

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

FEDERAL ENERGY REGULATORY  
COMMISSION,  
Plaintiff,

v.

Civil No. 3:15-cv-00452 (MHL)

POWHATAN ENERGY FUND, LLC, *et al.*,  
Defendants.

**ORDER**

The Federal Energy Regulatory Commission (“FERC”), moves for entry of a protective order (ECF No. 251) in response to Powhatan Energy Fund LLC’s (“Powhatan’s”) notice of deposition pursuant to Fed. R. Civ. P. 30(b)(6). A hearing was held on December 14, 2021 at 9:30 a.m. with counsel for the parties present. At the conclusion of the hearing, the Court made the following findings: (1) Fed. R. Civ. P. 30(b)(6), by its very terms, applies to FERC; (2) there is no categorical prohibition on Powhatan taking a Rule 30(b)(6) deposition of FERC; (3) FERC’s counsel previously agreed that it would provide a Rule 30(b)(6) witness, subject to agreement with Powhatan regarding the topics and scope of the deposition; (4) the parties have been unable to agree on a list of topics and the scope of the 30(b)(6) deposition; and (5) many of the 30(b)(6) topics currently identified by Powhatan are overly broad and/or may seek information protected by privileges and/or the work product doctrine.

Based on these findings, the Court took the Motion for Protective Order under advisement and directed the parties to explore other means of discovery, including, but not limited to, stipulations and/or deposition through written questions to address FERC’s concerns of privilege

and work product disclosures. The Court further directed the parties to attend a conference phone call on December 28, 2021 at 9:30 a.m. to address the status of this discovery dispute.

On December 28, 2021, counsel for the parties represented to the Court that significant progress had been made and requested additional time to resolve the Motion for Protective Order. The matter was continued until January 13, 2022 and the parties were advised that the Court would be prepared to rule on the Motion for Protective Order in the event that the parties had failed to resolve the Motion for Protective Order.

On January 20, 2022, counsel for the parties advised the Court that they had discussed, but had not finalized, procedural and factual stipulations. Since the hearing held on December 14, 2021, the Court has not been provided a revised list of 30(b)(6) topics. Counsel further advised the Court that the parties explored deposition through written questions without success.

Further, counsel for FERC represented to the Court on the record that FERC: (1) has provided Powhatan with its entire investigative file regarding this matter, including all facts known to FERC and learned by FERC during the course of its investigation; (2) will not rely on facts at the trial of this matter that were not either contained in FERC's investigative file or produced in discovery; (3) will not call any person employed with or by FERC to testify as a fact witness during its case-in-chief at the trial of this matter; (4) reserves the right to call a person employed with or by FERC to authenticate documents and/or to sponsor a summary of data or information compiled from sources that would otherwise be admissible into evidence; and (5) reserves the right to call a fact witness employed with or by FERC for rebuttal purposes if Powhatan attempts to put FERC's conduct or investigative motives at issue during Powhatan's presentation of its case.

For good cause shown, the Court may issue an order to protect a party from undue burden. After reviewing the pleadings, considering the arguments and representations of counsel, and for

