

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

FEDERAL ENERGY REGULATORY COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civ. A. No. 3:15-cv-00452 (MHL)
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	:	
POWHATAN ENERGY FUND, LLC, ET AL.,	:	
	:	
	:	
Defendants.	:	
	:	
	:	

JOINT MOTION FOR ENTRY OF A PROTECTIVE ORDER

Plaintiff Federal Energy Regulatory Commission and Defendants Powhatan Energy Fund, LLC, HEEP Fund, Inc., CU Fund, Inc., and Houlian “Alan” Chen (collectively the “Parties”) jointly move the court under Federal Rule of Civil Procedure 26(c) for entry of the Protective Order attached hereto as Exhibit A.

The Parties have conferred in good faith and believe this litigation may involve the disclosure of materials that contain confidential business information along with other types of information that should be protected from public disclosure. The Parties agree that the improper disclosure of this material could result in “annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c). As a result, the Parties jointly request that the court enter the attached Protective Order, which will both minimize discovery disputes related to confidentiality and adequately protect the Parties’ confidentiality interests.

Since the Parties have jointly agreed to the terms of the attached Protective Order and jointly move for its entry, the Parties move for entry of this order without oral argument as required under Local Rule 7(e).

Third Party Interests

The Parties met and conferred with counsel for both third-parties PJM Interconnection LLC (“PJM”) and Monitoring Analytics LLC (the “Market Monitor”). As a result, the Parties made several amendments to the initially agreed upon Protective Order in consideration of the interests expressed by PJM and the Market Monitor, particularly to provide greater notice to PJM and the Market Monitor of the possible disclosure of confidential materials. As a result, PJM consented to the proposed order in late February 2021. PJM has also consented to the filing of this motion.

On March 16, 2021, following several additional exchanges of draft language, counsel for the Market Monitor expressed that it continues to object to certain terms of the proposed order. The Parties agree that they are unable to accept the Market Monitor’s remaining proposals because they would place broad limitations on the Parties’ ability to efficiently litigate this matter, including: (1) limiting the Parties’ ability to use support staff; (2) limiting expert witnesses’ ability to receive confidential materials if they work for PJM market participants now or plan to in the future; (3) giving the Market Monitor an indefinite period of time to recategorize deposition testimony as confidential; (4) likely requiring the Parties to make a substantial number of filings under seal regardless of the court’s practice or guidance on that issue; and (5) possibly preventing the Parties from referring to protected material in motions or hearings before the court without first obtaining the Market Monitor’s consent.

The Parties have advised the Market Monitor of the filing of this motion and their view that its requests are inconsistent with the court's practice and the local rules. The Parties further advised the Market Monitor that its counsel may object to the subpoena propounded upon it or seek a Protective Order as permitted the Federal Rules of Civil Procedure, the local rules, and the court's Pretrial Order (Dkt. 160).

Conclusion

For the foregoing reasons, the Parties request that the court enter the Protective Order attached as Exhibit A.

Respectfully Submitted,

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EXHIBIT A

Interconnection, L.L.C.), medical or psychiatric information, trade secrets, personnel records, or such other sensitive commercial information that is not publicly available will likely be disclosed or produced during the course of discovery in this litigation, and jointly request that the Court enter this Order (“Consent Protective Order” or “Order”) setting forth conditions for treating, obtaining, and using such information;

B. The Parties agree that this action involves, *inter alia*, (a) ATTORNEY EYES ONLY, competitive financial, technical, and proprietary information, and (b) CONFIDENTIAL, highly sensitive and confidential financial and marketing information;

C. The Parties agree that the unrestricted disclosure of such CONFIDENTIAL and ATTORNEY EYES ONLY information would be extremely prejudicial to the Parties and non-parties and compromise their respective interests, would harm the public interest, would release PJM member information that should be protected from disclosure, and that entry of this Consent Protective Order is necessary and desirable to protect the interests of the Parties and non-parties while allowing the exchange of information relevant to the action; and

D. The Parties, as evidenced by the endorsement of their counsel of this Order, jointly request entry of this Consent Protective Order pursuant to Rule 26(c) in order to prevent unnecessary disclosure or dissemination of such confidential or proprietary information;

