

No. 176).¹ After Defendants filed their Notice of Objection, the parties had additional meet and confer sessions by phone on April 21, 2021 and April 29, 2021 and have exchanged additional emails in an effort to narrow the scope of their dispute. In accordance with Paragraph 21(g) of the Initial Pretrial Order, counsel for the parties certify that they have met and conferred in good faith to attempt to resolve this dispute.

Respectfully Submitted,

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Dated: April 30, 2021

¹ Defendants understood April 16, 2021 to be the deadline for submitting notices of objection in accordance with Paragraph 23 of the Initial Pretrial Order. Plaintiff understood that deadline to have been extended based on the language of Defendants' Motion to Modify Discovery Deadline (ECF No. 172) that explicitly sought to move that deadline and was granted by the court. Plaintiff notes that it filed a Notice of Objection Regarding Defendants' Responses to Plaintiff's Discovery Requests (ECF No. 177) on April 30, 2021. Defendants do not object that filing. Consistent with the Court's rules and procedures, the parties will file a chart outlining those disputes by May 14, 2021. Plaintiff has requested a joint hearing on both Plaintiff's and Defendants' discovery objections. Defendants consent to that request.

Discovery Dispute Chart

Requests for Production	Plaintiff's Objection / Answer	Defendants' Response to Objection	The Court's Ruling
<p>This dispute relates to all 59 of Defendants' Requests for Production except for Request for Production Nos. 55 and 57. Attached as Appendix A is a copy of FERC's December 22, 2020 Objections to Defendants' Requests for Production, which includes the full text of the Requests.</p> <p>Dispute No. 1: The Parties agreed that their searches would be focused on several broad categories of evidence, including communications with third parties. Plaintiff limited its review to communications between third parties and officials within FERC's Office of Enforcement. This dispute relates to whether</p>	<p>Objection: FERC objects on the grounds of relevance and burdensomeness to the extent Defendants demand a search for documents not relevant to claims or defenses before the court, FERC searched and produced documents from the custodians most likely to have relevant documents; that is staff within the Office of Enforcement.</p> <p><u>Relevance of Third Party to FERC Communications</u></p> <p><i>Rules:</i></p> <ul style="list-style-type: none"> • Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense...."); • Fed. R. Evid. 401 (evidence must be of "consequence in determining the action" to be relevant); • Fed. R. Evid. 403 ("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair 	<p>Response: Defendants' requests for production—which were addressed to FERC as a whole and were not limited to FERC's Office of Enforcement—seek information relevant to the to the claims and defenses in this action and proportional to the needs of the case.</p> <p><u>Relevance</u></p> <p><i>Rules:</i></p> <ul style="list-style-type: none"> • Fed. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case.... Information within this scope of discovery need not be admissible in evidence to be discoverable.") • Local Civ. R. 26 (C) ("Unless otherwise ordered by the Court, an objection to any interrogatory, request, or application under Fed. R. Civ. P. 26 through 37, shall be served within fifteen (15) days after the service of the 	

