determine that the information should be made public, the Commission will provide notice to IMM, and other parties no less than five (5) business days prior to the date on which the material will become public. This Protective Order shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Privileged Material and/or CEII in the files of the Commission.

17. Privileged Material and/or CEII shall remain available to Participants until the later of 1) the date an order terminating this proceeding no longer is subject to judicial review, or 2) the date any other Commission proceeding relating to the Privileged Material and/or CEII is concluded and no longer subject to judicial review. No less than three (3) days after the date of such order, any Participant receiving Privileged Material and/or CEII shall return or destroy the Privileged Material and/or CEII. If requested, each Participant also must submit to the IMM an affidavit stating that to the best of its knowledge it has returned or destroyed the Privileged Material and/or CEII.

18. Regardless of any order terminating this proceeding, this PJM Markets Protective Agreement shall remain in effect until specifically modified or terminated by the Presiding Judge, the Chief Judge, or the Commission. All CEII designations shall be subject to the “[d]uration of the CEII designation” provisions of 18 C.F.R. § 388.113(e).

19. Any violation of this PJM Markets Protective Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

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)	

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged Material and/or Critical Energy/Electric Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the PJM Markets Protective Order in this proceeding, that I have been given a copy of and have read the PJM Markets Protective Agreement, and that I agree to be bound by it. I declare that the scope of my employment does not include and is not planned to include any of the activities described in Paragraph 7, unless permission is obtained in accordance with Paragraph 8, of the PJM Markets Protective Agreement. I understand that the contents of Privileged Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the PJM Markets Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____
Printed Name: _____
Title: _____
Representing: _____
Date: _____