~~IN THE CIRCUIT COURT~~ OF MARSHALL COUNTY, WEST~~VIRGINIA~~

(handwritten, right margin):
5-17-18
Judge Young
Business Court
N. Preservati
G. Krock
K. Crocker
J. Blank
E. Thomas.
J. Companion
J. Wright
R. Wolinsky
J. Kessler
H. Persinger II
J. Marshall

BUSINESS COURT DIVISION

ADKINS ENERGY, INC., et al.,

    Plaintiffs,

v.

DOMINION TRANSMISSION, INC., et al.,

    Defendants.

Civil Action No. 16-C-92(c)
Presiding Judge Russell M. Clawges, Jr.
Resolution Judge James H. Young, Jr.

CONSOLIDATED WITH:

**IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

RILEY NATURAL GAS COMPANY,

    Plaintiff,

v.

BERRY ENERGY, INC.,

    Defendant.

Civil Action No. 16-C-365
Presiding Judge Russell M. Clawges, Jr.
Resolution Judge James H. Young, Jr.

ORDER REGARDING PROTOCOLS FOR THE
PRODUCTION OF DOCUMENTS AND DATA

In accordance with Rule 29 of the West Virginia Rules of Civil Procedure, the

undersigned parties jointly, by and through their counsel, having expressed their mutual intent to

seek the discovery of hard copy documents and electronically stored information ("ESI")

(collectively, "Documents"), hereby stipulate and agree that the following terms and conditions

shall govern and supplement any local rules regarding the search, retrieval and production of

Documents in this matter (hereinafter, the "Protocol").

Based on the foregoing, **IT IS HEREBY ORDERED:**

I.   DEFINITIONS

A.   "Bates Number" means a unique alphanumeric identifier associated with every physical sheet of paper, electronic file, electronically stored TIFF image, or other tangible thing, consisting of (1) an alphabetic portion identifying the producing party and/or other characteristics of the production; and (2) a numeric portion incremented according to a scheme defined at the producing party's discretion to ensure that the alphanumeric identifier for each physical sheet of paper, electronic file, electronically stored TIFF image, or other tangible thing is unique. The alphanumeric identifier shall be no more than sixteen (16) characters in length.

B.   "ESI" (electronically stored information) is defined as files, documents, or other data that are stored on computers, file servers, discs, tapes, smart phones, the internet, or any other devices or media.

C.   "Document(s)" is defined to be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the West Virginia Rules of Civil Procedure.

D.   "Hard Copy Document" means a Document kept in physical form, as opposed to electronic form, in the ordinary course of a party's business.

E.   "Spreadsheet" means an electronic file that displays multiple cells that together make up a grid consisting of rows and columns, each cell containing either alphanumeric text or numeric values, including, but not limited to, files created with Microsoft Excel.

F.   "Extracted Text" means the text extracted from a Native File and includes all header, footer, and document body information.

G.   "Load File" means an electronic file containing information identifying a set of paper-scanned images or processed ESI and indicating where individual pages or files belong together as documents, including attachments, and where each document begins and ends. A

2

Load File will also contain data relevant to the individual Documents, including extracted and user-created Metadata, coded data, as well as OCR or Extracted Text. A separate load file linking corresponding images will also be provided if productions are made in Static Image format.

H. "Metadata" means: (i) information embedded in a Native File that is not ordinarily viewable or printable from the application that generated, edited, or modified such Native File; (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted or otherwise manipulated by a user of such system, and (iii) information from emails such as author, recipient, cc, bcc, sent date and subject.

I. "Native File" means ESI in the original file format of the application in which such ESI is normally created, viewed or modified.

J. "OCR" means the optical character recognition text that is generated by software used in conjunction with a scanner that is capable of reading image-based documents and making such documents searchable.

K. "Static Image" means a representation of ESI produced by converting a Native File into a standard image format capable of being viewed and printed on standard computer systems. A Tagged Image File Format (TIFF) image is an example of a Static Image.

L. "Requesting Party" means the party serving requests for documents pursuant to Rule 34 of the West Virginia Rules of Civil Procedure ("Document Requests").