<p>additional the files of additional custodians from other FERC offices should be searched for potentially responsive evidence.</p>	<p>prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”);</p> <ul style="list-style-type: none"> • Fed. R. Evid. 701 (lay opinion testimony limited to circumstances not present here). <p><u>Cases:</u></p> <ul style="list-style-type: none"> • <i>Lightsquared Inc. v. Deere & Co.</i>, No. 13 Civ. 8157, 2015 WL 8675377, at *5 (S.D.N.Y. Dec. 10, 2015 (“a party seeking to compel another party to search the files of additional custodians bears the burden of establishing the relevance of the documents it seeks from those custodians”); • <i>Mortg. Resol. Servicing, LLC v. JPMorgan Chase Bank, N.A.</i>, No. 15CIV0293LTSJCF, 2017 WL 2305398, at *2 (S.D.N.Y. May 18, 2017) (“Absent agreement among the parties, then, the responding party is entitled to select the custodians most likely to possess responsive information and to search the files of those individuals. Unless that choice is manifestly unreasonable or the requesting party demonstrates that the resulting production is deficient, the court should play no role in dictating 	<p>interrogatories, request, or application....”)</p> <ul style="list-style-type: none"> • 16 U.S.C. § 823b(d)(3)(B) (“The court shall have authority to review de novo the law and the facts involved....”) <p><u>Cases:</u></p> <ul style="list-style-type: none"> • <i>In re United States</i>, 864 F.2d 1153, 1156 (5th Cir. 1989) (“[A]s a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived.”) • <i>Clark v. Trans Union, LLC</i>, No. 3:15CV391, 2017 WL 11504623, at *2 (E.D. Va. Mar. 1, 2017) (Lauck, J.) (“[F]ailure to make specific legitimate objections to particular interrogatories or requests for production within the time allowed may result in a court deeming any objections waived.”) (internal quotations and alterations omitted) • <i>Spendlove v. RapidCourt, LLC</i>, No. 3:18-CV-856, 2019 WL 7143664, at *5 (E.D. Va. Dec. 23, 2019) (“Relevancy is broadly construed to include any information if there is ‘any 	
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	<p>the design of the search, whether in choosing search tools, selecting search terms, or, as here, designating custodians.”);</p> <ul style="list-style-type: none"> • <i>Stephens v. City of Lawrence</i>, No. 113CV01503TWPDM, 2015 WL 9165592, at *2 (S.D. Ind. Dec. 16, 2015) (lay opinion testimony regarding “legal conclusions that will determine the outcome of [the] case” is impermissible); • <i>Christian v. Fam. & Child Empowerment Servs., Inc.</i>, No. 4:18CV55, 2019 WL 8886238, at *2 (E.D. Va. July 30, 2019) (granting motion to strike lay opinion regarding legal requirements). <p><u>Facts:</u></p> <ul style="list-style-type: none"> • Plaintiff understands from the Parties’ meet and confer that Defendants are seeking statements by “prominent” members of the energy industry regarding the behavior at issue in this case. • Powhatan during the Order to Show Cause Proceeding conceded that “Obviously, what one individual [third party] plucked out of thin air thinks about Dr. Chen’s trades has no bearing on this case.” 	<p>possibility’ it may be relevant to any claim or defense.”)</p> <ul style="list-style-type: none"> • December 28, 2017 Memorandum Opinion (ECF No. 89) <p><u>Facts:</u></p> <ul style="list-style-type: none"> • In its December 22, 2020 Objections to Defendants’ discovery requests, FERC did not object to the production of communications with third parties based on relevance. While it included various relevance objections—including objections regarding the relevance of “internal Commission documents and communications” and “investigations involving other market participants”—none of its objections contended that communications with third parties are categorically irrelevant. Accordingly, this aspect of the objection has been waived. • In fact, FERC specifically agreed to produce communications with third parties (and Defendants in turn agreed that FERC would not be required to search for or log internal documents or communications). FERC raised this relevance argument only after 	
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	<ul style="list-style-type: none"> • None of the parties’ claims or defenses rely upon third parties’ understanding of Dr. Chen and Powhatan’s trading. • FERC’s Objections to Defendants’ Requests for Production contained some form of relevance objection to 52 of the 59 requests, along with statements regarding which Requests FERC would provide documents in response to. • Defendants bear the burden of establishing the relevance of documents they seek from additional custodians. Defendants’ argument seeks to improperly shift this burden to FERC. <p><u>Relevance of FERC to Third Party Communications</u></p> <p><i>Rules:</i></p> <ul style="list-style-type: none"> • Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense....”); • Fed. R. Evid. 401 (evidence must be of “consequence in determining the action” to be relevant); • Fed. R. Evid. 403 (“The court may exclude relevant evidence if its probative value is substantially 	<p>deficiencies in its production were revealed.</p> <ul style="list-style-type: none"> • Communications involving FERC officials outside the Office of Enforcement and third parties are relevant to the claims and defenses in this case. Discussions between FERC officials and PJM officials, market participants, or market experts about the type of trading at issue here are likely to be relevant to several of Defendants’ defenses, including those related to void-for-vagueness, fair notice and selective enforcement, due process, whether the trades were manipulative, scienter, waiver, and the seriousness of the alleged violations. • For instance, if a FERC Commissioner told a PJM official that he recognized that the FERC-approved market rules created incentives for and allowed market participants to engage in transactions in order to obtain marginal loss surplus allocation (“MLSA”) payments, that would seriously undermine FERC’s claims in this case and would support several of the defenses 	
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	<p>outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”).</p> <p><u>Case</u></p> <ul style="list-style-type: none"> • <i>Seminole Energy Servs., LLC Seminole Gas Co., LLC Seminole High Plains, LLC Lakeshore Energy Servs., LLC Vanguard Energy Servs., LLC</i>, 126 FERC ¶ 61041, 61264 (2009) (“it is a well-settled principle that the Commission speaks through its orders”). <p><u>Facts:</u></p> <ul style="list-style-type: none"> • The Commission’s Order and accompanying Complaint and claims are not based on any third-party communications other than those filed publicly on the docket during the Order to Show Cause Proceeding. • Defendants do not argue that their conduct was shaped or affected by another party’s alleged communications with FERC, meaning the communications could not have affected their state of mind. • The views of Commission staff and/or individual members are not 	<p>listed above. It could even qualify as a party admission.</p> <ul style="list-style-type: none"> • As another example, if market participants or experts contacted FERC officials expressing confusion about why Defendants’ trades were being investigated or prosecuted, that would support Defendants’ argument that they and other market participants lacked fair notice that FERC would consider it unlawful to take MLSA payments into account when engaging in UTC transactions. As the Supreme Court has explained, “laws which regulate persons or entities must give fair notice of conduct that is forbidden or required... A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” <i>F.C.C. v. Fox Television Stations, Inc.</i>, 567 U.S. 239, 253 (2012) (internal quotations and citation omitted). Communications from 	
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	<p>binding on the Commission, because the Commission speaks only via Orders as voted on by its members.</p> <p><u>Burdensomeness</u></p> <p><u>Rule:</u></p> <ul style="list-style-type: none"> • Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case....”); <p><u>Cases:</u></p> <ul style="list-style-type: none"> • <i>Mortg. Resol. Servicing, LLC v. JPMorgan Chase Bank, N.A.</i>, No. 15CIV0293LTSJCF, 2017 WL 2305398, at *2 (S.D.N.Y. May 18, 2017) (“Absent agreement among the parties, then, the responding party is entitled to select the custodians most likely to possess responsive information and to search the files of those individuals. Unless that choice is manifestly unreasonable or the requesting party demonstrates that the resulting production is deficient, the court should play no role in dictating the design of the search, whether in choosing search tools, selecting 	<p>third parties could show that other market participants and experts had no contemporaneous notice that FERC would consider UTC trading that took MLSA payments into consideration to be manipulative. Such communications would support Defendants’ fair notice and void-for-vagueness defenses.</p> <ul style="list-style-type: none"> • FERC’s cabined view of relevance—based on the notion that the Commission speaks only through its orders—is inconsistent with the Federal Power Act, which provides for <i>de novo</i> review of the law and the facts involved, and is inconsistent with this Court’s December 28, 2017 Memorandum Opinion (ECF No. 89), which explained that the Court’s review is not limited to the so-called “administrative record” and held that Defendants have the right to conduct their own discovery. • The statement FERC quotes from Powhatan’s response to FERC’s Order to Show Cause addressed Enforcement staff’s attempt to rely on the lay testimony of another UTC trader about the legality of the trades at issue here. As 	
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	<p>search terms, or, as here, designating custodians.”)</p> <ul style="list-style-type: none"> • <i>Lightsquared Inc. v. Deere & Co.</i>, No. 13 Civ. 8157, 2015 WL 8675377, at *5 (S.D.N.Y. Dec. 10, 2015 (see above) “a party seeking to compel another party to search the files of additional custodians bears the burden of establishing the relevance of the documents it seeks from those custodians”). <p><u>Facts:</u></p> <ul style="list-style-type: none"> • FERC is an agency with approximately 1,500 employees, the overwhelming majority of which have had no involvement in FERC’s investigation of or suit against Defendants. • FERC searched for and produced third party communications from the source it has stated would be the source of relevant documents since the filing of its Initial Disclosures – the Office of Enforcement, which is the sole office at FERC responsible for investigating Defendants’ conduct and litigating this civil penalty action. • The burdensomeness concerns are particularly acute given the lack of relevance of the documents sought. 	<p>explained above, the purpose of seeking communications between FERC and third parties is not to obtain this type of lay testimony.</p> <ul style="list-style-type: none"> • Regardless of whether the views of individual FERC Commissioners or staff may be binding on the agency, they nevertheless may be relevant, such as by illustrating contemporaneous understandings of the legality of the trading at issue in this case and the seriousness of the alleged violations. <p><u>Burdensomeness</u></p> <p><u>Rules:</u></p> <ul style="list-style-type: none"> • Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or 	
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	<ul style="list-style-type: none"> The relative quantity of Defendants’ production to FERC is not itself demonstrative of greater adherence to discovery protocol. Defendants engaged in the conduct at issue in this matter; sensibly their communications about that conduct bear directly on the element of scienter. FERC’s conduct is not at issue. Defendants search was limited to four custodians. The number of documents produced reveals that some of those custodians were particularly prolific, but is not necessarily a reflection of burden. Additionally, a number of non-responsive documents was produced. 	<p>expense of the proposed discovery outweighs its likely benefit.”)</p> <p><u>Cases:</u></p> <ul style="list-style-type: none"> <i>Lee v. Va. State Bd. of Elections</i>, No. 3:15CV357 (HEH-RCY), 2015 WL 9461505, at *7 (E.D. Va. Dec. 23, 2015) (holding that a request for communications between the Virginia State Board of Elections and third parties was not unduly burdensome given the limitations on privilege issues, the fact that communications can be electronically searched, and citing <i>Carefirst of Md, Inc. v. Carefirst Pregnancy Ctrs., Inc.</i>, 334 F.3d 390, 402 (4th Cir. 2003) for the proposition that “[d]iscovery ... is broad in scope and freely permitted”) (citation omitted). <i>Spendlove v. RapidCourt, LLC</i>, No. 3:18-CV-856, 2019 WL 7143664, at *4 (E.D. Va. Dec. 23, 2019) (“[A] party objecting to a discovery request as overly burdensome must submit affidavits or other evidence demonstrating the nature and extent of the asserted burden.”) <p><u>Facts:</u></p>	
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		<ul style="list-style-type: none"> • In response to Defendants’ requests for production, FERC produced 367 total documents. For reference, Powhatan has produced more than 30,000 documents and Chen has produced 1,595 documents in this action, in addition to the thousands of documents that were produced to FERC during FERC’s administrative investigation. Even third-party PJM has produced more than 3,500 documents to date. • Defendants already agreed to significantly limit FERC’s review by requiring searches for communications <i>only</i> with third parties, alleviating concerns regarding intra-agency privileges and other costly privilege reviews. Despite this limitation, FERC has refused to review documents for anyone outside of the Office of Enforcement. In light of the limitations Defendants have agreed to, the additional limits FERC seeks to impose are unreasonable and unwarranted. • Defendants have sought to focus their requested custodians on specific offices within FERC that 	
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		<p>are most likely to have relevant third-party correspondence on the relevant issues, and have even offered to allow FERC to search documents only for those employees with a certain level of seniority or to identify specific individuals to further eliminate the need for blanket review. Defendants have also offered to allow FERC to limit the date range for searches of communications involving custodians outside the Office of Enforcement. FERC has rejected these offers whole cloth.</p> <ul style="list-style-type: none">• Specifically, Defendants seek custodians within the following offices within FERC given that these offices are likely to have communications with third parties that are relevant to Plaintiff's claims and Defendants' defenses: (1) the Chairman and Commissioners and their offices, (2) the Office of Energy Market Regulation, (3) the Office of Energy Policy and Innovation, (4) the Office of General Counsel, and (5) the Office of External Affairs.	
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		<ul style="list-style-type: none">• The benefits of the requested discovery far outweigh the alleged burdens. As Defendants have explained, they expect that communications involving FERC personnel outside the Office of Enforcement are likely to be relevant to the claims and defenses in this case and important in resolving the case. Additionally, roughly \$34.5 million is in controversy; this is Defendants' first opportunity to obtain discovery; FERC as an agency of the federal government that regularly responds to FOIA requests and engages in litigation has considerable resources to respond to the requests; and Defendants have no other way to obtain the requested material.• FERC has not substantiated its claim that reviewing communications involving certain officials outside the Office of Enforcement would be unduly burdensome.• FERC's decision to limit its review and productions to communications with the Office of Enforcement is inconsistent with the agreement the parties	
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		<p>negotiated regarding the scope of document review in this case. Pursuant to that agreement, Defendants have produced 33,367 documents to FERC. FERC has produced only 367 documents to Defendants. Defendants would not have agreed to make such robust productions and would not have agreed to certain limits on FERC’s productions if FERC had been forthright about its intent to impose additional limits on its custodians.</p>	
<p>This dispute relates to all of Defendants’ Requests for Production that were not clearly limited to seeking only information about Defendants or their trading. Specifically, it covers Requests for Production Nos. 4, 8, 13, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 56, and 59. Attached as Appendix A is a copy of FERC’s December 22, 2020 Objections to Defendants’ Requests for</p>	<p>Objection: FERC objects on the grounds of relevance to the extent Defendants demand documents solely and exclusively pertaining to the conduct of other market participants.</p> <p><u>Rules:</u></p> <ul style="list-style-type: none"> • Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense....”); • Fed. R. Evid. 401 (evidence must be of “consequence in determining the action” to be relevant); • Fed. R. Evid. 403 (“The court may exclude relevant evidence if its probative value is substantially 	<p>Response: The information Defendants seek is relevant to the claims and defenses in this action and proportional to the needs of the case.</p> <p><u>Rules:</u></p> <ul style="list-style-type: none"> • Fed. R. Civ. P. 26(b)(1) • Advisory Committee’s Note to 2000 Amendments to Fed. R. Civ. P. 26(b)(1) (explaining that information about “other incidents of the same type” may be relevant to a party’s claims or defenses and thus “properly discoverable”) <p><u>Case:</u></p>	

