

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**FEDERAL ENERGY REGULATORY
COMMISSION,**

Petitioner,

v.

Civil Action No. 3:15cv452

**POWHATAN ENERGY FUND, LLC
HOULIAN “ALAN” CHEN,
HEEP FUND, INC.
and
CU FUND, INC.,**

Respondents.

MEMORANDUM ORDER

This matter comes before the Court on Respondent Powhatan Energy Fund, LLC’s (“Powhatan”) Motion to Dismiss (ECF No. 20); Respondent Houlian “Alan” Chen (“Chen”), HEEP Fund, Inc. (“HEEP Fund”), and CU Fund, Inc.’s (“CU Fund”) Motion to Dismiss (ECF No. 22); and, the position papers filed by the Respondents and Petitioner Federal Energy Regulatory Commission (“FERC”) pursuant to this Court’s November 25, 2015 Order (ECF Nos. 38, 39). In order to address preliminary procedural matters, on January 7, 2016, the Court held an initial pretrial conference pursuant to its authority in Federal Rule of Civil Procedure 16(a)¹ and Local Civil Rule 16(A) and (B).²

¹ Federal Rule of Civil Procedure 16(a) states, in pertinent part:

(a) Purposes of a Pretrial Conference. In any action, the court may order the attorneys . . . to appear for one or more pretrial conferences for such purposes as:

- (1)** expediting disposition of the action;
- (2)** establishing early and continuing control so that the case will not be protracted because of lack of management;

Accordingly, for the reasons stated from the bench, and in accordance with the Court's discretion to conduct this case in such a way "to secure the just, speedy, and inexpensive determination of every action and proceeding," Fed. R. Civ. P. 1, the Court ORDERS the following:

1. The Court DENIES WITHOUT PREJUDICE the motions to dismiss (ECF Nos. 20, 22).
2. The Court ORDERS the parties to each file, not later than close of business on January 21, 2016, an additional memorandum detailing the respective party's position regarding the procedure mandated by 16 U.S.C. § 823b(d)(3)(B). The memoranda shall be written in 12 (twelve) point Roman style with one inch margins, and shall not exceed 15 (fifteen) 8-1/2 inch x 11 inch pages double-spaced. *See* E.D. Va. Loc. Civ. R. 7(F)(3). The parties should respond to

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- (3) discouraging wasteful pretrial activities;
 - (4) improving the quality of the trial through more thorough preparation;
 - and
 - (5) facilitating settlement.

Fed. R. Civ. P. 16(a).

² Local Civil Rule 16 states, in pertinent part:

(A) Applicability of Rule 16: . . . [Reviews from administrative agencies] are not subject to the provisions of this Local Rule, but the judge to whom any such case is assigned may, in his or her discretion, follow the procedure outlined herein in whole or in part in any case.

(B) Initial Pretrial Conference and Order and Scheduling Order: In all other civil actions, as promptly as possible after a complaint or notice of removal has been filed, the Court shall schedule an initial pretrial conference In addition thereto, or in lieu thereof, . . . the Court shall enter an order fixing the cut-off dates for the respective parties to complete the processes of discovery, the date for a final pretrial conference and, whenever practicable, the trial date, and providing for any other administrative or management matters permitted

E.D. Va. Loc. Civ. R. 16(A), (B) (citations omitted).

any pertinent arguments raised by the opposing party in its initial position paper and should specifically address the following:

- a. Whether the phrase “in lieu of” contained in 16 U.S.C. § 823b(d)(1) constitutes a waiver of any particular right (citing similar language in comparable statutes);
- b. Whether other agency review statutes are similar to § 823b(d)(2) and (3), with case law analyzing the statutes;
- c. Whether legislative history of § 823b(d) exists, and whether such information sheds light on the interpretation of the statute;
- d. Whether any FERC statements or records, including relevant Proposed Rulemaking or notice and comment records (if any), shed light on the interpretation of § 823b(d);
- e. Whether shall promptly “assess” the penalty in § 823b(d)(3)(A) means “evaluate” or “impose”;
- f. Whether, notwithstanding objections on the merits, objections to the manner in which FERC procedurally undertook its assessment were lodged before FERC; and,
- g. Whether the Court owes deference under *Chevron U.S.A. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), to agency interpretation of 16 U.S.C. § 824v.

3. The Court STAYS discovery, to the extent discovery would be allowed or requested, until further order of the Court.

Let the Clerk of the Court send a copy of this Memorandum Order to all counsel of record.

It is so ORDERED.

Date: JAN. 8, 2016
Richmond, Virginia



M. Hannah Lauck
United States District Judge