THEREFORE, the terms of this Order being agreed to by counsel for the Parties, it is hereby STIPULATED, AGREED AND ORDERED that the following restrictions and procedures shall apply to certain information, testimony, documents and excerpts from documents supplied by the Parties to each other in response to discovery requests, or by third-parties in response to a subpoena or a subpoena *duces tecum*::

1. Designated Material

In accordance with the terms of this Consent Protective Order, any information recorded in any form or any portion thereof, including any form of evidence or discovery contemplated under Rules 26 through 36 and Rule 45 of the Federal Rules of Civil Procedure, may be designated pursuant to this Consent Protective Order as “CONFIDENTIAL” or “ATTORNEY EYES ONLY” by the person or entity (including a non-party) producing it or by any Party to this action (the “Designating Party”). All information and material designated in accordance with this Consent Protective Order as “CONFIDENTIAL” or “ATTORNEY EYES ONLY,” and all information or material derived from it, constitutes “Designated Material” under this Consent Protective Order. Unless and until otherwise ordered by the Court or agreed to in writing by the Parties and the Designated Party, any and all Designated Material under this Consent Protective Order shall not be used or disclosed by the Party receiving the Designated Material (the “Receiving Party”) except as provided under the terms of this Consent Protective Order. (For purposes of this Consent Protective Order, “disclose” or “disclosed” means to show, furnish, provide or otherwise communicate the contents or existence of the referenced material or document to anyone, except as provided herein).

2. Access

2.1 Materials Designated “CONFIDENTIAL”

Subject to the limitations set forth in this Consent Protective Order, Designated Material may be marked “CONFIDENTIAL” generally for the purpose of protecting information protected from disclosure by statute or that should be protected from disclosure as confidential personal information (including information considered confidential pursuant to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.), medical or psychiatric information, trade secrets, personnel records, or such other sensitive commercial information that is not publicly

available. Material designated “CONFIDENTIAL” may only be disclosed by the Receiving Party to:

(a) Persons (including, without limitation, deposition or trial witnesses) who appear on the face of the Designated Material marked “CONFIDENTIAL” as an author, addressee or recipient thereof, or who is directly referenced in Designated Material, or in whose files the document or thing was found or counsel for such persons;

(b) Counsel of record for the Parties to this action, as well as the partners, associates, agents and regularly employed staff and supporting personnel of such counsel to the extent reasonably necessary to render professional services in this litigation;

(c) Subject to Section 3 below, up to three (3) designated officers, directors, in-house counsel or employees of the Receiving Party with responsibility for maintaining, defending or evaluating this litigation.

(d) Any officer of the federal government with responsibility for supervising, maintaining, defending, or evaluating the litigation.

(e) Any 30(b)(6) deposition witness presented by the Designating Party, or any other deposition witness produced by the Designating Party;

(f) The Court and court personnel (including stenographic reporters) and any necessary law clerk, paralegal, secretarial, clerical, and other lay court personnel;

(g) Subject to Section 3 below, Designated Material marked “CONFIDENTIAL” may also be disclosed to independent experts (and the assistants, secretarial and clerical staffs of such independent experts) who are not employees of the Receiving Party and who are retained by a Party or its attorneys of record in this action to assist in the preparation of the case, such as independent economic, accounting or scientific experts or technical advisors, or

to furnish technical or expert services in connection with this action, or to give expert testimony with respect to the subject matter thereof for the trial of this action;

(h) Outside document processing service providers, including e-discovery, duplicating, photocopying and document coding/scanning contractors. Notwithstanding any other provision of this protective order, access to CONFIDENTIAL Information shall be permitted to such service providers without need for the completion of Exhibit A.

(i) Such other persons as the Designating Party may, in writing, agree or by order of this Court.