<p>Production, which includes the full text of the Requests.</p> <p>Dispute No. 2: The issue the parties bring before the Court is whether FERC should be compelled to produce documents that do not expressly reference Defendants and relate to other PJM market participants who received marginal loss surplus allocation (“MLSA”) payments based on up-to congestion (“UTC”) transactions.</p>	<p>outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”</p> <p><u>Case:</u></p> <ul style="list-style-type: none"> • <i>Hemlock Semiconductor Corp. v. Kyocera Corp.</i>, No. 15-CV-11236, 2016 WL 1660862, at *4 (E.D. Mich. Apr. 27, 2016) (materials involving third parties were not relevant merely because cases were potentially related absent a showing of how the evidence bore on the parties’ claims or defenses). • <i>Hilton Head Island Dev. Co., LLC v. DuBois</i>, No. 9:13-CV-3510-RMG, 2014 WL 12615707, at *2 (D.S.C. Oct. 24, 2014) (granting protective order against party that propounded “requests . . . calculated to obtain materials related to ongoing litigation in other cases”). <p><u>Facts:</u></p> <ul style="list-style-type: none"> • Defendants did not work with or consult any other market participant prior to or during their manipulative scheme. 	<ul style="list-style-type: none"> • <i>Schneider v. Chipotle Mexican Grill, Inc.</i>, No. 16-CV-02200-HSG (KAW), 2017 WL 1101799, at *4 (N.D. Cal. Mar. 24, 2017) (discovery about related matters is appropriate where there is “significant factual and legal overlap”) • <i>Tucker v. Ohtsu Tire & Rubber Co.</i>, 191 F.R.D. 495, 497 (D. Md. 2000) (rejecting relevance-based objection to production of documents concerning a related case where one of the parties had already “made reference during this litigation” to material from the related case). <p><u>Facts:</u></p> <ul style="list-style-type: none"> • Certain of Defendants’ Requests seek information about other PJM market participants who allegedly engaged in UTC transactions in 2010 in order to obtain MLSA payments and FERC’s investigations of such market participants. Information about other market participants who engaged in the same type of trading as Defendants and received the same type of payments during the same time period is likely to be 	
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	<ul style="list-style-type: none"> • To date, Defendants have not argued they were even contemporaneously aware of the allegedly manipulative trading being conducted by other market participants. • None of the parties’ claims or defenses rely upon the legality of or facts underlying other market participants’ trading. • FERC’s unwillingness to produce irrelevant documents from other matters is consistent with its Objections, which stated: “To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of other market participants is not relevant to the claims and defenses at issue in this litigation.” • FERC made no agreement that it would provide materials from other investigations and has consistently objected to Defendants’ demands for this material, which have most often arisen in the context of Request for 	<p>relevant to several of Defendants’ defenses, including those related to void-for-vagueness, fair notice and selective enforcement, due process, whether the trades at issue here were manipulative, scienter, waiver, and the seriousness of the alleged violations.</p> <ul style="list-style-type: none"> • As the Supreme Court has explained, “laws which regulate persons or entities must give fair notice of conduct that is forbidden or required... A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” <i>F.C.C. v. Fox Television Stations, Inc.</i>, 567 U.S. 239, 253 (2012) (internal quotations and citation omitted). Communications about other market participants could support Defendants’ argument that there was no contemporaneous notice that FERC would consider UTC trading that took MLSA payments into consideration to be 	
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	<p>Production 56 seeking documents from the <i>Coaltrain</i> litigation.</p>	<p>manipulative. Such communications would support Defendants’ fair notice and void-for-vagueness defenses. Communications about market participants who allegedly engaged in similar trading to the trading at issue in this case but from whom FERC is not seeking civil penalties could also help support a selective prosecution defense.</p> <ul style="list-style-type: none"> • Additionally, the investigations of Defendants and other market participants who received MLSA payments based on UTC trades were closely linked from the outset. On August 25, 2010, FERC issued a single order announcing an investigation of “large volumes of Up-To Congestion transactions in PJM’s markets” that were undertaken to obtain MLSA payments. <i>PJM Up-To Congestion Transactions</i>, 132 FERC ¶ 61,169 (2010). It also appears that FERC’s data requests to PJM related to the investigation of UTC transactions by Defendants as well as other market participants. Similarly, the referrals of potential misconduct to FERC from both PJM and its independent market 	
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		<p>monitor covered allegations against Defendants as well as other UTC traders. These materials all indicate that investigations of Defendants and other UTC traders were handled on a coordinated basis and that relevant information about those investigations may be contained in communications that reference other UTC traders.</p> <ul style="list-style-type: none">• The limited information we do have about communications regarding other UTC traders who received MLSA payments in 2010 demonstrates why such communications are likely to be relevant to this case. For instance, after Defendants publicly requested it, FERC Enforcement staff provided a transcript of a July 27, 2010 call between Dr. Joseph Bowring, President of PJM's independent market monitor, and representatives of another trading firm whose UTC transactions from summer 2010 garnered MLSA payments and have since been alleged to be manipulative by FERC. Dr. Bowring told these traders that they were "not violating the rules" by engaging in UTC transactions at issue,	
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		<p>acknowledged that the then-existing market rules were “incenting this behavior,” and stated that—notwithstanding the market monitor’s duty to refer potential violations of FERC’s anti-manipulation rule to the FERC Office of Enforcement—he was “not going to take any further action” against the traders after they stated they would discontinue the transactions at issue. This call indicates that the market monitor initially did not view UTC trading to obtain MLSA payments as prohibited or manipulative conduct, which seriously undercuts FERC’s claims in this case and supports several of the defenses referenced above. Thus there is good reason to believe that highly relevant information may contained in communications related to other UTC traders who received MLSA payments.</p> <ul style="list-style-type: none"> • FERC’s own responses to Defendants’ interrogatories included ten references <i>FERC v. Coaltrain Energy, L.P.</i>, No. 2:16-cv-00732 (S.D. Ohio 2020) (“<i>Coaltrain</i>”), another civil penalty action alleging market 	
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		<p>manipulation based on UTC transactions from summer 2010 that garnered MLSA payments. These responses demonstrate that FERC itself views the <i>Coaltrain</i> case as relevant to the claims and defenses in this action.</p> <ul style="list-style-type: none">• When asked, FERC would not answer whether it provided the defendants in <i>Coaltrain</i> with materials about the Defendants in this action.• FERC's decision to exclude these materials from production is inconsistent with the agreement the parties negotiated regarding the scope of document review in this case. This agreement was negotiated after the parties exchanged objections and was intended to resolve issues raised in those objections without the need to involve the Court in discovery disputes. Pursuant to that agreement, Defendants have produced 33,367 documents to FERC. FERC has produced only 367 documents to Defendants. Defendants would not have agreed to make such robust productions and would not have agreed to certain limits on FERC's	
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		<p>productions if FERC had been forthright about its intent to stand on its objection and exclude communications related to its investigations of other UTC traders from its productions.</p> <ul style="list-style-type: none">• Several of the Requests for Production seek information about UTC trading and MLSA payments generally. <i>See, e.g.</i>, Requests for Production Nos. 4, 8, 21, 23, 24, and 25. FERC offered no general relevance-based objections to these requests in its December 22, 2020 Objections. However, to the extent FERC is excluding information responsive to these requests from its review and production because they do not expressly mention Defendants or their trading, Defendants underscore that the information sought in these Requests is relevant to the claims and defenses in this action, including those related to void-for-vagueness, fair notice and selective enforcement, due process, whether the trades at issue here were manipulative, scienter, waiver, and the seriousness of the alleged violations.	
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		<ul style="list-style-type: none"> • The only other specific relevance argument raised in FERC’s December 22, 2020 Objections and not addressed by the agreement to limit FERC’s review to communications with third parties relates to Request for Production No. 24. This Request for Production seeks information “relating to whether PJM’s Tariff during the Relevant Period prohibited market participants from considering MLSA payments when deciding whether to engage in UTC trades or other transactions in PJM markets.” FERC objected on relevance grounds, arguing that it “has not alleged in either its Order Assessing Penalties or its Amended Complaint that Defendants trading violated the PJM Tariff.” However, the information sought in this Request is relevant to several of Defendants’ defenses, including the defense that FERC’s claims are barred by the filed rate doctrine and the associated rule against retroactive ratemaking. 	
<p>Dispute No. 3: Plaintiff objects to Defendants’ Request for Production</p>	<p>Objection: FERC objects because the request is an impermissible “cloned discovery” request. Courts almost</p>	<p>Response: This request is appropriate given the similarities</p>	

