

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
United States

+1 202 389 5000

www.kirkland.com

Brooksany Barrowes
To Call Writer Directly:
+1 202 389 5025
brooksany.barrowes@kirkland.com

Facsimile:
+1 202 389 5200

April 27, 2026

Via eFiling

The Honorable Debbie-Anne A. Reese
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *Morgantown Power, LLC*
Docket No. EC26-58-000
Response to FERC Notice Regarding Public Release of Confidential Information

Dear Secretary Reese:

On April 20, 2026, the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued a letter in the captioned proceeding pursuant to Section 388.112(d) of the Commission’s regulations,¹ providing that the Commission received a request in the March 4, 2026 protest of Public Citizen, Inc. (“Public Citizen”) under the Freedom of Information Act (“FOIA”) to make public Section 2.03 of the Purchase Agreement filed confidentially by Morgantown Power, LLC (“Morgantown Power” or “Applicant”) and that the Commission “is considering the release of this information.”² Section 2.03 of the Purchase Agreement sets forth the purchase price for the Transaction.

Continued confidential treatment of Section 2.03 of the Purchase Agreement is warranted because it constitutes information that is protected from public disclosure under FOIA Exemption 4, i.e., “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”³ Accordingly, the Commission should deny Public Citizen’s FOIA request.

¹ 18 C.F.R. § 388.112(d) (2025).

² *Morgantown Power, LLC*, 195 FERC ¶ 61,055 (2026) (“FERC FOIA Notice”).

³ 5 U.S.C. § 552(b)(4) (2025).

KIRKLAND & ELLIS LLP

Debbie-Anne A. Reese

April 27, 2026

Page 2

A. Background

On February 2, 2026, Morgantown Power filed an Application seeking authorization for Chesapeake Data LLC (“Buyer”) to purchase one hundred percent of Morgantown Power’s membership interests from Lanyard Power Holdings, LLC.⁴ Several comments were filed in the FERC docket regarding the Application, to which responses were filed by Morgantown Power on March 20, 2026 (“March 20 Answer”), and April 14, 2026, and by Buyer’s owner on April 8, 2026.⁵ The March 20 Answer explained that Public Citizen’s request for the release of the confidential purchase price under Section 2.03 of the Purchase Agreement was unjustified and contrary to Commission precedent.⁶

On April 20, 2026, the Commission issued the FERC FOIA Notice in which the Commission requested comments on Public Citizen’s FOIA request within seven business days.⁷ Morgantown Power hereby responds to Public Citizen’s FOIA request as invited by the Commission.

B. The Commission Should Reject Public Citizen’s FOIA Request under Well-Established FERC and U.S. Supreme Court Precedent

Public Citizen’s FOIA request states that it seeks the public release of the confidential purchase price of the Transaction. This information is protected from public disclosure under FOIA Exemption 4. FOIA Exemption 4 provides that information can be protected from FOIA disclosure if it pertains to “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”⁸ The purchase price fits squarely within the terms “commercial or financial information,” the purchase price was obtained “from a person,”⁹ and it has been treated confidentially by the parties to the Purchase Agreement in which it is contained. Accordingly, Section 2.03 of the Purchase Agreement is protected under FOIA Exemption 4.

⁴ *Application for Approval Under Section 203 of the Federal Power Act and Requests for Waivers, Confidential Treatment, Expedited Action, and a 21-Day Comment Period*, Docket No. EC26-58-000 (filed Feb. 2, 2026) (“Application”). All terms not defined herein have the meaning set forth in the Application.

⁵ See Motion for Leave to Answer and Answer of Morgantown Power, LLC, Docket No. EC26-58-000 (filed Mar. 20, 2026); Motion for Leave to Answer and Answer of Morgantown Power, LLC, Docket No. EC26-58-000 (filed Apr. 14, 2026); Answer of TeraWulf, Inc. to Joint Motion to Dismiss, Docket No. EC26-58-000 (filed Apr. 8, 2026).

⁶ March 20 Answer at 11 (“Public Citizen has not set forth any rational justification for the public release of the Purchase Agreement.”).

⁷ FERC FOIA Request, 195 FERC ¶ 61,055 at P 2.

⁸ 5 U.S.C. § 552(b)(4). The Commission’s own regulations use identical language to describe records exempt from public disclosure, see 18 C.F.R. § 388.107(d).

⁹ “‘Person’ includes an individual, partnership, corporation, association, or public or private organization other than an agency.” 5 U.S.C. § 551(2).