2.2 Materials Designated “ATTORNEY EYES ONLY”

Subject to the limitations set forth in this Consent Protective Order, Designated Material that may be marked “ATTORNEY EYES ONLY” includes, without limitation, proprietary technical data or extraordinarily sensitive competitive commercial information, such as information tending to reveal the identities of customers and prospective customers whose status as such is not publicly known, non-public competitive financial information, and forward looking forecasts, projections, strategies, plans or the like that are not publicly available. Material designated “ATTORNEY EYES ONLY” may only be disclosed by the Receiving Party to:

(a) Persons (including, without limitation, deposition or trial witnesses) who appear on the face of the Designated Material marked “ATTORNEY EYES ONLY” as an author, addressee or recipient thereof, or who is directly referenced in Designated Material, or in whose files the document or thing was found or counsel for such persons;

(b) Counsel of record for the Parties and Designating Parties to this action, as well as the partners, associates, agents and regularly employed staff and supporting personnel of such counsel to the extent reasonably necessary to render professional services in this action;

(c) Any officer of the federal government with responsibility for supervising, maintaining, defending, or evaluating the litigation.

(d) Any 30(b)(6) deposition witness presented by the Designating Party, or any other deposition witness produced by the Designating Party;

(e) The Court and court personnel (including stenographic reporters) and any necessary law clerk, paralegal, secretarial, clerical, and other lay court personnel;

(f) Subject to Sections 3 and 4(b) below, Designated Material marked “ATTORNEY EYES ONLY” may also be disclosed to independent experts (and the assistants, secretarial and clerical staffs of such independent experts), who are not employees of the Receiving Party and who are retained by a Party or its attorneys of record in this action to assist in the preparation of the case, such as independent economic, accounting or scientific experts or technical advisors, or to furnish technical or expert services in connection with this action, or to give expert testimony with respect to the subject matter thereof for the trial of this action;

(g) Outside document processing service providers, including e-discovery, duplicating, photocopying and document coding/scanning contractors. Notwithstanding any other provision of this Consent Protective Order, access to “ATTORNEY EYES ONLY” Information shall be permitted to such service providers without need for the completion of Exhibit A.

(h) Such other persons as the Designating Party may, in writing, agree or by order of this Court.

2.3 CEII

Notwithstanding any other provision of this Agreement, any person who receives information designated as “Critical Energy Infrastructure Information” or “CEII” shall be in full compliance with the requirements of FERC and the custodian of such CEII to receive CEII. PJM

Interconnection, L.L.C. shall be deemed the custodian of any information designated as CEII and provided by the Independent Market Monitor for PJM.

3. Certificates of Adherence Concerning Designated Material

Each person to whom any Designated Material may be disclosed pursuant to the provisions of Sections 2.1(g) or 2.2(f) above or such person's supervisor, shall, prior to the time such Designated Material is disclosed to him or her, be provided with a copy of this Consent Protective Order and shall certify under penalty of perjury that he or she has carefully read the Consent Protective Order and fully understands and agrees to abide by its terms. This certificate shall be in the form attached to this Order as Exhibit A. Counsel who makes any disclosure of Designated Materials pursuant to Sections 2.1(g) or 2.2(f) above, shall retain each original executed certificate or a copy thereof.

4. Use of Designated Material by Designating Party

(a) Nothing in this Consent Protective Order shall limit any Designating Party's use of its own documents and information nor shall it prevent the Designating Party from disclosing its own confidential information or documents to any person. Such disclosure shall not affect any designations made pursuant to the terms of this Consent Protective Order, so long as the disclosure is made in a manner which is consistent with the designation and reasonably calculated to maintain the confidentiality of the information.

(b) A Party intending to disclose to an independent expert pursuant to Section 2.2(f) "ATTORNEY EYES ONLY" information produced by a non-party shall, at the request of a non-party that produced the ATTORNEY EYES ONLY information, inform that non-party of the identity of the intended recipient for purposes of evaluating whether the non-party that produced the ATTORNEY EYES ONLY information wishes to object to the intended disclosure. The non-party receiving the identity of the intended recipient as set forth in this provision shall not reveal

the identity of any such intended recipient to anyone other than the Court and court personnel. Should a non-party wish to object to the intended disclosure to an independent expert pursuant to Section 2.2(f) of ATTORNEY EYES ONLY information it produced, that non-party shall notify the disclosing party within three (3) business days of receiving the identity of the intended recipient and shall promptly (*i.e.*, within seven (7) business days of receiving the identity of the intended recipient or at such time as may be agreed to by the disclosing party) file an objection in such a manner that the identity of the intended recipient will not be revealed to the non-disclosing party. This provision shall not apply to any information produced by a Party to this action.