<p>No. 56, which states: “Provide all documents, communications, and other evidence produced to the defendants in <i>Federal Energy Regulatory Commission v. Coaltrain Energy, L.P., et al.</i>, No. 2:16- cv-00732 (S.D. Ohio), that have not already been provided in response to one of the previous Requests.”</p>	<p>uniformly reject such requests because they are irrelevant and opaque to the court considering the cloned request.</p> <p><u>Rules:</u></p> <ul style="list-style-type: none"> • Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case....”); • Fed. R. Evid. 401 (evidence must be of “consequence in determining the action” to be relevant); • Fed. R. Evid. 403 (“The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”) <p><u>Cases:</u></p> <ul style="list-style-type: none"> • <i>Fields v. Wright Med. Tech., Inc.</i>, No. 4:15-CV-110-RL-JEM, 2017 WL 3048867, at *3 (N.D. Ind. July 19, 2017) (“‘Cloned discovery’ requesting all documents produced or received during other litigation or investigations, is irrelevant and 	<p>between this case and the <i>Coaltrain</i> case.</p> <p><u>Rules:</u></p> <ul style="list-style-type: none"> • Fed. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.... Information within this scope of discovery need not be admissible in evidence to be discoverable.”) • Local Civ. R. 26 (C) (“Unless otherwise ordered by the Court, an objection to any interrogatory, request, or application under Fed. R. Civ. P. 26 through 37, shall be served within fifteen (15) days after the service of the interrogatories, request, or application....”) <p><u>Cases:</u></p> <ul style="list-style-type: none"> • <i>In re United States</i>, 864 F.2d 1153, 1156 (5th Cir. 1989) (“[A]s a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived.”) 	
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	<p>immaterial unless the fact that particular documents were produced or received by a party is relevant to the subject matter of the instant case. . . . The [requester’s] counsel must do their own work and request the information they seek directly.”).</p> <ul style="list-style-type: none"> • <i>Wollam v. Wright Medical Group, Inc.</i>, 2011 WL 1899774, 2 (D.Colo.) (2011) (contrasting “cloned discovery” with “[d]irect requests allow[ing] a court to consider the relevance of the information sought to the specific claims and defenses in the pending case.”). <p><u>Facts:</u></p> <ul style="list-style-type: none"> • FERC’s objection to this Request was: “FERC objects to this Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of Coaltrain Energy, L.P. is not relevant to the claims and defenses at issue in this litigation.” • Coaltrain is not on trial here, and that case involves different traders with a different company executing different transactions at different 	<ul style="list-style-type: none"> • <i>Clark v. Trans Union, LLC</i>, No. 3:15CV391, 2017 WL 11504623, at *2 (E.D. Va. Mar. 1, 2017) (Lauck, J.) (“[F]ailure to make specific legitimate objections to particular interrogatories or requests for production within the time allowed may result in a court deeming any objections waived.”) (internal quotations and alterations omitted) • Several courts have allowed “cloned” discovery from cases “involving similar claims and facts to the case at bar.” <i>Waters v. Earthlink, Inc.</i>, No. 01-11887-REK, 2004 WL 6000237, at *3 (D. Mass. Dec. 1, 2004). Such discovery has been permitted where it “seeks information that is relevant to plaintiff’s claims and defendants’ defenses,” particularly where the production of “such information could save the time and expense of duplicating discovery aimed at the same issues and materials already produced in prior litigation.” <i>Peterson v. Wright Med. Tech., Inc.</i>, No. 11-1330, 2013 WL 655527, at *6 (C.D. Ill. Feb. 21, 2013); <i>Snowden By & Through Victor v.</i> 	
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	<p>times than Dr. Chen. While the alleged infractions are similar, the mere similar allegations do not entitle Defendants to cloned discovery.</p> <ul style="list-style-type: none"> • Defendants do not argue they conspired, worked with, or were even contemporaneously aware of Coaltrain or its UTC trading. • None of the other factors warranting cloned discovery is present here. • To the extent documents produced in <i>Coaltrain</i> were responsive to Defendants other discovery requests, they have been produced. • “Cloned discovery” is a legal term used to conceptualize why documents from other cases are generally considered irrelevant. FERC’s relevance argument has not been waived for failure to include the specific term in its objection. 	<p><i>Connaught Lab’s, Inc.</i>, 137 F.R.D. 325, 330 (D. Kan. 1991); <i>see also United States v. Am. Tel. & Tel. Co.</i>, 461 F. Supp. 1314, 1342 (D.D.C. 1978) (“This Court is not required to compel plaintiff to engage in a time-consuming reenactment of the discovery process engaged in by the Litton and MCI plaintiffs, with the result that eventually, that is, several years later, essentially the same documents will be produced.”); <i>Wauchop v. Domino’s Pizza, Inc.</i>, 138 F.R.D. 539, 547 (N.D. Ind. 1991) (“Use of the discovery fruits disclosed in one lawsuit in connection with other litigation, and even in collaboration among plaintiffs’ attorneys, comes squarely within the purposes of the Federal Rules of Civil Procedure.... Such cooperation among litigants promotes the speedy and inexpensive determination of every action as well as conservation of judicial resources.”) (citation omitted).</p> <p><u>Facts:</u></p> <ul style="list-style-type: none"> • In its December 22, 2020 Objection to Defendants’ 	
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		<p>discovery requests, FERC objected to this Request on the grounds that “[t]he conduct of Coaltrain Energy, L.P. is not relevant to the claims and defenses at issue in this litigation.” FERC did not object to this Request on the grounds of “cloned” discovery. Accordingly, this objection has been waived and Request for Production No. 56 should be addressed in accordance with Dispute No. 2.</p> <ul style="list-style-type: none">• For the reasons explained above in response to Dispute No. 2, information about FERC’s investigations of other PJM market participants who received MLSA payments in summer 2010 based on UTC transactions is relevant to the claims and defenses in this action. Coaltrain is one such market participant.• There are substantial similarities between the <i>Coaltrain</i> case and the instant action. Like this case, <i>Coaltrain</i> involves UTC trades in PJM’s market in summer 2010 that generated MLSA payments. As in this case, FERC in <i>Coaltrain</i> is alleging that certain UTC trades were manipulative because they were placed in order to obtain	
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		<p>MLSA payments. And as in this case, FERC alleges that Coaltrain’s trading violated FPA section 222, 16 U.S.C. § 824v, and the Commission’s Anti-Manipulation Rule, 18 C.F.R. § 1c.2.</p> <ul style="list-style-type: none"> • Allowing “cloned” discovery here would promote efficiency. Discovery in <i>Coaltrain</i> was conducted in 2019 and the case remains pending. As such, the materials FERC produced in the <i>Coaltrain</i> case should be readily available. To the extent there are concerns about the confidentiality of the documents produced in <i>Coaltrain</i>, such concerns should be addressed by the Consent Protective Order entered by the Court on March 22, 2021 (ECF No. 170). • Permitting “cloned” discovery in this case is particularly appropriate given that FERC has refused to provide information about its investigations of Coaltrain and other UTC traders who received MLSA payments in 2010 in response to other targeted Requests propounded by Defendants. 	
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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2021, I filed the foregoing joint statement and discovery dispute chart 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.

/s/ Robert W. Warnement
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and CU Fund, Inc.*

Appendix A

FERC's December 22, 2020 Objections to Defendants' Requests for Production

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

_____)	
FEDERAL ENERGY)	
REGULATORY COMMISSION,)	
)	
Plaintiff,)	Case No.: 3:15-CV-00452-MHL
)	
v.)	
)	
POWHATAN ENERGY)	
FUND, LLC, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**PLAINTIFF’S OBJECTIONS TO DEFENDANTS’ FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 34), the Federal Energy Regulatory Commission (“FERC” or the “Commission”) submits the following objections to the First Set of Requests for Production of Documents (“Requests”) of Defendants Powhatan Energy Fund, LLC, Houlian “Alan” Chen, HEEP Fund, Inc., and CU Fund, Inc. (collectively, “Defendants”).

GENERAL OBJECTIONS

1. FERC objects to these Requests, including the general instructions, to the extent they purport to impose obligations upon FERC greater than or beyond the requirements of the Federal Rules of Civil Procedure, the Local Rules of this Court, or other applicable law.
2. FERC objects to these Requests to the extent they seek information that is subject to the attorney-client, attorney work product, deliberative process, or law enforcement privileges. FERC also objects to the preparation of a privilege log for any privileged documents created after

the Show Cause Order was issued on December 17, 2015 (revised December 18, 2015). Moreover, the creation of a document-by-document privilege log for internal FERC privileged documents that predate the Order to Show Cause would be unduly burdensome because it is estimated there are thousands of such documents.

3. FERC does not concede that a response to any of these Requests is relevant to the claims or defenses in this case or will be admissible in this action. FERC does not waive its objections on any grounds to the use of any response at trial or in any other proceedings in this action or in any other action. FERC's voluntary production of documents in response to any Request to which it has objected may not be deemed a waiver of its stated objections.

4. FERC objects to these Requests to the extent they are predicated upon erroneous assumptions or Defendant's definitions, or to the extent that they state incorrect facts. By responding to these Requests, FERC does not agree to, and specifically reserves the right to challenge, any of the factual predicates contained therein.

5. FERC responds to each Request based on information and documentation available as of the date hereof and reserves the right to supplement and amend its responses pursuant to Fed. R. Civ. P. 26(e). No response herein should be construed as being made with prejudice to the Commission's right to amend these responses based on additional information, further review, clarification from the requesting party, or any other reason.

6. Consistent with Fed. R. Civ. P. 26(b)(5)(B) and Fed. R. Evid. 502(b), inadvertent disclosure of any privileged document is not a waiver of any applicable privilege with respect to such document.

7. These General Objections are incorporated, to the extent applicable, in response to each individual Request as if these General Objections were fully set forth therein. FERC reserves the right to supplement these General Objections as necessary.

OBJECTIONS TO DEFINITIONS & INSTRUCTIONS

1. FERC objects to the definition of “Commission,” “FERC,” and “Plaintiff” because it purports to encompass its “former representatives.” Plaintiff is not obligated to, nor will it, search or produce materials that are not within its possession, custody, or control.

2. FERC objects to Instruction 6, production of a privilege log, as unduly burdensome and disproportionate to the needs of the case to the extent that it seeks detailed information regarding documents not otherwise discoverable.

SPECIFIC RESPONSES AND OBJECTIONS

REQUEST FOR PRODUCTION NO. 1:

Provide all documents, communications, and other evidence relating to your contention that the trades within the scope of the Complaint were manipulative wash trades.

OBJECTION TO REQUEST FOR PRODUCTION NO. 1:

Concerning the Request's reference to "documents" and "evidence," in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 2:

Provide all documents, communications, and other evidence relating to your contention that that the trades within the scope of the Complaint did not expose Defendants to market prices (Compl. ¶ 3).

OBJECTION TO REQUEST FOR PRODUCTION NO. 2:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by other third parties to data requests issued by

Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 3:

Provide all documents, communications, and other evidence relating to your contention that the trades within the scope of the Complaint did not expose Defendants to economic risk (Compl. ¶ 89).

OBJECTION TO REQUEST FOR PRODUCTION NO. 3:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its

General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 4:

Provide all documents, communications, and other evidence reflecting the amount and type(s) of risk to which a UTC trade must be exposed in order to avoid that trade being labeled manipulative by the Commission.

OBJECTION TO REQUEST FOR PRODUCTION NO. 4:

Concerning the Request's reference to "documents" and "evidence," in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client

privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 5:

Provide all documents, communications, and other evidence relating to your contention that the trades within the scope of the Complaint “were certain themselves to lose money” (Compl. ¶ 94).

OBJECTION TO REQUEST FOR PRODUCTION NO. 5:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the

investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 6:

Provide all documents, communications, and other evidence supporting your contention that Defendants' "round-trip UTC trades were routinely uneconomic" (Penalty Assessment Order at P 76).

OBJECTION TO REQUEST FOR PRODUCTION NO. 6:

Concerning the Request's reference to "documents" and "evidence," in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be

proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 7:

Provide all documents, communications, and other evidence relating to your contention that Defendants traded UTCs “without regard to market fundamentals” (Compl. ¶ 6, quoting Penalty Assessment Order at P 51).

OBJECTION TO REQUEST FOR PRODUCTION NO. 7:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client

privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants

REQUEST FOR PRODUCTION NO. 8:

Provide all documents, communications, and other evidence relating to whether PJM market participants during the Relevant Period were prohibited from undertaking UTC trades for purposes other than those specified in the Penalty Assessment Order, *i.e.*, for “hedg[ing] congestion price risk associated with physical transactions” or “arbitraging the price differences between two nodes in the day-ahead and real-time markets” (Penalty Assessment Order at P 18).

