



## I. PETITION

In connection with its review of Part V service costs under the OATT provided by NRG during the period from June 1, 2022, to February 24, 2025,<sup>4</sup> the Market Monitor requested that NRG provide copies of all invoices that support Project Investment (“PI”) charges in 2022 and 2023 and all invoices less than \$10,000 for PI costs in 2024 and 2025. The Market Monitor also requested all invoices and supporting documentation for all costs included in the fixed cost component of the Part V service bills from Indian River 4 to PJM from 2022 through February 24, 2025, the end of service (“Requested Information”).

The Requested Information is needed for the Market Monitor to verify all the costs charged to PJM customers and to verify that the documentation supports monthly billings,

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<sup>4</sup> See OATT Attachment M § IV.D-1 (“The Market Monitoring Unit shall monitor compliance with PJM Market Rules and shall take action on compliance issues. The Market Monitoring Unit has the exclusive authority to perform the functions set forth in Tariff, Attachment M-Appendix and in this Attachment M. If the Market Monitoring Unit detects a Market Violation involving potential misconduct, it shall, if the applicable criteria are met, refer the matter in accordance with section IV.I below. If the Market Monitoring Unit detects a compliance issue and determines that there is an issue about the proper and lawful application of a rule, and the Market Monitoring Unit makes a preliminary determination that no misconduct is evident and the issue involves a difference about the appropriate calculation of the level of an input, the Market Monitoring Unit may file a petition or initiate other regulatory proceedings addressing the issue. The Market Monitoring Unit may, where it deems appropriate, submit a confidential Referral and initiate a public regulatory proceeding concerning the same underlying matter.”); OATT Attachment M-Appendix § IV.2 (“The Market Monitoring Unit and the generating unit owner shall attempt to come to agreement on the level of each component included in the Deactivation Avoidable Cost Credit. In the case of cost of service filing submitted to the Commission in alternative to the Deactivation Cost Credit, the Market Monitoring Unit shall indicate to the generating unit owner in advance of filing its views regarding the proposed method or cost components of recovery. The Market Monitoring Unit shall notify the Office of the Interconnection of any costs to which it and the generating unit owner have agreed or the Market Monitoring Unit’s determination regarding any cost components to which agreement has not been obtained. If a generating unit owner includes a cost component inconsistent with its agreement or inconsistent with the Market Monitoring Unit’s determination regarding such cost components, the Market Monitoring Unit may exercise its powers to inform Commission staff of its concerns and seek a determination that would require the Generating unit to include an appropriate cost component. This provision is duplicated in Tariff, Part V, section 114 and Tariff, Part V, section 119.”).

as the OATT requires.<sup>5</sup> The Market Monitor is unable to obtain such information from an alternative source. The Market Monitor has been seeking the Requested Information for over two years. Accordingly, the Market Monitor requests that the Commission grant this petition and require NRG to provide the Requested Information within two weeks.

Section V.B.1 of Attachment M to the OATT authorizes the Market Monitor to request that market participants provide additional information if the Market Monitor determines that such information “is required to accomplish the objectives of the Plan.” Section V.B.2 of Attachment M provides, “The information request recipient shall provide the Market Monitoring Unit with all information that is reasonably requested.” Section V.B.2 provides further, that, “If an information request recipient fails to provide requested information within a reasonable time, the Plan provides that the Market Monitor may enforce the information request by initiating regulatory or judicial proceedings, including petitioning the Commission for an order directing production of the information.”

The Market Monitor reviewed cost information provided by NRG and, upon determining that it was insufficient, sought to obtain the Requested Information in emails dated September 9, 2024, January 10, 2025, February 28, 2025, March 11, 2025, June 4, 2025, July 18, 2025, August 22, 2025 and September 8, 2025.<sup>6</sup>

By letter dated November 19, 2025 (Attachment B), the Market Monitor requested that NRG provide the Requested Information citing Section V.B.1 of Attachment M to the OATT. The Market Monitor also requested all invoices and supporting documentation for all costs included in the fixed cost component of the Part V service bills from Indian River 4 to PJM from 2022 through February 24, 2025, the end of service.

NRG refused to provide information responsive to the request in emails dated January 30, 2025, April 25, 2025, June 10 and 20, 2025, August 4, 2025 and September 24, 2025, included

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<sup>5</sup> *Id.*

<sup>6</sup> Attachment A.

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in confidential Attachment A. NRG responded to the Market Monitor's formal request on December 5, 2025 ("December 5<sup>th</sup> Response"), which is included in confidential Attachment B. In its December 5<sup>th</sup> response, NRG stated that it would not provide the Requested Information because, "[p]er section 5.2.G of the Settlement Agreement, invoices over \$10,000 were only required to be submitted prospectively starting in January 2024."

It is not NRG's role to determine whether the Market Monitor should have the data required to evaluate NRG's costs under the Part V Service Agreement. The Market Monitor is not a party to the Part V Service Agreement and that agreement does not change any provision of the OATT or the defined the scope of the market monitoring function. Attachment M to the OATT confers broad responsibility on the Market Monitor for review of market behavior and the market design for market power concerns. Attachment M clearly defines the Market Monitor's authority to request the referenced data. NRG does not address the role of the Market Monitor as defined in Attachment M.