5. Designating Materials

Documents, information, materials, pleadings, legal memoranda, expert statements and discovery responses, in whole or in part, may be designated as “CONFIDENTIAL” or “ATTORNEY EYES ONLY” as follows:

5.1 The producing or responding Party shall designate material by placing the legend “CONFIDENTIAL” or “ATTORNEY EYES ONLY” on each page of the materials or on each physical item prior to its production or, for documents produced in native form, include such designation in the folder or file name for each electronic item prior to its production.

5.2 When a Party wishes to designate its own “CONFIDENTIAL” or “ATTORNEY EYES ONLY” materials produced by someone other than the Designating Party, such designation shall be made:

(a) Within fourteen (14) business days from the date that the Designating Party receives copies of such materials from the producing or disclosing entity; and

(b) By notice to all Parties to this action and the producing or disclosing entity, if it is not a Party to this action, identifying the materials to be designated with particularity (either by production numbers or (“Bates numbers”) by providing other adequate identification of the

specific material). Such notice shall be sent by email (except insofar as no email address is available) and regular mail.

5.3 Upon notice of designation pursuant to Section 5.2 above, all persons receiving notice of the requested designation of materials shall:

(a) Make no further disclosure of such Designated Material or information contained therein, except as allowed in this Consent Protective Order;

(b) Take reasonable steps to notify any persons known to have possession or access to such Designated Materials of the effect of such designation under this Consent Protective Order; and

(c) Take reasonable steps to reclaim or prevent access to such Designated Material or information in the possession or control of any person not permitted to have access under the terms of this Consent Protective Order.

6. Designating Depositions

6.1 Deposition transcripts or portions thereof may be designated as “CONFIDENTIAL” or “ATTORNEY EYES ONLY” by a Party or Designating Party during deposition testimony taken in this action, in which case the portion of the transcript containing Designated Material shall be identified in the transcript by the Court Reporter as “CONFIDENTIAL” or “ATTORNEY EYES ONLY”. The omission of such designation during deposition testimony shall not preclude any Party from later designating deposition testimony or exhibits as “CONFIDENTIAL” or “ATTORNEY EYES ONLY” in accordance with Section 6.4 of this Consent Protective Order.

6.2 Where testimony is designated at a deposition, the Designating Party shall have the right to exclude from those portions of the deposition entailing designated testimony all

persons not authorized by the terms of this Consent Protective Order to receive such Designated Material.

6.3 Any Party may mark Designated Material as a deposition exhibit and examine any witness thereon, provided that the exhibit and related transcript pages receive the same confidentiality designation as the original Designated Material and provided that the person to whom the Designated Materials is to be shown is a person who may have such access under Section 2, above.

6.4 Any Party or Designating Party may, within ten (10) business days after receiving a final deposition transcript, designate pages of the transcript and/or its exhibits as Designated Material. If any Party or Designating Party so designates such material, the Designating Party shall provide written notice of such designation to all Parties within that ten-business-day period. Designated Material within the deposition transcript or the exhibits thereto may be identified by written designation referring to pages and, where applicable, line numbers by highlighting, underlining, or otherwise visibly designating the designated portions and marking such portions “CONFIDENTIAL” or “ATTORNEY EYES ONLY”. Until the expiration of the ten business-day period, any portion of the deposition not previously designated shall be treated as “ATTORNEY EYES ONLY” and subject to protection as provided by this Consent Protective Order.

7. Copies

All complete or partial copies of Designated Material and written materials derived from Designated Materials shall also be deemed subject to the terms of this Consent Protective Order.

8. Court Procedures

8.1 Disclosure of Designated Material to Court Officials

Subject to the provisions of this Section 8, Designated Material may be disclosed to the Court, Court officials or employees involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master or referee appointed by the Court), the jury in this action, and any interpreters interpreting on behalf of any Party or deponent.

8.2 Disclosure of Designated Material to Court Officials

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.