OBJECTION TO REQUEST FOR PRODUCTION NO. 8:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as unduly burdensome because the relevant documents setting out the proper purposes for UTC trading, including the Commission’s Orders, Rules, and Regulations, are publicly available.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no documents in response to this Request.

REQUEST FOR PRODUCTION NO. 9:

Provide all documents, communications, and other evidence relating to your contention that the trades within the scope of the Complaint “had no relationship to” the “market purpose behind UTCs” (Penalty Assessment Order at P 80).

OBJECTION TO REQUEST FOR PRODUCTION NO. 9:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome

because the factual material gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 10:

Provide all documents, communications, and other evidence relating to your contention that the Defendants “understood that their round-trip UTC trades had little price risk by design, were not undertaken to arbitrage price spreads, were certain themselves to lose money, and were placed only to create the illusion of volume trading to obtain transmission and thereby earn MLSA payments that otherwise would have gone to other market participants” (Compl. ¶ 94).

OBJECTION TO REQUEST FOR PRODUCTION NO. 10:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client

privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 11:

Provide all documents, communications, and other evidence relating to your contention that “Dr. Chen understood that his fraudulent trading scheme was inconsistent with, and obstructed the market design purpose of, UTC trading in PJM” (Compl. ¶ 91).

OBJECTION TO REQUEST FOR PRODUCTION NO. 11:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the

investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 12:

Provide all documents, communications, and other evidence relating to your contention that the Defendants acted with regard to the trades within the scope of the Complaint for the sole purpose of obtaining MLSA payments.

OBJECTION TO REQUEST FOR PRODUCTION NO. 12:

Concerning the Request's reference to "documents" and "evidence," in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be

proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 13:

Provide all documents, communications, and other evidence relating to the possibility that one leg of a paired trade might not clear.

OBJECTION TO REQUEST FOR PRODUCTION NO. 13:

Concerning the Request's reference to "documents" and "evidence," in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client

privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 14:

Provide all documents, communications, and other evidence relating to your contention that “the so-called ‘home run’ strategy, is disproven by the contemporaneous evidence” and is “‘a *post hoc* explanation’” (Compl. ¶ 92, quoting Penalty Assessment Order at P 129).

OBJECTION TO REQUEST FOR PRODUCTION NO. 14:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of

which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 15:

Provide all documents, communications, and other evidence relating to your contention that "Dr. Chen performed analyses concerning the historical performance of 'all

the combinations' of UTC paths and that Mr. [Kevin] Gates understood Dr. Chen to have developed a model to determine the MLSA payments" but Dr. Chen did not "analyze[] this alleged 'home run' strategy" (Penalty Assessment Order at P 90, footnote omitted).

OBJECTION TO REQUEST FOR PRODUCTION NO. 15:

Concerning the Request's reference to "documents" and "evidence," in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note

to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 16:

Provide all documents, communications, and other evidence indicating that Defendants disguised, obscured, mischaracterized, concealed the nature of, or created a false appearance with regard to the trades within the scope of the Complaint.

OBJECTION TO REQUEST FOR PRODUCTION NO. 16:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material

that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 17:

Provide all documents, communications, and other evidence relating to your contention that Defendants’ trades “were presented in a manner that appeared legitimate but instead disguised the transactions’ true purpose” (Penalty Assessment Order at P 64) and were “placed to appear as if they were legitimate spread trades” (Penalty Assessment Order at P 65).

OBJECTION TO REQUEST FOR PRODUCTION NO. 17:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome

because the factual material gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 18:

With respect to your contention that “Defendants’ ‘round-trip UTC transactions were deceptive and manipulative’ because the trades were entered separately,” *i.e.*, the “trading activity involved ‘plac[ing] separate bids for each leg of their round-trip UTC transactions in the PJM market’” (Compl. ¶ 87, quoting Penalty Assessment Order at P 5), provide all documents, communications, and other evidence indicating that there were alternative methods for placing “connected” bids for UTC transactions during the Relevant Period (Compl. ¶ 87).

OBJECTION TO REQUEST FOR PRODUCTION NO. 18:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client

privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 19:

Provide all documents, communications, and other evidence reflecting Defendants’ state of mind with respect to the trades within the scope of the Complaint.

OBJECTION TO REQUEST FOR PRODUCTION NO. 19:

In addition to its General Objections, FERC objects to this Request as ambiguous because the phrase “state of mind” is vague and undefined. Conceivably, “all documents, communications or other evidence” created, edited, or reviewed by Defendants had the potential to reflect or otherwise effect Defendants’ “state of mind.”

Concerning the Request’s reference to “documents” and “evidence,” FERC further objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to

Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 20:

Provide all documents, communications, and other evidence relating to your contention that the trades within the scope of the Complaint “impaired, obstructed, or defeated a well-functioning market inasmuch as they intentionally distorted the allocation of payments provided for by the tariff” (Compl. ¶ 88).

OBJECTION TO REQUEST FOR PRODUCTION NO. 20:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 21:

Provide all documents, communications, and other evidence relating to how well the market for the UTC product was functioning during the Relevant Period.

OBJECTION TO REQUEST FOR PRODUCTION NO. 21:

In addition to its General Objections, FERC objects to this Request as ambiguous because the phrase “how well the market for the UTC product was functioning” is vague and undefined.

Concerning the Request’s reference to “documents” and “evidence,” FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis

received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 22:

Provide all documents, communications, and other evidence indicating that the trades within the scope of the Complaint caused transmission to be unavailable when "other market participants sought to use it for their own non-manipulative transactions" (Compl. ¶

96) or “prevented other market participants from using the transmission for legitimate purposes” (Penalty Assessment Order at P 67).

OBJECTION TO REQUEST FOR PRODUCTION NO. 22:

Concerning the Request’s reference to “documents” and “evidence,” in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note

to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 23:

Provide all documents, communications, and other evidence relating to your contention that “MLSA payments were not, and should not be considered, part of the underlying UTC trade” (Penalty Assessment Order at P 78).

OBJECTION TO REQUEST FOR PRODUCTION NO. 23:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents—namely, the Commission Orders, Rules, and Regulations governing UTC trading.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those

documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 24:

Provide all documents, communications, and other evidence relating to whether PJM’s Tariff during the Relevant Period prohibited market participants from considering MLSA payments when deciding whether to engage in UTC trades or other transactions in PJM markets.

OBJECTION TO REQUEST FOR PRODUCTION NO. 24:

In addition to its general objections, FERC objects to this Request as seeking documents that are neither relevant nor likely to lead to discovery of relevant evidence and, thus, disproportionate to the needs of this case under Fed. R. Civ. P. 26(b)(1). The Commission has not alleged in either its Order Assessing Penalties or its Amended Complaint that Defendants trading violated the PJM Tariff.

FERC further objects to this Request as unduly burdensome and duplicative because it calls for the production of documents that are publicly available—namely, the PJM Tariff and attendant documents.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material

that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 25:

Provide all documents, communications, and other evidence relating to your contention that that it was “improper” to “engag[e] in round-trip UTC trades with the MLSA payments as the sole or primary price signal” (Penalty Assessment Order at P 80).

OBJECTION TO REQUEST FOR PRODUCTION NO. 25:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents—namely, the Commission Orders, Rules, and Regulations governing UTC trading.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 26:

Provide all documents, communications, and other evidence relating to your contention that “[s]eeking to obtain MLSA payments through round-trip trades is not a legitimate economic purpose” (Penalty Assessment Order at P 133).

OBJECTION TO REQUEST FOR PRODUCTION NO. 26:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents—namely, the Commission

Orders, Rules, and Regulations governing UTC trading.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 27:

Provide all documents, communications, and other evidence relating to the propriety or impropriety of PJM market participants taking MLSA payments into consideration when deciding whether to engage in UTC trades or other transactions in PJM markets during the Relevant Period.

OBJECTION TO REQUEST FOR PRODUCTION NO. 27:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents—namely, the Commission Orders, Rules, and Regulations governing UTC trading.

FERC further objects to this Request as ambiguous because the phrase “into consideration” is vague and undefined.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 28:

Provide all documents or communications pre-dating the submission of any of the trades within the scope of the Complaint that advised PJM market participants against considering MLSA in deciding whether to engage in UTC trades or other transactions in PJM markets, or specified how much weight a market participant could appropriately give to MLSA payments in deciding whether to engage in a UTC trade or other transactions in PJM markets.

OBJECTION TO REQUEST FOR PRODUCTION NO. 28:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents—namely, the Commission Orders, Rules, and Regulations governing UTC trading.

FERC further objects to this Request as ambiguous because the phrases “considering” and “weight a market participant could appropriately give to MLSA payments” are vague and undefined.

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 29:

Provide all documents, communications, and other evidence relating to the changes to PJM’s tariff proposed and accepted in FERC Docket No. ER10-2280.

OBJECTION TO REQUEST FOR PRODUCTION NO. 29:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission’s Order considering changes to PJM’s tariff proposed and accepted in FERC Docket No. ER10-2280

along with all materials and communications relied upon by the Commission in reaching the conclusions set out in that Order are publicly available via the Commission's E-Library site (elibrary.ferc.gov).

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 30:

Provide all documents, communications, and other evidence relating to your contention that Defendants had notice that trades within the scope of the Complaint were manipulative prior to the submission of any of those trades.

OBJECTION TO REQUEST FOR PRODUCTION NO. 30:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents—namely, the Commission Orders, Rules, and Regulations governing UTC trading.

Concerning the Request’s reference to “documents” and “evidence,” FERC further objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note

to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 31:

Provide all documents, communications, and other evidence relating to the incentives that might be created by the Commission orders in the *Black Oak* proceeding.