M. "Producing Party" means the party producing documents.

II. GENERAL PROVISIONS

A. The Parties will identify, collect, review for relevance and responsiveness, and

3

produce as required pursuant to this Protocol certain Documents that include, but are not limited to, hard copy documents, electronically stored documents, images, diagrams, e-mails, spreadsheets, databases, and responsive attachments to any of the foregoing, which may be stored on electronic media.

B.　　This Protocol will in no way limit each party's responsibility to search for physical paper files or tangible items in their possession, custody, or control that may contain relevant information that is responsive to Document Requests and any future discovery requests. Furthermore, this Protocol will in no way extend or alter the time for responding in writing to Document Requests or for producing physical paper files or tangible items in response to Document Requests. However, nothing in this protocol shall prohibit or restrict the right of the Requesting Party and Producing Party to enter into agreements as between them that extend the time for responding in writing to discovery requests or for producing physical paper files or tangible items in response to said discovery requests.

C.　　Nothing in this Protocol alters, amends, modifies, supersedes, or replaces any party's rights or obligations to seek a protective order or cost-sharing under Rule 26 of the West Virginia Rules of Civil Procedure.

D.　　Nothing in this Protocol alters or replaces any provision of any Protective Order in this case.

E.　　Nothing in this Protocol shall be construed to waive any party's rights to assert any form of privilege or other discovery objection permitted by law.

F.　　The Parties may only alter this Protocol, including the deadlines provided herein, by mutual agreement in writing between the relevant Parties or by Court approval.

G.　　Compliance with the terms of this Protocol eliminates a Party's obligation to

4

identify, collect, apply search terms to, and review Documents of custodians other than those identified herein (i.e., compliance eliminates any further obligation, absent court order or agreement of the Parties, to collect all potentially discoverable ESI of other individuals who have or are likely to have discoverable information).

H.   Defendant Riley Natural Gas Company ("Riley") will not participate in the processes set forth in Section III (involving custodians) and Section IV Subsections (A) and (B) (involving search terms) of the Protocol. The remaining provisions in this Protocol, including Section IV Subsection (C), shall apply to Riley and its production of documents and ESI. Along with its initial production of responsive documents, Riley shall disclose the manner in which it searched for those documents (including the search terms, custodians and parameters utilized). In the event that any Party reasonably believes that Riley's response to requests for production of documents did not uncover ESI responsive to their requests, the Parties may revisit the issue and attempt to negotiate mutually-agreeable searches for Riley documents involving particular custodians and search terms. If no such agreement is reached, the Parties retain the right to seek a ruling from the Court.

III.   **CUSTODIANS**

A.   Upon entry of this Protocol, each Party shall, in good faith, conduct a reasonable investigation to determine which custodians, including corporate and shared drives, under its control are most likely to have information relevant to the claims and defenses raised in this litigation ("Custodians"). For purposes of this Protocol, and all paragraphs contained herein, Custodians include individuals, such as current and former board members, directors, officers, employees, volunteers, agents and/or other representatives, for whom responsive ESI is housed on hardware or contained within software that is owned or controlled by a Producing Party, and

5

ESI repositories housed on hardware or contained within software owned or controlled by a Producing Party if the repositories have no designated individual custodian but otherwise contain responsive ESI. The Producing Party shall not be responsible for seeking or searching ESI that is maintained on hardware or contained within software or webmail accounts that are not owned or controlled by the Producing Party or its current board members, directors, officers, or employees. The Producing Party shall, however, be responsible for seeking and searching ESI that is maintained on hardware or contained within software or webmail accounts that are not owned or controlled by the Producing Party, such as personal email accounts (e.g., gmail, yahoo, hotmail, aol, etc.), and personal computers, if the hardware, software or webmail account is owned or controlled by one of the Producing Party's current board members, directors, officers, or employees and evidence is discovered by the Producing Party or presented by another Party indicating the presence of responsive ESI.