Notwithstanding the foregoing, Designated Material introduced into evidence at trial shall not be sealed or otherwise treated as confidential by the Court except pursuant to a further order of the Court at the request of either Party, or at the request of a non-party that has produced Designated Material, during pretrial proceedings or at trial. Any Party that may introduce into evidence Designated Material produced by a non-party shall give the non-party that produced the Designated Material at least ten (10) days' notice in advance of the commencement of testimony at trial so that the non-party will have an opportunity to object or seek appropriate protection of the Designated Material by the Court.

8.3 Retrieval of Designated Material

The Party or Designating Party responsible for filing the Designated Materials shall be responsible for retrieving such Designated Materials from the Court following the final termination

of the action (including any appeals thereof), consistent with the direction of the Court and its Clerk in this regard.

8.4 Failure to File Under Seal

If any Party or Designating Party fails to request that the Court file Designated Materials under seal, the Designating Party or any Party to this action may request, in accordance with the provisions of Local Civil Rule 5, that the Court place the Designated Materials under seal within 30 days of the filing of said Designated Material.

The Parties shall serve public versions of filings on non-parties who have provided Designated Materials.

9. Objections

A Party may challenge the propriety of any designation under this Consent Protective Order at any time. A challenge may be made by serving all other Parties and the Designating Party with a captioned notice of objection, which shall identify with particularity the Designated Material as to which the designation is challenged and state the basis for each challenge (the “Notice of Objection”).

Following service of a Notice of Objection, the Parties and the Designating Party shall meet and confer in good faith to resolve the challenge. In the event that the Parties and the Designating Party are unable to resolve the challenge informally, the Party challenging the designation may file, on or before the thirtieth calendar day after service of a Notice of Objection (or as otherwise agreed to with the Designating Party), a motion to redesignate the challenged material, accompanied by a certification that the Parties and the Designating Party met and conferred in good faith prior to the filing of the motion. In the event of such a motion, the material at issue may be submitted to the Court for *in camera* inspection. It shall be the burden of the Designating Party under such circumstances to establish that the information so designated is

CONFIDENTIAL or ATTORNEY EYES ONLY within the meaning of this Consent Protective Order. The original designations shall remain effective until three (3) business days after entry of an order redesignating the materials, for any period after the Designating Party indicates intent to appeal until timely filing, and during the pendency of any timely filed appeal or writ petition.

10. Designated Material Subpoenaed or Ordered Produced in Other Litigation

If a Receiving Party who has Designated Material is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as CONFIDENTIAL or ATTORNEY EYES ONLY, that Party must:

(a) promptly notify the Designating Party in writing. Such notification shall include a copy of the subpoena or court order, to the extent permitted by law;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Consent Protective Order. Such notification shall include a copy of this Consent Protective Order; and

(c) cooperate with respect to all reasonable procedures sought by the Designating Party whose Designated Material may be affected, to afford the Designating Party the opportunity to challenge the subpoena or court order or to otherwise resolve disputes concerning the disclosure of such Designated Material.

If a Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as CONFIDENTIAL or ATTORNEY EYES ONLY before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission or if such production is otherwise required by law. The Designating Party shall bear the burden and expense of seeking protection in that court of its Designated Material, and nothing in these provisions should be

construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. Client Communication

Nothing in this Consent Protective Order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course of rendering such advice, relying upon the examination of Designated Material. In rendering such advice and otherwise communicating with the client, however, counsel shall not disclose the contents, substance or source of Designated Material, except as permitted by this Consent Protective Order. This provision shall not restrict FERC staff from providing Designated Material to, or discussing it with, the Commission.

12. No Prejudice

12.1 This Consent Protective Order shall not diminish any existing obligation or right with respect to Designated Material, nor shall it prevent a disclosure to which the Designating Party consents in writing before the disclosure takes place.

12.2 Unless all Parties stipulate otherwise, evidence of the existence or nonexistence of a designation under this Consent Protective Order shall not be admissible for any purpose during any proceeding on the merits of this action.

12.3 If any person required to produce documents inadvertently produces any Designated Material, without marking it with the appropriate legend, the Designating Party may give written notice to the Receiving Party or Parties, including appropriately marked copies of the Designated Material, that the document, thing, or response is deemed Designated Material and should be treated as such in accordance with the provisions of this Consent Protective Order.