OBJECTION TO REQUEST FOR PRODUCTION NO. 31:

In addition to its General Objections, FERC objects to this Request as ambiguous because the term “incentives” is vague and undefined. FERC further objects to this Request as ambiguous because it fails to specify which particular Orders in the multi-year *Black Oak* proceeding are at issue.

FERC further objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission’s Orders in the *Black Oak* Proceeding along with all materials and communications relied upon by the Commission in reaching the conclusions set out in those Orders are publicly available via the Commission’s E-Library site (elibrary.ferc.gov).

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects

that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 32:

Provide all documents, communications, and other evidence relating to the implications of the *Black Oak* orders for this civil action, the investigation preceding this civil action, or other FERC inquiries, investigations, administrative processes or proceedings, or lawsuits related to MLSA payments to UTC traders.

OBJECTION TO REQUEST FOR PRODUCTION NO. 32:

In addition to its General Objections, FERC objects to this Request as ambiguous because the term “implications” is vague and undefined. FERC further objects to this Request as ambiguous because it fails to specify which particular Orders in the multi-year *Black Oak* proceeding are at issue. FERC further objects to this Request as ambiguous because it fails to specify the “inquiries, investigations, administrative processes or proceedings” at issue and

whether the modifier “related to MLSA payments to UTC traders” should be read as applying to all of those terms or solely to the term “lawsuits.”

FERC further objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission’s Orders in the *Black Oak* Proceeding along with all materials and communications relied upon by the Commission in reaching the conclusions set out in those Orders are publicly available via the Commission’s E-Library site (elibrary.ferc.gov).

FERC further objects to this Request as unduly burdensome because it seeks materials that are neither relevant nor likely to lead to the discovery of relevant material and, thus disproportionate to the needs of this case pursuant to Fed. R. Civ. P. 26(b)(1). The conduct of market participants other than Defendants is not relevant to the claims or defenses at issue in this litigation, and, thus, materials concerning the potential “implications” of the *Black Oak* proceedings to “other FERC inquiries, investigations, administrative processes or proceedings, or lawsuits” are not relevant here.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note

to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 33:

Provide all documents, communications, and other evidence relating to your consideration of warnings raised by “certain participants in the *Black Oak* proceeding ... that the chosen MLSA allocation method could create perverse incentives for virtual traders to engage in volume trading to collect larger MLSA payments rather than to trade for arbitrage” and avowals by other participants in that proceeding “that such conduct would not occur” (Penalty Assessment Order at P 113).

OBJECTION TO REQUEST FOR PRODUCTION NO. 33:

In addition to its General Objections, FERC objects to this Request as vague and ambiguous because the terms “warnings” and “avowals” are undefined.

FERC further objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission’s Orders in the *Black Oak* Proceeding along with all materials and communications relied upon by the Commission in reaching the conclusions set out in those Orders are publicly available via the Commission’s E-Library site (elibrary.ferc.gov).

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material

that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 34:

Provide all documents, communications, and other evidence relating to whether or not, prior to any of the trades at issue, the Commission ever explicitly contemplated that PJM market participants might engage in UTC trades for the purpose of obtaining MLSA payments, including any consideration of that issue in connection with the *Black Oak* proceeding.

OBJECTION TO REQUEST FOR PRODUCTION NO. 34:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission’s Orders

regarding UTC trading in the *Black Oak* Proceeding along with all materials and communications relied upon by the Commission in reaching the conclusions set out in those Orders are publicly available via the Commission's E-Library site (elibrary.ferc.gov).

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 35:

Provide all documents, communications, and other evidence reflecting the calculation of civil penalties sought in the Complaint.

OBJECTION TO REQUEST FOR PRODUCTION NO. 35:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission's Order Assessing Penalties contains the authoritative explanation of how the Commission determined the penalties sought in the Amended Complaint, and makes relevant citation to the Commission's publicly available Penalty Guidelines.

FERC further objects to this Request as duplicative and unduly burdensome because the factual material underlying that penalty calculation are included in the Administrative Record, which was previously provided to Defendants along with a detailed index.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 36:

Provide all documents and communications other than those provided in response to the prior Request evidencing, discussing, or referencing FERC's civil penalty determinations as to any of the Defendants, as well as the financial data upon which FERC relied in reaching the determination.

OBJECTION TO REQUEST FOR PRODUCTION NO. 36:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission's Order Assessing Penalties contains the authoritative explanation of how the Commission determined the penalties sought in the Amended Complaint, and makes relevant citation to the Commission's publicly available Penalty Guidelines.

FERC further objects to this Request as duplicative and unduly burdensome because the factual material underlying that penalty calculation are included in the Administrative Record, which was previously provided to Defendants along with a detailed index.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 37:

Provide all documents, communications, and other evidence reflecting the calculation of the disgorgement amounts sought in the Complaint.

OBJECTION TO REQUEST FOR PRODUCTION NO. 37:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission’s Order Assessing Penalties contains the authoritative explanation of how the Commission determined the disgorgement sought in the Amended Complaint, and makes relevant citation to the Commission’s publicly available Penalty Guidelines.

FERC further objects to this Request as duplicative and unduly burdensome because the factual material underlying that disgorgement calculation are included in the Administrative Record, which was previously provided to Defendants along with a detailed index.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material

that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 38:

Provide all documents, communications, other than those provided in response to the prior Request evidencing, discussing, or referencing FERC's disgorgement determinations as to any of the Defendants, as well as the financial data upon which FERC relied in conducting those calculations.

OBJECTION TO REQUEST FOR PRODUCTION NO. 38:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission's Order Assessing Penalties contains the authoritative explanation of how the Commission determined

the disgorgement sought in the Amended Complaint, and makes relevant citation to the Commission's publicly available Penalty Guidelines.

FERC further objects to this Request as duplicative and unduly burdensome because the factual material underlying that disgorgement calculation are included in the Administrative Record, which was previously provided to Defendants along with a detailed index.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 39:

Provide all documents, communications, and other evidence relating to your

decision to seek joint and several liability.

OBJECTION TO REQUEST FOR PRODUCTION NO. 39:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission's Order Assessing Penalties contains the authoritative explanation of the Commission's rationale for seeking joint and several liability in the Amended Complaint.

FERC further objects to this Request as duplicative and unduly burdensome because the factual material underlying that determination are included in the Administrative Record, which was previously provided to Defendants along with a detailed index.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 40:

Provide all documents, communications, and other evidence relating to your contention that the trades within the scope of your Complaint were subject to the Commission's jurisdiction.

OBJECTION TO REQUEST FOR PRODUCTION NO. 40:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available documents. The Commission's Order Assessing Penalties contains the Commission's rationale for why it determined Defendants' conduct was subject to Commission jurisdiction.

FERC further objects to this Request as duplicative and unduly burdensome because the factual material underlying that determination are included in the Administrative Record, which was previously provided to Defendants along with a detailed index.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those

documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 41:

Provide non-redacted copies of all exculpatory documents, communications, or other evidence.

OBJECTION TO REQUEST FOR PRODUCTION NO. 41:

In addition to its General Objections, FERC objects to the Request as vague because the term “exculpatory” is ambiguous and undefined.

Concerning the Request’s reference to “documents” and “evidence,” FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation that bear on the defendants’ intent of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

REQUEST FOR PRODUCTION NO. 42:

Provide non-redacted copies of the documents requested by STS Energy Partners LP in the Freedom of Information Act request at issue in *STS Energy Partners LP v. Federal Energy Regulatory Commission*, No. 1:14-cv-00591-JDB (D.D.C., filed Apr. 10, 2014).

OBJECTION TO REQUEST FOR PRODUCTION NO. 42:

In addition to its General Objections, FERC objects to this Request because it seeks materials that are neither relevant nor likely to lead to the discovery of relevant materials and, thus disproportionate to the needs of this case pursuant to Fed. R. Civ. P. 26(b)(1). The materials sought by STS Energy Partners fell into two categories: 1) documents pertaining to an investigation of Oceanside Power LLC and 2) documents pertaining to the *Black Oak* Proceeding.

As to the first category, the conduct of Oceanside Power LLC is not at issue in this litigation and, therefore not relevant to the claims or defenses before the court.

As to the second category, to the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those

documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 43:

Provide all documents and other evidence exchanged between or relating to any communications between any employee or official of FERC, including any Commissioner or staff member, and any third party other than Defendants, relating to any of the Defendants or any of their current or former representatives, the trading within the scope of the Complaint, the propriety or impropriety of allowing UTC traders to receive MLSA payments, and the propriety or impropriety of taking MLSA payments into consideration when deciding whether to engage in UTC trades or other transactions in PJM markets.

OBJECTION TO REQUEST FOR PRODUCTION NO. 43:

In addition to its General Objections, FERC objects to this Request as ambiguous because the phrases “propriety or impropriety,” “allowing UTC traders to receive MLSA payments,” “taking MLSA payments into consideration,” and “other transactions” are vague and undefined.

FERC further objects to this Request as unduly broad and burdensome because it seeks communications regarding an array of transactions and market participants that are not the subject of the claims and defenses at issue in this litigation.

FERC further objects to this Request as unduly burdensome to the extent it seeks documents that are publicly available. The Commission's Orders regarding UTC trading and MLSA, along with all formal communications to the Commission regarding those issues, are available via the Commission's E-Library website (elibrary.ferc.gov).

FERC further objects to this Request as duplicative and unduly burdensome to the extent such communications are included in the Administrative Record, which was already provided to Defendants along with a detailed index.

Subject to the foregoing Objections, FERC will produce any responsive communications with third parties identified after a reasonable search of the Commission's records.

