

Statement of Defendants and the Independent Market Monitor for PJM (ECF No. 180), as amended May 4, 2021 (ECF No. 183). The Court has not yet addressed the merits of those discovery disputes. As explained in those filings, FERC unilaterally imposed several restrictions when responding to Defendants' December 7, 2020 Requests for Production and, as a result, FERC has produced only 367 documents in response to Defendants' Requests for Production.¹ PJM and the IMM produced some documents in response to Defendants' December 7, 2020 subpoenas for documents, but have not responded in full to those subpoenas, based on various objections detailed in the joint statements and discovery dispute charts submitted to the Court on April 30, 2021.²

Defendants have noticed depositions for representatives or employees of FERC, PJM, and the IMM. In accordance with the schedule set forth in the Initial Pretrial Order, those depositions are scheduled to be completed by July 23, 2021, with the earliest deposition scheduled for June 28, 2021. Once the present disputes regarding written discovery are resolved and if Defendants succeed on even a limited number of issues implicated by those disputes, then FERC, PJM, and/or the IMM will require additional time to collect, review, and produce documents and Defendants then will need time to review such documents in advance of the depositions. Additionally, while PJM has agreed in principle to review and produce additional documents, Defendants and PJM have not yet been able to reach final agreement on the scope of PJM's review. Completing the production and review of additional documents before the currently scheduled deadline for

¹ Defendants, by contrast, have produced over 33,300 documents in response to FERC's written discovery requests, in addition to the thousands of documents provided during the investigation that preceded this litigation. A separate joint statement and discovery dispute chart was submitted on May 14, 2021 regarding FERC's discovery requests to Defendants (ECF No. 185) and also remains pending before the Court.

² While Defendants have continued to negotiate with PJM about the scope of searches to be performed, PJM did not propose modifications to the search terms originally proposed by Defendants until June 15, 2021.

depositions no longer seems possible. And requiring Defendants to take depositions before they have had the opportunity to obtain meaningful written discovery would be unfair and inefficient.

Additionally, several disputes have arisen regarding depositions that will likely require resolution by the Court. In particular, FERC on June 8, 2021 filed a notice of objection regarding Defendants' deposition of a FERC representative in accordance with Federal Rule of Civil Procedure 30(b)(6) (ECF No. 186); the IMM on June 11, 2021 filed a motion to quash Defendants' two subpoenas for depositions of IMM personnel along with a supporting memorandum (ECF Nos. 187 and 188); and Powhatan on June 14, 2021 filed a notice of objection regarding the format for FERC's depositions of two individuals associated with Powhatan (ECF No. 189). Extending the deadline for depositions may also be necessary in order to resolve these disputes.

For the foregoing reasons, Defendants request that the deadline for depositions be extended to August 23, 2021 or another date that would allow for (1) resolution of the pending discovery disputes in this case; (2) the collection, review, and production of additional documents by FERC, PJM, and/or the IMM; and (3) review of additional documents by Defendants in advance of depositions. Defendants defer to the Court regarding additional adjustments to the discovery and trial schedule that may be necessary. Defendants have been authorized to represent that FERC does not oppose the requested extension, but asked that Defendants note that FERC is concerned about the parties' ability to adhere to the Court's trial date in light of the enlarged deposition period.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2021, I filed the foregoing motion with the Clerk's Office, using the CM/ECF system, which will send a notification of such filing to counsel of record in this matter.

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