The Market Monitor cannot reach a conclusion about the reasonableness of the costs charged under the Part V Service Agreement and perform the market monitoring function set forth in the OATT without a review of the requested information. There is no reason for NRG to withhold information documenting its costs. NRG is the sole source for the requested information.

Because the Petition includes confidential attachments, the Market Monitor includes as Attachment C a proposed Protective Agreement.<sup>7</sup> The proposed Protective Agreement is based on the Chief Administrative Law Judge's Model Protective Order, but is modified to remove provisions related to oil pipelines and to take the form of an agreement.

This Petition should be granted and NRG should be required to provide the Requested Information pursuant to Section V.B.2 of Attachment M to the OATT within two weeks.

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<sup>7</sup> See 18 CFR § 388.312.

## II. COMMUNICATIONS

Pursuant to 18 C.F.R. § 385.203(b)(3), the Market Monitor designates the following persons as those to receive all notices and communications with respect to this proceeding:

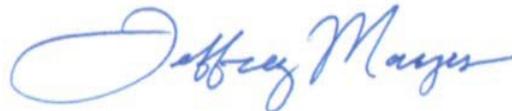
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## III. CONCLUSION

The Market Monitor respectfully requests that the Commission promptly grant this petition and require NRG to provide the Requested Information.

Respectfully submitted,



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Dated: February 20, 2026

# **ATTACHMENT A**

**CUI//PRIV Redacted**

**ATTACHMENT B**

**CUI//PRIV Redacted**

# **ATTACHMENT C**

## **Protective Agreement**

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

) )  
Independent Market Monitor for PJM ) Docket No. EL26-\_\_-000  
) )

**PROTECTIVE AGREEMENT**

This Protective Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Independent Market Monitor for PJM (Monitoring Analytics, LLC) (“Petitioner”) and \_\_\_\_\_ (“Intervenor”), and shall govern the use of all Privileged Material, as defined herein, submitted by Petitioner or Intervenor to the Federal Energy Regulatory Commission (the “Commission”) in this proceeding. Petitioner and Intervenor are referred to herein individually as a “Party” and jointly as “Parties.”

1. The complaint (“Complaint”) filed by Complainant in the above-captioned proceeding included documents that contained Privileged Material. Respondent/Intervenor is a “participant” in such proceeding, as such term is defined in 18 C.F.R. § 385.102(b), or has filed a timely motion to intervene or a notice of intervention in such proceeding. The Parties enter into this Protective Agreement to govern the use of Privileged Material or CEII produced by Complainant or Respondent/Intervenor in the above-referenced proceeding. Notwithstanding any order terminating such proceeding, this Protective Agreement shall remain in effect unless and until specifically modified or terminated jointly by the Parties or by the Commission or a court of competent jurisdiction.
  
2. The Commission’s regulations<sup>1</sup> and its policy governing the labelling of controlled unclassified information (“CUI”),<sup>2</sup> establish and distinguish the respective designations of Privileged Material and CEII. As to these designations, this Protective Agreement provides that a Party:
  - A. *may* designate as Privileged Material any material which customarily is treated by that Party as commercially sensitive or proprietary or material subject to a legal privilege, which is not otherwise available to the public, and which, if disclosed,

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<sup>1</sup> Compare 18 C.F.R. § 388.112, with 18 C.F.R. § 388.113. This Protective Agreement does not alter the respective requirements imposed by these sections on Privileged Material or CEII.

<sup>2</sup> Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff, 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

would subject that Party or its customers to risk of competitive disadvantage or other business injury; and

B. *must* designate as CEII, any material that meets the definition of that term as provided by 18 C.F.R. §§ 388.113(a), (c).

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

A. Party(ies): As defined above.

B. Privileged Material:<sup>3</sup>

- i. Material (including depositions) provided by a Party in response to discovery requests or filed with the Commission, and that is designated as Privileged Material by such Party;<sup>4</sup>
- 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 such Party;<sup>5</sup>
- iii. Any information contained in or obtained from such designated material;
- iv. Any other material which is made subject to this Protective Agreement by the Commission, any court, or other body having appropriate authority, or by agreement of the Parties;

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<sup>3</sup> 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).

<sup>4</sup> See *infra* P 11 for the procedures governing the labeling of this designation.

<sup>5</sup> 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).

- v. Notes of Privileged Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Privileged Material);<sup>6</sup> 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 Protective Agreement; or
- C. Critical Energy/Electric Infrastructure Information (CEII): As defined at 18 C.F.R. §§ 388.113(a), (c).
- D. Non-Disclosure Certificate: The term “Non-Disclosure Certificate” means the certificate attached to this Protective Agreement, by which individuals 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 Protective Agreement, and that such Parties have read the Protective Agreement and agree to be bound by it.
- E. Reviewing Representative: A person who has signed a Non-Disclosure Certificate and who is:
  - i. Commission Trial Staff designated as such in this proceeding;
  - ii. An attorney who has made an appearance in this proceeding for a Party;
  - 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 Party;
  - iv. An expert or an employee of an expert retained by a Party for the purpose of advising, preparing for, submitting evidence or testifying in this proceeding;

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<sup>6</sup> Notes of Privileged Material are subject to the same restrictions for Privileged Material except as specifically provided in this Protective Agreement.