REQUEST FOR PRODUCTION NO. 44:

Provide all documents reflecting communications regarding this civil action, the investigation preceding this civil action, or any of the Defendants or any of their current or former representatives by (a) any current or former employee of FERC's Office of Enforcement or any current or former member of the investigative or litigation team for this matter with (b) any Commissioner of FERC or the Office of any Commissioner of FERC.

OBJECTION TO REQUEST FOR PRODUCTION NO. 44:

In addition to its General Objections, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

FERC further objects to the Request as unduly burdensome to the extent it seeks publicly available documents. Following the issuance of the Order to Show Cause and until the issuance of the Order Assessing Penalties, all communication between Enforcement Staff and the Commission occurred via docketed filings consistent with the Commission’s Separation of Functions Rule. As a result, all such communications are available on FERC’s E-Library website (elibrary.ferc.gov).

Consistent with these objections, FERC will produce no materials in response to this Request.

REQUEST FOR PRODUCTION NO. 45:

Provide all transcripts and video and audio recordings of testimony you took or interviews you conducted in connection with (a) your investigation of Defendants’ UTC trading or (b) any other of your investigations of UTC trading and MLSA payments.

OBJECTION TO REQUEST FOR PRODUCTION NO. 45:

In addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because transcripts, video, and audio recordings responsive to this Request are included in the Administrative Record, which was previously produced to Defendants along

with a detailed Index.

To the extent that this Request seeks transcripts of testimony from other investigations involving “UTC trading and MLSA payments,” FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of other market participants is not relevant to the claims and defenses at issue in this litigation.

To the extent that this Request seeks transcripts of testimony from other investigations involving “UTC trading and MLSA payments,” FERC believes that this Request may call for the production of information that is subject to third-party requests for confidential treatment, including trade secrets or other confidential business information, pursuant to the 18 CFR 1b.9, the Freedom of Information Act, and other authorities. This Request may also call for production of records maintained pursuant to the Privacy Act, 5 U.S.C. 552a. Consequently, the Commission, without waiving the objections asserted herein, anticipates that any possible production of items responsive to this portion of the Request may require both (a) notice to the affected third parties, and (b) the application to the Court for an appropriate protective order governing the production of confidential information amongst the parties in discovery.

Consistent with these objections, all responsive materials have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 46:

Provide all documents, communications, and other evidence you received from third parties in connection with (a) your investigation of Defendants’ UTC trading or (b) any other of your investigations of UTC trading and MLSA payments.

OBJECTION TO REQUEST FOR PRODUCTION NO. 46:

In addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because “all documents, communications, and other evidence [FERC] received from third parties” relevant to Defendants’ conduct are included in the Administrative Record, which was previously produced to Defendants along with a detailed Index. The Administrative Record includes all evidence about Defendants’ manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by third parties to data requests issued by Enforcement; as well as all material submitted by Defendants during the investigation.

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of other market participants is not relevant to the claims and defenses at issue in this litigation.

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC believes that this Request may call for the production of information that is subject to third-party requests for confidential treatment, including trade secrets or other confidential business information, pursuant to the 18 CFR 1b.9, the Freedom of Information Act, and other authorities. This Request may also call for production of records maintained pursuant to the Privacy Act, 5 U.S.C. 552a. Consequently, the Commission, without waiving the objections asserted herein, anticipates that any possible production of items responsive to this portion of the Request may require both (a) notice to the affected third parties, and (b) the

application to the Court for an appropriate protective order governing the production of confidential information amongst the parties in discovery.

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 47:

Provide all document or data preservation requests, data requests, subpoenas, or other requests for information or documents you issued to third parties and all responses you received to such requests in connection with (a) your investigation of Defendants' UTC trading or (b) any other of your investigations of UTC trading and MLSA payments.

OBJECTION TO REQUEST FOR PRODUCTION NO. 47:

In addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because "all documents, communications, and other evidence [FERC] received from third parties" relevant to Defendants' conduct are included in the Administrative Record, which was previously produced to Defendants along with a detailed Index. The Administrative Record includes all evidence about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by third parties to data requests issued by Enforcement; as well as all material submitted by Defendants during the investigation.

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the

needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of other market participants is not relevant to the claims and defenses at issue in this litigation.

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC believes that this Request may call for the production of information that is subject to third-party requests for confidential treatment, including trade secrets or other confidential business information, pursuant to the 18 CFR 1b.9, the Freedom of Information Act, and other authorities. This Request may also call for production of records maintained pursuant to the Privacy Act, 5 U.S.C. 552a. Consequently, the Commission, without waiving the objections asserted herein, anticipates that any possible production of items responsive to this portion of the Request may require both (a) notice to the affected third parties, and (b) the application to the Court for an appropriate protective order governing the production of confidential information amongst the parties in discovery.

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 48:

To the extent not provided in response to one of the previous Requests, provide your entire investigative files for (a) your investigation of Defendants' UTC trading or (b) any other of your investigations of UTC trading and MLSA payments.

OBJECTION TO REQUEST FOR PRODUCTION NO. 48:

In addition to its General Objections, FERC objects to this Request as ambiguous because the term "investigative file" is vague and undefined.

FERC further objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission's investigation of Defendants and

responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the

needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of other market participants is not relevant to the claims and defenses at issue in this litigation.

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC believes that this Request may call for the production of information that is subject to third-party requests for confidential treatment, including trade secrets or other confidential business information, pursuant to the 18 CFR 1b.9, the Freedom of Information Act, and other authorities. This Request may also call for production of records maintained pursuant to the Privacy Act, 5 U.S.C. 552a. Consequently, the Commission, without waiving the objections asserted herein, anticipates that any possible production of items responsive to this portion of the Request may require both (a) notice to the affected third parties, and (b) the application to the Court for an appropriate protective order governing the production of confidential information amongst the parties in discovery.

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 49:

Provide all documents, communications, and other evidence relating to your decisions about which PJM market participants subject to Referrals of Potential Violations from PJM or the IMM should be investigated by Enforcement and should be subject to civil penalties and other sanctions, including all documents and other evidence relating to your decision not to seek civil penalties from Black Oak Energy, LLC.

OBJECTION TO REQUEST FOR PRODUCTION NO. 49:

In addition to its General Objections, FERC objects to this Request as unduly burdensome to the extent it seeks publicly available information. FERC's determinations

regarding the assessment of civil penalties are found in its Orders Assessing Penalties, which are publicly available via the Enforcement section of FERC's website (ferc.gov/enforcement-legal/enforcement). All documents underlying those Orders can be found on the relevant dockets listed in those Orders and accessed via the Commission's E-Library website (elibrary.ferc.gov).

FERC further objects to this Request as duplicative and unduly burdensome because the factual material supporting FERC's decision to pursue penalties against Defendants is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by third parties to data requests issued by Enforcement; as well as all material submitted by Defendants during the investigation.

To the extent that this Request seeks the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client, attorney work product, deliberative process, and the law enforcement privileges.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for

documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of other market participants is not relevant to the claims and defenses at issue in this litigation.

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC believes that this Request may call for the production of information that is subject to third-party requests for confidential treatment, including trade secrets or other confidential business information, pursuant to the 18 CFR 1b.9, the Freedom of Information Act, and other authorities. This Request may also call for production of records maintained pursuant to the Privacy Act, 5 U.S.C. 552a. Consequently, the Commission, without waiving the objections asserted herein, anticipates that any possible production of items responsive to this portion of the Request may require both (a) notice to the affected third parties, and (b) the application to the Court for an appropriate protective order governing the production of confidential information amongst the parties in discovery.

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 50:

Provide all documents, communications, and other evidence not already provided in response to one of the previous Requests relating to any complaints, inquiries,

investigations, administrative processes or proceedings, or civil penalty actions regarding MLSA payments to UTC traders (regarding Defendants or other market participants) by (a) PJM, (b) the IMM, or (c) FERC.

OBJECTION TO REQUEST FOR PRODUCTION NO. 50:

In addition to its General Objections, FERC objects to this Request to the extent it seeks information not in FERC's possession or control—namely, documents in the possession or control of PJM and the IMM.

Concerning the Request's reference to "documents" and "evidence," in addition to its General Objections, FERC objects to this Request as duplicative and unduly burdensome because the factual material gathered relating to "complaints, inquiries, investigations, administrative processes or proceedings, or civil penalty actions" against Defendants and responsive to this Request is included in the Administrative Record, which was previously provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants' manipulative transactions of which FERC is currently aware, including: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM's Independent Market Monitor; responses by other third parties to data requests issued by Enforcement; as well as all material submitted by Defendants.

To the extent that this Request purports to call for the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client

privilege, attorney work product, the deliberative process privilege, and the law enforcement privilege.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of other market participants is not relevant to the claims and defenses at issue in this litigation.

To the extent that this Request seeks evidence obtained in investigations involving other market participants, FERC believes that this Request may call for the production of information that is subject to third-party requests for confidential treatment, including trade secrets or other confidential business information, pursuant to the 18 CFR 1b.9, the Freedom of Information Act, and other authorities. This Request may also call for production of records maintained pursuant to the Privacy Act, 5 U.S.C. 552a. Consequently, the Commission, without waiving the objections asserted herein, anticipates that any possible production of items responsive to this portion of the Request may require both (a) notice to the affected third parties, and (b) the application to the Court for an appropriate protective order governing the production of confidential information amongst the parties in discovery.

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 51:

Provide all documents, communications, and other evidence relating to UTC bids and executed UTC transactions between December 1, 2007 and November 30, 2010, including all documents and communications relating to the reservation of transmission service in connection with those bids and transactions and MLSA payments associated with those bids and transactions and including documents, communications, and other evidence sufficient to determine the aggregate profitability of each company that traded UTC during the specified period. This should include data reflecting for each UTC bid:

- (a) The company that placed the bid;
- (b) The date and hour of the bid;
- (c) The source and sink points;
- (d) The bid and cleared volume in MW;
- (e) The bid price;
- (f) Whether the bid cleared;
- (g) Any associated transmission reservation;

- (h) All economic components of the trade, including day-ahead and real-time prices for the source and sink, the MLSA payment associated with the UTC trade, the cost to reserve transmission, and other charges; and
- (i) Any other information describing the UTC trades.