B. By April 27, 2018,[1] the Parties shall exchange proposed lists of custodians ("Initial Custodians") to be searched for responsive Documents and search terms. The Parties further agree that if custodian beyond the Initial Custodians appear to be necessary to obtain discoverable information, the Parties will discuss the inclusion of additional custodians ("Supplemental Custodians"). The Parties agree to work in good faith to negotiate and agree on appropriate Supplemental Custodians, if any. To the extent the Parties reach agreement on or the Court enters an order requiring Supplemental Custodians, if any, ESI containing one or more of the agreed upon Initial Search Terms or Supplemental Search Terms will be captured, preserved,

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[1] If the last day of any period established by this Protocol is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. For purposes of computation of time, Rule 6(d) of the West Virginia Rules of Civil Procedure shall not apply. Further, "receipt" may include any customary form of physical or electronic delivery to counsel for the Parties.

reviewed for relevance and responsiveness (as well as confidentiality and privilege) and produced, if appropriate, pursuant to this Protocol.

C.   Custodian information shall be populated for hard copy (paper) documents and loose electronic documents by the person or department from which the document was collected. If possible, custodian information for emails should be populated by the name of the person from whom they were collected.

IV.   SEARCH TERMS

A.   The Parties agree that search terms shall be used to identify the ESI of the Custodians identified pursuant to this Order that is to be reviewed for relevance and responsiveness (as well as for confidentiality and privilege).

B.   By April 27, 2018, each Party shall provide the other Parties with a list of search terms/combinations ("Initial Search Terms"),[2] to be run or previously run on its ESI repository that the Party reasonably believes will uncover relevant ESI that is responsive to the Document Requests served on that Party. The Parties further agree that if search terms beyond the Initial Search Terms appear to be necessary to obtain discoverable information, the Parties will discuss the running of further search terms ("Supplemental Search Terms"). The Parties agree to work in good faith to negotiate and agree on appropriate Supplemental Search Terms, if any. To the extent the Parties reach agreement on or the Court enters an order requiring Supplemental Search Terms, if any, ESI containing one or more of these agreed upon Supplemental Search Terms will be captured, preserved, reviewed for relevance and responsiveness (as well as confidentiality and

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[2] In developing the search terms/combinations, the * in the terms is a wildcard indicator in which all derivatives of the root word is captured in all ESI that contains the root word. The + in the terms is a symbol for the word "and" that is typically used in a Boolean search and will link words together to ensure that relevant/responsive documents are captured in all ESI containing the root word and any other word(s) contained in the parentheses following the + sign.

privilege) and produced, if appropriate, pursuant to this Protocol.

C. The time period to be used for application of the Initial Search Terms as to the Initial Custodians is January 1, 2008 until June 8, 2016. However, the Parties further agree to work in good faith and reasonably meet and confer to determine whether specific document requests require the application of search terms to produce documents that pre-date January 1, 2008.

V. PROCESSING AND PRODUCTION PROTOCOL

A. The Parties will produce all responsive Documents, with the exception of spreadsheets, databases, audio, video or text files larger than 300 pages in size, in Group IV compressed single- page TIFF image format, with associated load files for Relativity or similar programs, which shall include a .dat file and a .DII file for native documents and metadata, .jpeg for all images (all pictures/photographs shall be produced in color) and an image load file in Opticon (OPT) format.

B. Documents produced in TIFF format shall retain tracked changes, embedded comments, hidden text, and speaker notes. Comments, speaker notes, and hidden text should appear in the text files, unless redactions are necessary to remove privileged material.

C. The Parties shall produce full extracted text (as available) in document- level text files that are appropriately identified with the TIFF images, or for those documents that do not have extracted text or have been redacted, OCR will be produced. The load file shall contain the categories of metadata listed in Exhibit A.

D. Files will be named with consecutive numbers.

E. The metadata load file will contain the name of the file as it was saved in the ordinary course of business.

F.   For emails with attachments and other container files such as .ZIP files that are attached to emails, the metadata load file will contain "begin-attachment" and "end-attachment" values representing the low and the high consecutive numbers representing the names of the responsive files in that attachment range or container file.

G.   A load file compatible with loading to the Relativity litigation support platform (.dat file) and platforms using .DII files (such as Summation) will be produced. The load file will contain links to extracted full text files, TIFF files, and where they occur, Native files.

H.   The list of fields does not create any obligation to create or manually code fields that are not automatically generated by the processing of the ESI or that do not exist as part of the original metadata of a document.

