

Regulatory Commission; the PJM Interconnection, L.L.C. (“PJM”); and/or Monitoring Analytics, LLC, the independent market monitor for PJM (“Market Monitor”).

Section 8.2 of the Consent Protective Order provides:

In the event that any Designated Material is included with, or the contents thereof are in any way disclosed in any pleading, motion or other paper filed with the Clerk of this Court, the Party filing such pleading, motion or other paper shall contemporaneously move the Court to file the Designated Material under seal pursuant to Local Civil Rule 5.

In accordance with this section of the Consent Protective Order, the portions of Defendants’ Response to the Market Monitor’s Motion to Quash that could be construed as disclosing the contents of Designated Material have been filed under seal.

The Fourth Circuit has explained that when deciding whether to seal documents, “a district judge must weigh the competing interests of the public’s access to judicial proceedings and the interests of the individuals in keeping the information private and of the government in ensuring integrity in its processes.” *Gonzalez v. Cuccinelli*, 985 F.3d 357, 376 (4th Cir. 2021). Factors to be considered when making this determination “ ‘include whether the records are sought for improper purposes, such as promoting public scandals or unfairly gaining a business advantage; whether release would enhance the public’s understanding of an important historical event; and whether the public has already had access to the information contained in the records.’ ” *Id.* (quoting *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984)).

Defendants take no position on whether the redacted portions of Defendants’ Response to the Market Monitor’s Motion to Quash satisfy this standard and should remain sealed and, if so, the period of time for which such portions of the filing should remain sealed. Because Defendants are moving to file under seal because others have designated certain materials as confidential, Defendants understand that the designating parties must file responses providing the information required by Local Civil Rule 5(C).

Defendants note that by filing the Motion to File Under Seal in accordance with section 8.2 of the Consent Protective Order, they are not conceding that the underlying material has been properly designated as “Confidential” or “Attorney’s Eyes Only.” Pursuant to section 9 of the Consent Protective Order, Defendants “may challenge the propriety of any designation under this Consent Protective Order at any time.” Defendants reserve their right to undertake such challenges, including with respect to the materials implicated by the Motion to File Under Seal.

Respectfully Submitted,

/s/ Patrick R. Hanes

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Dated: June 25, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2021, I filed the foregoing motion with the Clerk's Office, using the CM/ECF system, which will send a notification of such filing to counsel of record in this matter.

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