12.4 Neither the provisions of this Consent Protective Order, nor the filing of any Designated Material, under seal, shall prevent the use in court, at any hearing, or at trial of this action of any Designated Material that is subject to this Consent Protective Order or filed under

seal pursuant to its provisions. Prior to the pretrial conference, the Parties and Designating Parties shall meet and confer concerning appropriate methods for dealing with Designated Material at trial.

13. Privilege, Waiver, and Claw-Back

Federal Rule of Evidence 502 shall apply to this case. The production or disclosure during discovery of an attorney-client privileged, attorney work product, or other protected document or information medium (“Protected Material”) shall not be deemed a waiver of the privilege, work product, or other protection or immunity from discovery by the producing Party or non-party in this or any subsequent state or federal proceeding. If any Party becomes aware of the production of Protected Material by any Party or non-party, the Party shall provide written notice of such production. Within three (3) business days of receipt of notice by any Party that Protected Material was produced or disclosed, sufficiently identified by Bates number or other method to enable its identification, all recipients of the Protected Material shall collect all copies or reproductions thereof and shall delete such material from any medium or, if requested, return them to the producing Party or non-party. In addition, the recipients shall collect all notes or other work product that summarize, discuss, or quote the contents of such Protected Material, which shall then be segregated and destroyed. Within five (5) business days after sending notice, the producing Party will then produce a privilege log with an explanation of how the Protected Material is protected from disclosure by any applicable privilege or the work product doctrine. If the recipient disputes the protected nature of the Protected Material, then the recipient shall so notify the producing Party in writing within a reasonable time after receiving the privilege log. If the dispute cannot be resolved after conferring in good faith with the producing Party, the recipient may promptly file a motion with the Court. The producing Party shall have the burden of demonstrating

the protected nature of the Protected Material. The producing Party must retain the information until the motion is resolved.

(a) For any Protected Material clawed-back under the protocol above, the Parties agree that such disclosure is inadvertent and will not argue otherwise. The Parties also agree not to argue that the disclosure of Protected Material in discovery during this litigation was due to the disclosing Party's failure to take reasonable steps to prevent disclosure. The Parties further agree that adherence to the protocol in Section 13 of this Consent Protective Order constitutes the taking of prompt, reasonable steps to rectify the error.

14. Modification and Survival

14.1 Modification

The Parties reserve the right to seek modification of this Consent Protective Order at any time for good cause. The Parties agree to meet and confer prior to seeking to modify this Consent Protective Order for any reason. The restrictions imposed by this Consent Protective Order with respect to any specific protected material may be modified or terminated only by written stipulation of all Parties and Designating Parties or, after the Designating Party has been provided an opportunity to object, by subsequent order of this Court.

14.2 Survival and Return of Designated Material

This Consent Protective Order shall survive termination of this action. To the extent permitted under relevant federal laws and regulations governing records retention, within sixty (60) days after the final termination of the action, including appeals and retrials, all documents designated CONFIDENTIAL or ATTORNEY EYES ONLY and all other documents and things containing Designated Material, including deposition testimony regarding designated exhibits and all copies thereof, shall be destroyed. Counsel of record shall certify their compliance with this

provision and shall deliver such certification to counsel for the Designating Party within the sixty (60) day period.

Notwithstanding the provisions for destruction of Designated Material, counsel may retain pleadings, attorney and independent expert work product, and deposition transcripts.

15. The Provisions Hereof Do Not Apply to Information That Becomes Public Knowledge in the Absence of a Violation of This Consent Protective Order

The restrictions set forth in the foregoing paragraphs shall not apply to information which (a) was or became public knowledge, not in violation of this Consent Protective Order, (b) was or is acquired in good faith from a third party, not a party to this action, not in violation of this Consent Protective Order, who or which has the right to disclose such information, (c) was or is discovered independently by the Receiving Party without violating this Consent Protective Order, or (d) was disclosed by the Designating Party to a third party in the absence of any understanding or expectation that the information would be kept confidential. The burden of showing that Designated Material can be treated as non-confidential material pursuant to the provisions of this Section 16 shall rest at all times on the Party who seeks to disclose such information or to treat such information as non-confidential. A Party that objects to the designation of material as confidential on one of the grounds set forth in this Section 16 shall follow the objections procedures set forth in Section 9 above.