- v. A person designated as a Reviewing Representative by order of the Commission; or
  - vi. Employees or other representatives of a Party 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 Protective Agreement only to Parties and only to their Reviewing Representatives as provided in Paragraphs 6-10 of this 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 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 Protective Agreement.
- 6. Privileged Material and/or CEII must be handled by each Party and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to Paragraph 9 of this 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 Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph 7, such Reviewing Representative may not use information contained in any Privileged Material and/or CEII obtained in this proceeding for a commercial purpose (e.g. to give a Party or competitor of any Party 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. If a Party wishes to designate a person not described in Paragraph 3(E) above as a Reviewing Representative, the Party must seek agreement from the Party providing the Privileged Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative pursuant to Paragraph 3(E) of this Protective Agreement with respect to those materials. If no agreement is reached, the matter must be submitted to the Commission for resolution.

9. 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 Protective Agreement until three business days after that Reviewing Representative first has executed and served a Non-Disclosure Certificate.<sup>7</sup> However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure Certificate, any participating paralegal, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Agreement, and must take all reasonable precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons.
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 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 Protective Agreement and the Non-Disclosure Certificate for as long as the Protective Agreement is in effect.<sup>8</sup>
11. All Privileged Material and/or CEII in this proceeding filed with the Commission or submitted to any Commission personnel, must comply with the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*.<sup>9</sup> 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 this text in the file name.
  - 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 this text in the file name.
  - 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:

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<sup>7</sup> During this three-day period, a Party may file an objection with 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.

<sup>8</sup> See *infra* P 19.

<sup>9</sup> 82 Fed. Reg. 18,632 (Apr. 20, 2017) (issued by Commission Apr. 14, 2017).

CUI//CEII/PRIV. Any corresponding electronic files must also include this text in the file name.

- 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. If any Party desires to 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, that Party first must notify counsel for the disclosing Party, and identify all such Privileged Material. Thereafter, use of such Privileged Material will be governed by procedures determined by the Commission.
13. Nothing in this Protective Agreement shall be construed as precluding any Party from objecting to the production or use of Privileged Material and/or CEII on any appropriate ground.
14. Nothing in this Protective Agreement shall preclude any Party from requesting the Commission or any other body having appropriate authority to find this Protective Agreement should not apply to all or any materials previously designated Privileged Material pursuant to this Protective Agreement. The Commission or any other body having appropriate authority may alter or amend this Protective Agreement as circumstances warrant at any time during the course of this proceeding.
15. Each Party governed by this Protective Agreement has the right to seek changes in it as appropriate from the Commission or any other body having appropriate authority.
16. Subject to Paragraph 18, the Commission shall resolve any disputes arising under this Protective Agreement pertaining to Privileged Material according to the following procedures. Prior to presenting any such dispute to the Commission, the Parties to the dispute shall employ good faith best efforts to resolve it.
- A. Any Party that contests the designation of material as Privileged Material shall notify the Party that provided the Privileged Material 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 Party seeking protection. If the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 18 shall apply.
- C. The procedures described above shall not apply to material designated by a Party as CEII. Material so designated shall remain subject to the provisions of this Protective Agreement, unless a Party requests and obtains a determination from

the Commission's CEII Coordinator that such material need not retain that designation.

17. The designator will have five (5) 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 the designator no less than five (5) days prior to the date on which the material will become public. This Protective Agreement shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made unless the designator files a motion with the Commission, with supporting affidavits demonstrating why the material should continue to be privileged. Should such a motion be filed, the material will remain confidential until such time as the interlocutory appeal or certified question has been addressed by the Motions Commissioner or Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714, .715. No Party waives its rights to seek additional administrative or judicial remedies after a decision regarding Privileged Material or the Commission's denial of any appeal thereof or determination in response to any certified question. 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.
18. Privileged Material and/or CEII shall remain available to Parties 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. After this time, the Party that produced the Privileged Material and/or CEII may request (in writing) that all other Parties return or destroy the Privileged Material and/or CEII. This request must be satisfied with within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts and exhibits in this proceeding containing Privileged Material, or Notes of Privileged Material, may be retained if they are maintained in accordance with Paragraph 5 of this Protective Agreement. If requested, each Party also must submit to the Party making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Privileged Material and/or CEII. To the extent Privileged Material and/or CEII are not returned or destroyed, they shall remain subject to this Protective Agreement.
19. Regardless of any order terminating this proceeding, this Protective Agreement shall remain in effect until specifically modified or terminated by 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).
20. Any violation of this Protective Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.
21. Neither Party waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Privileged Material, including but not limited to indemnification for unwarranted release of Privileged Material and injunctive relief.





## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon representatives of NRG.

Dated at Eagleville, Pennsylvania,  
this 20<sup>th</sup> day of February, 2026.



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