1.   **Processing Specifications.** The preferred time zone of processing ESI is EST. Care should be taken, however, that any alteration of time zone during processing does not interfere with or alter original metadata of that ESI. To the extent that a Party has already processed ESI using a different time zone, the Producing Party will note the time zone used in its processing. The Producing Party shall consistently produce all ESI processed using the same time zone.

2.   **De-duplication.** Documents may be de-duplicated on a global or custodian basis. If a party elects to de-duplicate on a global basis, they must disclose the names of all document custodians by populating the All Custodians field in the metadata load file.

3.   **E-Mail Thread Analysis.** E-mail thread analysis may be used to reduce the volume of e-mails reviewed and produced, provided that the parties disclose such use. The produced e-mails must include all of the responsive information from a thread,

9

including responsive attachments.

4. **Encrypted or Password-Protected ESI.** For any ESI that exists in encrypted format or is password-protected, the Producing Party shall undertake reasonable efforts to provide the Parties a means to gain access to the files.

5. **Archive Files.** For any archive files, (zip, jar, rar, gzip, TAR, etc.), all contents should be extracted from the archive with source pathing and family relationships maintained/captured. The archive container file does not need to be included in the production. Family relationships do not need to be preserved for top-level loose archive files and their contents.

I. **Native Files.** Absent special circumstances, PowerPoint presentations, source code, large diagrams, audio and video media files, Excel files and/or .csv files, autocad files or other large engineering specific files should be produced in native format ("Native Files"), unless they have redactions. Native Files should be provided in a self-identified "Natives" directory. Each Native File should be produced with a corresponding single-page TIFF placeholder image, which will contain language indicating that the document is being produced as a Native File. Native Files should be named with the beginning Bates number that is assigned to that specific record in the production. A "NativeLink" entry for each Native File should be included in the .DAT load file indicating the relative file path to each Native File on the production media. Native Files should be produced with extracted text and applicable metadata fields.

1. **Native Redactions.** In the event that either party finds the redaction of certain documents in image form to be overly burdensome, they may elect to redact such documents in their native form. The produced documents must clearly indicate which portions have been redacted, and the searchable text provided must accurately reflect the

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contents of the document as produced.

2. **Hard Copy Documents Will Be Produced in Electronic Format**: Hard-copy documents shall be produced as image files with corresponding OCR text to the extent such documents are converted into electronic format. The Parties shall meet and confer to discuss documents that present imaging or formatting problems. To the extent exceptions to the foregoing are made, the Parties will meet and confer to discuss alternative production requirements, concerns and/or formats.

3. **Document Unitization**: To the extent possible and on an ongoing basis, the Parties will endeavor to apply unitization practices consistent with the following description.

a. Each page of a hard copy document shall be scanned into an image and, if a document is more than one page, the unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file.

b. For documents that contain affixed notes, the pages will be scanned once with the note(s) as they appear on the page and once without the notes so all content is captured. These pages will be treated as part of the same document.

c. The relationship of documents in a document collection (e.g., cover letter and enclosures, e-mail and attachments, binder containing multiple documents, folder or other documents where a parent-child relationship exists between the documents) shall be maintained through the scanning or conversion process. If more than one level of parent-child relationship exists, documents will

11

be kept in order, but all will be treated as children of the initial parent document. Such information shall be captured and produced in the metadata/coding load file in a manner that will allow the parent-child relationship among documents to be reconstituted by the receiving party in commercially available document management or litigation review software.

J.   **Control/Bates Numbering.** The Parties will produce native files and static images with a legible, unique control number. For native files, the Control/Bates Number will be provided in the file name. For static images, the Control/Bates Number will be electronically "burned" onto the image at a location that does not obliterate, conceal, or interfere with any information from the source document. No other legend or stamp will be placed on the static image other than a confidentiality legend (where applicable), redactions (consistent with any protective order entered in this matter), and the control number identified above. Confidentiality legends shall be "burned" onto the static image at a location that does not obliterate or obscure any information from the source document. The Parties will provide a slip sheet to identify native files that are produced. Confidential designations can be added to the file name for native files identified as confidential.

