

**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 Respondents’ Powhatan Energy Fund, LLC, Houlian “Alan” Chen, HEEP Fund, Inc., and CU Fund, Inc.’s (collectively, the “Respondents”) Motion for Leave to File Supplemental Material (the “Motion for Leave to File”). (ECF No. 54.) In the interest of justice and for good cause, the Court GRANTS the Motion for Leave to File. (ECF No. 54.) The Court ORDERS Respondents to file the supplemental material, (ECF No. 55-1.)

This matter also comes before the Court on the Motion for Leave to File Brief as *Amici Curiae* (the “Motion”) filed by Jeffrey S. Lubbers, William Funk, Jonathan H. Adler, Michael Herz, Linda Jellum, William S. Jordan III, Harold J. Krent, Don LeDuc, Ronald M. Levin, and Louis J. Virelli III (collectively, the “Amici”). (ECF No. 70.) The Amici attached a copy of their proposed Amici Curiae Brief (the “Amici Brief”) to the Motion. (ECF No. 70-1.) Petitioner Federal Energy Regulatory Commission (“FERC”) responded, (ECF No. 76), and the Amici have replied, (ECF No. 77).

The Amici consist of “law professors who regularly write and teach about federal and administrative law and procedure.” (Mot. ¶ 3.) They seek to file the Amici Brief because they “have a keen interest in the proper development of federal administrative law and policy and are well positioned to provide the Court with an institutional perspective on the broader implications of the statutory and due process rights at stake in this civil penalty proceeding.” (*Id.*) The Amici assert that “the proposed brief does not enlarge the issues presented by the parties, [but rather] will be useful in resolving the issues presented by the parties, particularly with respect to the legislative history” (*Id.* at ¶ 8.) FERC opposes the Motion, asserting that the Brief “is not timely,” and “is not useful,” and that the Amici “have no special interest in this case that would justify their input.” (Response 5, ECF No. 76.) FERC requests that the Court deny the Motion or grant FERC “leave to submit a responsive brief which will demonstrate [the Amici]’ brief is meritless, that its conclusions do not follow from its premises, and that it misconstrues or mischaracterizes much of the authority upon which it ostensibly relies.” (*Id.* at 6.)

A federal district court has “broad discretion in deciding whether to allow a non-party to participate as an *amicus curiae*.” *Tafas v. Dudas*, 511 F. Supp. 2d 652, 659 (E.D. Va. 2007). Courts have allowed briefs by *amici curiae* when: (1) the briefs “provide helpful analysis of the law”; (2) the amici “have a special interest in the subject matter of the suit”; or, (3) “existing counsel is in need of assistance.” *Id.* (quoting *Bryant v. Better Business Bureau*, 923 F. Supp. 720, 727 (D. Md. 1996)). A court should only grant leave to file an *amicus curiae* brief if the court “deems the proffered information timely and useful.” *Id.* (internal citations and quotation marks omitted). However, a court “may not consider legal issues or arguments not raised by the parties,” even if those issues are presented by the *amicus curiae*. *Id.* at 660 (citing *Cellnet Communs. v. FCC*, 149 F. 3d 429, 443 (6th Cir. 1998)).

The Court finds the Amici Brief helpful and the information timely and useful. The Amici clearly have a special interest in the subject matter of this suit as they consist of “ten law professors who regularly write and teach about federal administrative law and procedure.” (Brief 1, ECF No. 70-1.) Although the Amici filed the Motion several months after briefing had been submitted to the Court, no opinion has been issued, and the matter is still pending. The Court therefore finds that the Motion is timely.

The Court will also grant FERC leave to submit a brief in response to the Amici Brief. Because the Amici Brief has twenty-four (24) pages, FERC may submit a response brief that is no longer than twenty-four (24) pages. FERC must file its response brief no later than close of business March 24, 2017.

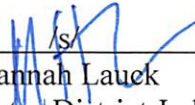
In sum, the Court ORDERS the following:

- 1) The Court GRANTS the Motion, (ECF No. 70);
- 2) The Court ORDERS the Amici to file the Amici Brief, (ECF No. 70-1);
- 3) The Court grants FERC leave to file a brief in response, no longer than twenty-four (24) pages, by close of business March 24, 2017;
- 4) The Court GRANTS the Motion for Leave to File, (ECF No. 54); and,
- 5) The Court ORDERS Respondents to file the supplemental material, (ECF No. 55-1).

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

It is so ORDERED.

Date: 3/15/2017
Richmond, Virginia



M. Hannah Lauek
United States District Judge