KIRKLAND & ELLIS LLP

Debbie-Anne A. Reese

April 27, 2026

Page 3

First, the purchase price is financial information in the truest sense. Public Citizen even refers to Section 2.03 of the Purchase Agreement as containing “the market value of Morgantown Power.”¹⁰

Second, the purchase price was “obtained from a person.” Specifically, the information was obtained from Morgantown Power in the Application. FERC has previously held that a limited liability company qualifies as a “person” for purposes of applying FOIA Exemption 4.¹¹

Third, the purchase price has been treated confidentially by the parties. The United States Supreme Court has held that information is “confidential” under FOIA Exemption 4 if that information is “(1) both customarily and actually treated as private by its owner and (2) provided to the government under an assurance of privacy.”¹² The purchase price in Section 2.03 of the Purchase Agreement has been treated as private by Morgantown Power and the parties to the Purchase Agreement. This information has not been disclosed publicly in any setting. Further, the Purchase Agreement was filed as privileged and confidential in the Application. Public Citizen received a copy of the Purchase Agreement only after executing a standard non-disclosure certificate acknowledging that Public Citizen is not permitted to make the confidential information public or to use it for any purpose outside of this proceeding.

Applicants frequently submit commercial or financial information to the Commission with the expectation that such information will be assured privacy. The Commission has reinforced this expectation by denying public release in prior proceedings where interveners have requested public disclosure of confidential information under FOIA, including a request from Public Citizen to disclose the purchase price of a transaction, which the Commission denied the requests under FOIA Exemption 4.¹³ The Commission’s precedent is consistent with guidance from the Department of Justice regarding FOIA Exemption 4, which provides that if the government did not at least imply that the information would be publicly disclosed at the time of filing, then the

¹⁰ Protest of Public Citizen, Inc., and Motion to “deny a claim of privilege”, Docket No. EC26-58-000 at 7 (filed Mar. 4, 2026) (“Public Citizen Motion”).

¹¹ *Canal Generating LLC, et al.*, 181 FERC ¶ 61,157 at P 55 (2022) (“*Canal Generating*”) (citing *Elec. Info. Ctr. v. U.S. Dep’t of Homeland Security*, 117 F. Supp. 3d 46, 63 (D.D.C. 2025) (“Information is considered ‘obtained from a person’ [under Exemption 4] if the information originated from an individual, corporation, or other entity, and so long as the information did not originate from the federal government.”)).

¹² *Food Marketing Institute v. Argus Leader Media*, 138 U.S. 2356 (2019).

¹³ See, e.g., *Canal Generating*, 181 FERC ¶ 61,157 (rejecting a FOIA request for release of the purchase price); *Macquarie Energy LLC, et al.*, 176 FERC ¶ 61,174 at P 34 (2021) (rejecting a FOIA request for an attachment that included the ownership percentages of upstream owners); *Pub. Citizen, Inc. and Citizens Action Coalition v. CenterPoint Energy, Inc. and Southern Indiana Gas and Elec. Co.*, 174 FERC ¶ 61,101 at P 38 (2021) (denying Public Citizen’s request for the release of a multi-party confidentiality agreement).

KIRKLAND & ELLIS LLP

Debbie-Anne A. Reese
April 27, 2026
Page 4

“submitter’s practice of keeping the information private will be sufficient to warrant confidential status.”¹⁴

Public Citizen argues that the purchase price should be disclosed publicly so that “the community and leaders” can “determine the current value of the land and property.”¹⁵ Although the Commission has the right to “release information as necessary to carry out its jurisdictional responsibilities,”¹⁶ neither the purchase price of this Transaction, nor the value of the land or property, has any bearing on the Commission’s jurisdictional responsibilities under Section 203 of the Federal Power Act. The Commission has previously held as much in response to nearly identical arguments from Public Citizen.¹⁷ There is no justification for deviating from this precedent now.

C. Conclusion

For the reasons set forth above, Morgantown Power respectfully requests that the Commission deny Public Citizen’s FOIA request and maintain the confidentiality of Section 2.03 of the Purchase Agreement, consistent with FERC and U.S. Supreme Court precedent.

Thank you for your attention to this matter. Please do not hesitate to contact the undersigned if you have any questions.

¹⁴ *Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA*, U.S. DEPT. OF JUSTICE: OFFICE OF INFORMATION POLICY, available at: <https://www.justice.gov/oip/step-step-guidedetermining-if-commercial-or-financial-information-obtained-person-confidential>.

¹⁵ Public Citizen Motion at 7.

¹⁶ 18 C.F.R. § 388.112(c)(1)(i).

¹⁷ *Canal Generating*, 181 FERC ¶ 61,157 at P 57, n.69 (“[T]he purchase price of the Commission-jurisdictional assets does not, in this particular case, include information that is central to the Commission’s analysis in this proceeding or that is necessary for the public to determine whether to participate in this proceeding.”).

KIRKLAND & ELLIS LLP

Debbie-Anne A. Reese
April 27, 2026
Page 5

Respectfully,

Sincerely,
/s/ Brooksany Barrowes
Brooksany Barrowes
Andrew DeVore
Kirkland & Ellis LLP
1301 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Counsel for Morgantown Power, LLC

April 27, 2026

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, I hereby certify that I have this day caused to be served the foregoing document upon each person designated on the official service lists compiled by the Secretary in the above-captioned proceedings.

Dated at Washington, D.C. this 27th day of April, 2026.

/s/ Andrew DeVore
Andrew DeVore
Kirkland & Ellis LLP
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Tel. (202) 389-3117
andrew.devore@kirkland.com