K.   **File Naming Conventions.** For Static Image productions, each page/image file shall be named with the unique control/bates number of the page of the Document, followed by the extension ".TIF". The Control/Bates numbering convention shall not contain any spaces, special characters or symbols other than a hyphen (-) or underscore (_).

L.   **Attachments.** Only responsive attachments need to be produced. Not responsive attachments may be withheld. If any one attachment to an email is responsive, then the cover email shall be produced for context, regardless of the cover email's responsiveness.

12

M.   **Privilege Logs**. Parties will provide a log of all documents withheld on the basis of privilege, work product protection, or other privilege. For electronic documents, each party may opt at its own discretion to create privilege logs using one of the following methods. For hard copy documents, each party shall create privilege logs using the Standard Log.

1.   **Automated Log**. An automated privilege log will be generated from the following metadata fields, to the extent they exist, as electronic metadata associated with the original electronic documents. The producing party is not required to provide a description of the basis of the privilege. The log will be produced in native excel format.

SUBJECT
FILE NAME
AUTHOR
SENDER/FROM
RECIPIENTS/TO
CC
BCC
SENT DATE TIME
RECEIVED DATE TIME
FILE CREATED DATE TIME
FILE LAST MODIFIED DATE TIME
PRIVILEGE TYPE
BEG BATES
END BATES

The producing party may substitute a description of the communication where the content of the SUBJECT OR FILENAME field(s) may reveal privileged information, but must indicate that the fields have been revised.

For each document the producing party will provide the basis for the claim of privilege (attorney-client or work product) and indicate whether the document has been produced with redactions.

Should the receiving party in good faith have reason to believe a particular entry on the Automated Log does not reflect a privileged document, it may request a Standard

13

Log for that entry, to be produced within one week of the request, or within such other reasonable time as the parties may agree or the Court may order.

2. **Standard Log.** A standard privilege log, created manually, will include these standard fields: author/sender/from; recipients/to; cc; bcc; date; privilege type; and a description sufficient to identify the subject of the document and the basis for the privilege assertion. The privilege log fields for email strings will contain the information from the top email in the email string. The producing party shall also populate a field titled "Other Participants" with all other participants identified on the face of the document not already captured in the top email of the email string for each email string which is withheld as entirely privileged.

3. **Date Cutoff.** Documents dated after the filing of the lawsuit containing privileged and/or work product material relating to the lawsuit do not need to be logged.

VI. <u>PRODUCTION OF PRIVILEGED MATERIALS AND CLAWBACK</u>

No Party shall be deemed to have waived its right to assert the attorney-client privilege and/or attorney work-product privilege (collectively "Privilege") if a document subject to a claim of privilege is included in a production. Any party who produces material or information without intending to waive a claim of Privilege does not waive that claim if, within five business (5) days after counsel for the Producing Party actually discovers that privileged material or information has been produced, the Producing Party identifies the material or information produced (e.g., by beginning and ending Bates Number) and states the Privilege asserted and basis therefore. In such an event, the Party receiving the identified documents will return or destroy all copies of the identified materials and treat those materials as if they had been initially excluded from production. To the extent that, prior to such notice, a Party receiving the materials protected by

14

Privilege may have disclosed or otherwise disseminated the materials, the receiving party shall make good faith efforts to retrieve the materials protected by Privilege and/or ensure such materials have been destroyed. A Party receiving materials that appear to be protected by privilege/work product of the Producing Party shall notify the Producing Party and cease further review and dissemination of the materials until the issue regarding production is resolved.

VII. DISPUTES

The Parties shall make good faith attempts to resolve all of their disputes arising out of this Protocol promptly and without the need for Court intervention consistent with the requirements of the applicable rules and orders of the Court.
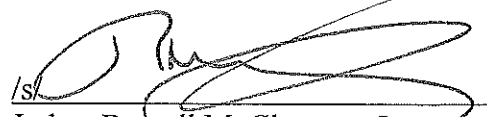
VIII. SUBSEQUENT DOCUMENT REQUESTS

Subject to any limitations imposed by the Court or any other applicable rule, the Parties may serve additional document requests and/or interrogatories ("Subsequent Document Requests") subsequent to the initial Documents Requests. Unless the Parties mutually agree to dispense with these provisions, ESI shall be searched, collected, and produced in response to the Subsequent Document Requests in accordance with this Protocol, except that the applicable deadlines related to identification of custodians, search terms, and production of ESI shall be negotiated by the Parties with consideration given to all the facts and circumstances then existing, including the scope of the Subsequent Document Requests and the timing of discovery.

