

FEDERAL ENERGY REGULATORY COMMISSION
Office of Enforcement
Washington, D.C. 20426



September 12, 2014

VIA EMAIL AND COURIER

William M. McSwain, Esq.
Drinker Biddle & Reath LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103-6996
william.mcswain@dbr.com

John N. Estes III, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005
john.estes@skadden.com

**Re: Materials Pertaining to the Investigation of Up-to Congestion
Trading by Houlian Chen**

Dear Mr. Estes and Mr. McSwain:

On September 3, 2014, we sent you a letter (September 3 Letter) responding to your letter dated August 27, 2014 (August 27 Letter), in which you jointly requested that “Staff disclose all data or information required to be disclosed pursuant to the Commission’s Policy Statement on Disclosure of Exculpatory Materials, 129 FERC ¶ 61,248 (2009) (“Brady Policy Statement”) or, in the alternative, confirm that Staff does not possess any such materials.” August 27 Letter at 1.

Our September 3 Letter explained that although Enforcement staff concluded that it was not in possession of any material required to be produced under the Commission's "*Brady* Policy," we would be producing, consistent the prior practice of this office, "certain materials not subject to the Commission's *Brady* Policy Statement but which appear to pertain to this matter." September 3 Letter at 3.

On September 5, 2014, we sent you a set of exhibits used at certain depositions in this investigation. In the cover letter for our September 5 production (September 5 Letter), we noted that we would be supplementing that production this week.

This production includes the following materials:

Deposition Exhibits

As promised in our September 5 Letter, we herewith provide the exhibits used at the July 20, 2011 deposition of Houlian Chen. With this production, Enforcement staff believes that you are in possession of all exhibits associated with depositions of witnesses in the investigation of your clients' trading.

Referrals

The Office of Enforcement received two referrals identifying HEEP Fund, CU Fund, and Powhatan (together, your clients) as having engaged in manipulative Up-to Congestion (UTC) trading. Those referrals – one from PJM, the other from Monitoring Analytics – are being produced to you, without the names and data of other market participants mentioned in those documents. Descriptions of trading practices unrelated to your clients have been preserved to the extent possible without identifying any other market participant.

Discovery Responses

Enforcement staff is in possession of discovery responses received from third parties (i.e., persons or entities other than your clients). Some of these discovery responses pertain to your clients. On September 11, 2014, we sent you by email Non-Disclosure Agreements covering these materials. After we receive your executed Non-Disclosure Agreements, we will provide you with copies of these third-party discovery materials.

Trade Data

Prior to the second deposition of Alan Chen in July 2011, Enforcement staff provided Mr. Estes, Chen's counsel, with certain trade data associated with his transactions. To ensure that Powhatan's counsel has full access to this

information, an additional copy is being provided herewith.

Extension of Time

Consistent with our email exchanges of September 8-10, 2014, we have agreed to grant you an extension of time to prepare your responses to the notices issued pursuant 18 C.F.R. § 1b.19 (1b.19 Notices) at least through September 19, 2014. On or before September 19, 2014, you will contact us to advise whether you have a good faith expectation of using the materials we have produced to you this month in your responses to the 1b.19 Notices. If you do, Enforcement staff will be amenable to granting a reasonable further extension of time for the submission of such responses.

The data files submitted herewith are password protected. Use password OE09122014* for access.

Sincerely,

/s/

Steven C. Tabackman
Division of Investigations
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 502-8311
steven.tabackman@ferc.gov

Samuel G. Backfield
Division of Investigations
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 502-8932
samuel.backfield@ferc.gov

cc: David Applebaum, Esq.