16. Material Disclosed to be Used Only for Purposes of Action

All Designated Material hereunder shall be used by each Receiving Party solely for purposes of this or a related action, and for no other purpose. Except as provided below, a Receiving Party may not use any Designated Material it obtains in the course of this action for any business purpose or in any other legal or administrative proceedings, unless that action involves the same parties, conduct, or directly stems from issues that arise in the course of this action.

Designated Material produced during the course of this action can be used by a Receiving Party in other legal or administrative proceedings if such use is mutually agreed by the Designating and the Receiving Parties.

17. No Contract

This Consent Protective Order shall not be construed to create a contract between the Parties or between the Parties and their respective counsel.

18. No Waiver

No action taken in accordance with this Consent Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.

19. Court's Retention of Jurisdiction

The Court retains jurisdiction, even after the termination of this action, to make such amendments, modifications, and additions to this Consent Protective Order as it may from time to time deem appropriate and to enforce the terms of this Consent Protective Order.

20. Discovery Disputes with Third Parties

All third parties who sign the Certificate of Adherence to Protective Order in Exhibit A or who are requested or required to produce any form of evidence or discovery contemplated under Rules 26 through 36 and Rule 45 of the Federal Rules of Civil Procedure shall be bound by and participate in the Discovery Dispute mechanism provided by the Court in paragraphs 20 through 23 of the Court's Initial Pretrial Order entered December 21, 2020, as may be amended by the Court.

Date: _____

United States District Court Judge

WE ASK FOR THIS:

**FEDERAL ENERGY REGULATORY
COMMISSION**

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**HOULIAN "ALAN" CHEN, HEEP FUND,
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EXHIBIT A

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

FEDERAL ENERGY REGULATORY)	
COMMISSION,)	
)	
)	
Plaintiff,)	Civil Action No. 3:15-cv-00452 (MHL)
v.)	
)	
POWHATAN ENERGY FUND, LLC,)	
HOULIAN “ALAN” CHEN,)	
HEEP FUND, INC., and)	
CU FUND, INC.)	
)	
Defendants.)	
)	

CERTIFICATE OF ADHERENCE TO PROTECTIVE ORDER

I understand that I or my subordinates may receive CONFIDENTIAL or ATTORNEY EYES ONLY information, subject to my eligibility to receive any, some, or all such information, as defined in the attached Consent Protective Order in Civil Action No. 3:15-cv-452, pending in the United States District Court for the Eastern District of Virginia, and by signing this Certificate of Adherence, I acknowledge and agree that I have read, understand, and am subject to the provisions of the Consent Protective Order and will not disclose such protected information in whole or in part or in any form or the information contained therein to any person, corporation, partnership, firm, governmental agency or association other than those specifically authorized by the Consent Protective Order.

I represent and affirm that I am eligible to receive information in one or both of the categories defined in section 2 of the Consent Protective Order, by signing with my initials:

_____ Information designated as CONFIDENTIAL

_____ Information designated as ATTORNEY EYES ONLY

I understand that any violation of the Consent Protective Order may subject me to sanctions by the Court. I shall not copy or use CONFIDENTIAL or ATTORNEY EYES ONLY information, as defined in the attached Consent Protective Order, except for the purposes of this action and pursuant to the terms of the Consent Protective Order.

No later than 60 days after final termination of this action, I shall destroy or return to the attorney from whom I have received them any documents in my possession designated CONFIDENTIAL or ATTORNEY EYES ONLY, and I shall return or destroy all copies, excerpts, summaries, notes, digests, abstracts, and indices containing CONFIDENTIAL or ATTORNEY EYES ONLY information as defined in the attached Consent Protective Order.

I submit myself to the jurisdiction of the United States District Court for the Eastern District of Virginia for the purpose of enforcing or otherwise providing relief relating to the Consent Protective Order.

Dated: _____

(Signature)

(Name)

(Job Title/Position)