IX. CONFIDENTIALITY

This order will be subject to the terms of any protective order entered either prior or subsequent to the entering of this order.

It is so ORDERED.

ENTER: ____May____, 2018   /s/ _____
                                Judge Russell M. Clawges, Jr.

15

Jointly Submitted by:

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EXHIBIT A

FIELD	DESCRIPTION	SAMPLE DATA
Bates Begin	Bates number of the first page in the document.	ABC00000001
Bates End	Bates number of the last page in the document.	ABC00000015
Family Begin	Bates number of the first page in the document family.	ABC00000001
Family End	Bates number of the last page in the document family.	ABC00000030
Page Count	Number of pages produced.	15
Custodian	The name of the custodian of this document.	Doe, John
All Custodians	When documents have been globally de-duplicated, the names of the other custodians who also possessed the document.	Smith, Mary; Jones, William; Brown, Jane
From	Author of the e-mail	Doe, John <jdoe@company.com>
To	Recipient(s) of the e-mail	Smith, Mary <msmith@company.com>; Jones, Williams jwilliams@company.com>
CC	Copyees of the e-mail	Brown, Jane <jbrown@company.com>
BCC	Blind Copyees of the e-mail	Doe, John <jdoe@company.com>
E-Mail Subject	Subject of the e-mail message	RE: Our Project
File Name	Original file name of the document; may contain the subject of the e-mail for e-mails	RE Our Project.msg MyAttachment.xlsx
File Extension	Original file extension of the document when it was collected	Msg
Author	Value of the author field in the native file	Doe, John
Date Sent	Date e-mail was sent	12/31/2013
Time Sent	Time e-mail was sent	14:54:27
Date Received	Date e-mail was received	12/31/2013

Time Received	Time e-mail was received	14:54:29
Date Created	Date document was created	12/30/2013
Time Created	Time document was created	18:50:20
Date Modified	Date document was last modified	12/31/2013
Time Modified	Time document was last modified	09:30:15
Source Path	Original path to the folder or directory where the document was stored.	Inbox\MyFolder C:\Users\jdoe\My Documents
MD5 Hash	Unique identifier generated using the MD5 cryptographic hash function	D564668821C34200FF3E32C9BFDCCC80
Thread Group	If only inclusive emails are produced, then thread group shall be provided for the families.	A00001e21
Confidentiality	The confidentiality designation requested for this document.	Highly Confidential
Text File	Location of the text file, relative to the root of the volume.	TEXT\000001\ABC00000001.TXT
Native File	For documents produced natively, a link to the location of the native file, relativity to the root of the volume.	NATIVE\000001\ABC00000015.XLSX

CERTIFICATE OF SERVICE

I hereby certify that on April 3o, 2018, a true and correct copy of the foregoing Order

Regarding Protocols for the Production of Electronically Stored Information has been served on

counsel by depositing a true copy thereof in the United States mail, postage prepaid, in envelopes

addressed as follows:

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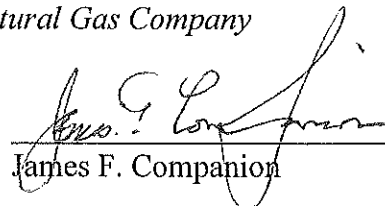*Counsel for Dominion Transmission, Inc.*

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STATE OF WEST VIRGINIA

COUNTY OF HARRISON, TO-WIT

I, Albert F. Marano, Clerk of the Fifteenth Judicial Circuit and the 18th Family Court Circuit of Harrison County, West Virginia, hereby certify the foregoing to be a true copy of the ORDER entered in the above styled action on the

____7___ day of __May_____, 20_18_.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the

Seal of the Court this __14__ day of __May_____, 20_18_.

Albert F Marano JR

Fifteenth Judicial Circuit & 18th

Family Court Circuit Clerk

Harrison County, West Virginia