OBJECTION TO REQUEST FOR PRODUCTION NO. 51:

In addition to its General Objections, FERC objects to this Request to the extent it purports to require FERC to produce data outside of the way it is kept in the normal course of business.

Concerning the Request's reference to "documents" and "evidence," FERC further objects to this Request as duplicative and unduly burdensome because the UTC bid and UTC transaction data gathered as part of the Commission's investigation of Defendants and responsive to this Request is included in the Administrative Record, which was previously produced to Defendants along with a detailed Index.

To the extent that this Request seeks the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client, attorney work product, deliberative process, and the law enforcement privileges.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee’s note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be “otherwise discoverable,” *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

To the extent that this Request seeks the UTC transaction data of other market participants, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of other market participants is not relevant to the claims and defenses at issue in this litigation.

To the extent that this Request seeks the UTC transaction data of other market participants, FERC believes that this Request may call for the production of information that is subject to third-party requests for confidential treatment, including trade secrets or other confidential business information, pursuant to the 18 CFR 1b.9, the Freedom of Information Act, and other authorities. This Request may also call for production of records maintained pursuant to the Privacy Act, 5 U.S.C. 552a. Consequently, the Commission, without waiving the objections asserted herein, anticipates that any possible production of items responsive to this portion of the Request may require both (a) notice to the affected third parties, and (b) the application to the Court for an appropriate protective order governing the production of confidential information amongst the parties in discovery.

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 52:

Provide all documents, communications, and other evidence relating to the payment of MLSA to UTC traders that have not already been provided in response to one of the previous Requests.

OBJECTION TO REQUEST FOR PRODUCTION NO. 52:

In addition to its General Objections, FERC objects to this Request as ambiguous because the term “relating to” is vague and undefined.

FERC further objects to this Request as unduly broad and burdensome because it fails to specify the number or type of UTC Traders at issue or the time period of the Request.

Concerning the Request’s reference to “documents” and “evidence,” FERC further objects to this Request as duplicative and unduly burdensome because the factual material gathered as part of the Commission’s investigation of Defendants and responsive to this Request is included in the Administrative Record, which was provided to Defendants along with a detailed index. The Administrative Record includes all materials obtained during the investigation about Defendants’ manipulative transactions of which FERC is currently aware: transcripts of all testimony taken during the investigation; the data and analysis received from PJM and Monitoring Analytics, PJM’s Independent Market Monitor; responses by third parties to data requests issued by Enforcement; as well as all material submitted by Defendants during the investigation.

To the extent that this Request seeks the production of internal Commission documents and communications, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the

needs of the case under Fed. R. Civ. P. 26(b)(1). FERC further objects that these internal documents and communications are protected by the attorney-client, attorney work product, deliberative process, and the law enforcement privileges.

Because the internal investigative documents sought by this Request are not relevant to the claims or defenses in this case, FERC has no obligation to provide a privilege log for those documents. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Civ. P. 26(b) Advisory Committee's note to 1993 amendment (noting that a party need not provide a privilege log (in any form) for documents that it believes in good faith not to be "otherwise discoverable," *e.g.*, that the party believes in good faith to be irrelevant, to impose undue production burdens, or not to be proportional to the needs of the case).

To the extent that this Request seeks documents and communications regarding other market participants, FERC objects to the Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of other market participants is not relevant to the claims and defenses at issue in this litigation.

To the extent that this Request seeks documents and communications regarding other market participants, FERC believes that this Request may call for the production of information that is subject to third-party requests for confidential treatment, including trade secrets or other confidential business information, pursuant to the 18 CFR 1b.9, the Freedom of Information Act, and other authorities. This Request may also call for production of records maintained pursuant to the Privacy Act, 5 U.S.C. 552a. Consequently, the Commission, without waiving the objections asserted herein, anticipates that any possible production of items responsive to this portion of the Request may require both (a) notice to the affected third parties, and (b) the application to the Court for an appropriate protective order governing the production of

confidential information amongst the parties in discovery.

Consistent with these objections, all materials responsive to this Request have already been produced to Defendants.

REQUEST FOR PRODUCTION NO. 53:

Provide all documents, communications, or other evidence relating to Defendants' UTC trading that have not already been provided in response to one of the previous Requests.

OBJECTION TO REQUEST FOR PRODUCTION NO. 53:

In addition to its General Objections, FERC objects to this Request as ambiguous because the phrase "relating to" is vague.

FERC further objects to the Request as unduly broad to the extent it seeks materials related to Defendants' UTC trades that are not related the claims or defenses at issue in this litigation. FERC will interpret this Request as seeking documents relating to Defendants' UTC trading at issue in the Commission's Amended Complaint.

Subject to the foregoing objection, FERC will produce any responsive documents identified after a reasonable search of the Commission's record.

REQUEST FOR PRODUCTION NO. 54:

Provide all documents, communications, or other evidence relating to any or all Defendants or any of their current or former representatives that have not already been provided in response to one of the previous Requests.

OBJECTION TO REQUEST FOR PRODUCTION NO. 54:

In addition to its General Objections, FERC objects to this Request as ambiguous because the phrase “relating to” is vague and undefined.

FERC further objects to the Request as unduly broad to the extent it seeks materials related to Defendants or any of their current or former representatives that are not related to the claims or defenses at issue in this litigation. FERC will interpret this Request as seeking documents relating to Defendants’ conduct that is at issue in the Commission’s Amended Complaint.

Subject to the foregoing objection, FERC will produce any responsive documents identified after a reasonable search of the Commission’s records.

REQUEST FOR PRODUCTION NO. 55:

Provide all documents, communications, or other evidence identified in FERC’s responses to Defendants’ First Set of Interrogatories that have not already been provided in response to one of the previous requests.

OBJECTION TO REQUEST FOR PRODUCTION NO. 55:

No objection.

REQUEST FOR PRODUCTION NO. 56:

Provide all documents, communications, and other evidence produced to the defendants in *Federal Energy Regulatory Commission v. Coaltrain Energy, L.P., et al.*, No. 2:16- cv-00732 (S.D. Ohio), that have not already been provided in response to one of the previous Requests.

OBJECTION TO REQUEST FOR PRODUCTION NO. 56:

In addition to its General Objections, FERC objects to this Request as seeking material that is neither relevant nor likely to lead to the discovery of relevant evidence and is, thus, disproportionate to the needs of the case under Fed. R. Civ. P. 26(b)(1). The conduct of Coaltrain Energy, L.P. is not relevant to the claims and defenses at issue in this litigation.

FERC further believes that this Request may call for the production of information that is subject to third-party requests for confidential treatment, including trade secrets or other confidential business information, pursuant to the 18 CFR 1b.9, the Freedom of Information Act, and other authorities. This Request may also call for production of records maintained pursuant to the Privacy Act, 5 U.S.C. 552a. Consequently, the Commission, without waiving the objections asserted herein, anticipates that any possible production of items responsive to this Request may require both (a) notice to the affected third parties, and (b) the application to the Court for an appropriate protective order governing the production of confidential information amongst the parties in discovery.

Consistent with the foregoing objections, FERC will not produce materials in response to this Request.

REQUEST FOR PRODUCTION NO. 57:

Provide all preservation, retention, or destruction policies applicable to the documents, communications, and other materials requested herein at any point in time.

OBJECTION TO REQUEST FOR PRODUCTION NO. 57:

In addition to its General Objections, FERC objects to this Request as unduly broad and burdensome to the extent it purports to seek documents from “any point in time.”

FERC further objects to this Request as ambiguous because the phrase “any point in time” is vague and undefined.

Consistent with the foregoing objections, FERC will produce all responsive documents identified after a reasonable search.

REQUEST FOR PRODUCTION NO. 58:

Provide all documents or communications relating to any breach, violation, or departure from any preservation, retention, or destruction policy that may have impacted the preservation or retention of any of the documents, communications, and other material requested herein at any point in time, including all documents or communications relating to former FERC Chairman Jon Wellinghoff’s purported February 2015 computer crash, described the [sic] June 4, 2015 *Management Alert: Review of Allegations of Improper Disclosure of Confidential, Nonpublic Federal Energy Regulatory Commission Information* by the Office of the Inspector General for the U.S. Department of Energy.

OBJECTION TO REQUEST FOR PRODUCTION NO. 58:

In addition to its General Objections, FERC objects to this Request as unduly broad and burdensome to the extent it purports to seek documents from “any point in time.”

FERC further objects to this Request as ambiguous because the phrase “any point in time” is vague and undefined.

FERC further objects to this Request as unduly broad and burdensome because it seeks materials unrelated to Defendants’ or Defendants’ conduct that is the subject of this litigation.

Consistent with the foregoing objections, FERC will produce all responsive documents identified after a reasonable search.

REQUEST FOR PRODUCTION NO. 59:

For any data you produce, provide documents (such as a legend or key) sufficient to explain or describe the data produced. For example, if you produce data in a spreadsheet format, produce documents sufficient to explain or describe the contents of each column or row.

OBJECTION TO REQUEST FOR PRODUCTION NO. 59:

In addition to its General Objections, FERC objects to this Request to the extent it purports to obligate the Commission to create documents in response or produce them in a form other than how they are kept in the normal course of business.

Subject to the foregoing objections, FERC will produce any responsive documents identified after a reasonable search.

FEDERAL ENERGY REGULATORY COMMISSION

By its attorneys,

Dated: December 22, 2020

/s/ Daniel Lloyd (Pro Hac Vice)
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CERTIFICATE OF SERVICE

I certify that on December 22, 2020, I sent the foregoing Objections to Defendants' Requests for Production to counsel of record for the Defendants by electronic mail.

/s/ Samuel Backfield
Samuel Backfield