

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Houlian Chen, Powhatan Energy Fund, LLC, HEEP) Docket No. IN15-3-000
Fund, LLC, and CU Fund, Inc.)

ALAN CHEN'S ANSWER TO PJM COMMENTS

We respectfully request that the Commission consider the following two brief points in response to the comments PJM recently filed in this case (if the Commission determines it is appropriate to consider PJM's comments).

First, PJM's views about distributing disgorgement funds are premature and seem to be premised on a misunderstanding of the Commission's process in FPA civil penalty cases where the respondent opts for federal district court proceedings. PJM appears to think that, if the Commission does not dismiss the matter at the show-cause phase, this case will proceed to judicial review after a Commission order on the merits addressing disgorgement, like the mine run of cases typically do, outside of the FPA enforcement context. For example, PJM asks the Commission to "suspend any requirement that PJM distribute the refunds, and direct or allow PJM to hold the disgorgement in escrow." Comments at 4. According to PJM, it should not be required to distribute disgorgement funds unless and until there is judicial finality on disgorgement.

In this case, however, a different path lays ahead. If the Commission issues an order assessing civil penalties, that order will have no binding effect. Instead, once the respondents decline to pay the proposed sanctions, the Commission must institute an action in federal district court under FPA section 31(d)(3)(B). In that case, the Commission will seek an order and judgment from the district court on the civil penalty assessment, *as well as any requirement for disgorging allegedly unjust profits from the conduct at issue*. See, e.g., Complaint at 25, *FERC*

