



of this Answer. Defendants further state that, under Federal Rule of Civil Procedure 8(d), pleadings should be simple, concise, and direct. Defendants expressly reserve the right to amend and/or supplement this Answer.

Defendants aver that any purported findings, conclusions, or determinations asserted in the Amended Complaint by FERC are not based on an evidentiary record developed in a contested proceeding before an objective trier of fact, are irrelevant and prejudicial, and should not be considered by the Court as part of its *de novo* adjudication of the law and facts. As this Court recognized in its December 28, 2017 and September 24, 2018 orders and memorandum opinions (ECF Nos. 89, 92, 107, 108), under the plain language of the Federal Power Act (“FPA”), the Federal Rules of Civil Procedure, and fundamental principles of fairness and due process, Defendants are entitled to full discovery and adjudication of the law and facts by this Court.

The Amended Complaint includes headings that do not contain factual allegations and therefore do not require Defendants’ response under Federal Rule of Civil Procedure 8(b). To the extent any response may be required, Defendants deny all allegations contained in each heading in the Amended Complaint. The headings below conform to the headings in the Amended Complaint solely for ease of reference.

References below to the ordinal numbers of sentences within given paragraphs are based on the number of textual sentences in those paragraphs and exclude citation sentences.

Defendants deny the allegations in the introductory paragraph of the Amended Complaint, except Defendants admit that the Court issued an order on December 28, 2017 (ECF No. 92); admit that FERC purports to bring this action pursuant to FPA section 31(d), 16 U.S.C. § 823b(d); and admit that, on May 29, 2015, FERC issued an Order Assessing Civil Penalties (“Penalty

Assessment Order”), a copy of which was attached to the Amended Complaint as Exhibit 1 (ECF No. 93-1).

### **SUMMARY OF THE ACTION**

1. Defendants admit that FERC purports to bring this action for affirmance and enforcement of civil penalties that FERC assessed by order against Defendants, but deny any factual inferences or legal conclusions made by FERC in or based upon the Penalty Assessment Order, and any paraphrasing, summarizing, or characterization of the substance of the Penalty Assessment Order or its effect on this proceeding, and deny that Defendants are liable for damages, penalties, or any other relief sought in the Amended Complaint. Defendants admit that Chen executed trades on behalf of Powhatan, HEEP Fund, and CU Fund between June 1 and August 3, 2010 (the “Relevant Period”). Defendants object to and deny FERC’s characterization of this period as the “Manipulation Period” and aver that no market manipulation occurred. Defendants aver that the FPA speaks for itself. The remainder of Paragraph 1 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 1.

2. Defendants admit that FERC issued the Penalty Assessment Order on May 29, 2015. Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 2 regarding the actions FERC purportedly took before issuing the Penalty Assessment Order and, therefore, deny them. Pursuant to this Court’s December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the Administrative Procedure Act (“APA”). As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 2. Defendants admit the allegations in footnote 1.

3. Defendants admit that “Up-to-Congestion” (“UTC”) is a financially settled product and that this product allows market participants to hedge costs and arbitrage price differentials. Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 3 regarding the allocation of Marginal Loss Surplus Allocation (“MLSA”) to UTC trades and, therefore, deny them. Pursuant to this Court’s December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 3 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 3.

4. Pursuant to this Court’s December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all factual findings alleged in Paragraph 4.

5. Pursuant to this Court’s December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all factual findings alleged in Paragraph 5.

6. Pursuant to this Court’s December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a

review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all factual findings alleged in Paragraph 6.

7. Defendants admit that FERC issued the Penalty Assessment Order on May 29, 2015. Defendants admit that FERC's Office of Enforcement ("Enforcement") conducted a multi-year investigation. Defendants admit that FERC issued an Order to Show Cause and that Defendants responded by submitting evidence and argument to FERC.<sup>1</sup> Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in Paragraph 7 that evidence not gathered during the investigation was submitted to FERC during the show-cause order process and, therefore, deny that allegation. The remainder of Paragraph 7 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 7.

8. Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 8 regarding FERC's decision-making process and, therefore, deny them. To the extent Paragraph 8 contains legal conclusions, such conclusions do not require an admission or denial. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 8.

9. Defendants aver that 16 U.S.C. § 825o-1(b) speaks for itself, and Defendants deny any characterization of the statute by FERC. Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 9 regarding FERC's decision-making process and, therefore, deny them. Pursuant to this Court's December 28, 2017 Order and

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<sup>1</sup> The administrative process initiated by the Order to Show Cause is referred to herein as the "show-cause order process."

Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 9.

10. Defendants admit that the Penalty Assessment Order purported to assess civil penalties in the amounts listed in Paragraph 10. Defendants deny that they are liable for damages, penalties, or any other relief sought in the Amended Complaint. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 10.

11. Defendants admit that the Penalty Assessment Order purported to direct disgorgement in the amounts and on the terms listed in Paragraph 11. Defendants deny that they are liable for damages, penalties, or any other relief sought in the Amended Complaint and deny that other market participants were harmed by their conduct. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 11.

12. Defendants admit the assertions in Paragraph 12.

13. Defendants aver that the statute speaks for itself. Defendants deny that the Court issued an order in this case on December 18, 2017. Defendants deny that FERC is entitled to the relief requested in Paragraph 13.

### **PARTIES**

#### **A. Plaintiff**

14. Defendants admit the assertions in Paragraph 14, but deny any implication that FERC's structure is lawful.

15. Defendants aver that the statutes speak for themselves. Paragraph 15 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants lack knowledge and information sufficient to form a belief as to the truth of the assertions in Paragraph 15 and, therefore, deny them.

#### **B. Defendants**

16. Defendants admit that, at all relevant times, Powhatan was a private investment fund organized as a Delaware corporation with its primary place of business in Henrico, Virginia. Defendants admit that, at all relevant times, the managing member of Powhatan was LSE Capital Management, LLC ("LSE"), a Delaware corporation with its primary place of business in Henrico, Virginia. Defendants admit that, at all relevant times, the sole member of LSE was Lawrence S. Eiben ("Eiben"). Defendants admit that, at all relevant times, Eiben was a resident of Henrico, Virginia and was the sole executive officer of Powhatan.

17. Defendants admit that, at all relevant times, Chen maintained his residence in The Woodlands, Texas. Defendants admit that Chen incorporated HEEP Fund and CU Fund in Texas and at all relevant times maintained their principal place of business there. Defendants admit that Chen was a signatory to Advisory Agreements with Powhatan and its predecessor companies, pursuant to which he traded in electricity markets, including the trades at issue here. The remainder

of Paragraph 17 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 17. Defendants deny that they are liable for damages, penalties, or any other relief sought in the Amended Complaint.

18. Defendants admit the allegations in Paragraph 18.

19. Defendants admit the allegations in Paragraph 19.

### **JURISDICTION**

20. Defendants aver that the cited statutes speak for themselves and Defendants deny any characterization of the statutes by FERC. Paragraph 20 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 20.

21. Paragraph 21 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants admit that the Court has personal jurisdiction.

### **VENUE**

22. Defendants aver that the statute speaks for itself. Paragraph 22 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants admit that venue is governed by FPA section 317, 16 U.S.C. § 825p.

23. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all allegations in Paragraph 23.

24. Defendants admit that HEEP Fund and Powhatan entered into an Advisory Agreement (“Powhatan Advisory Agreement”) pursuant to which Chen placed the trades at issue here. Defendants aver that the Powhatan Advisory Agreement speaks for itself. Defendants admit that prior to the Relevant Period, Chen traded for two of Powhatan’s predecessor companies. Defendants admit that, at all relevant times, those companies were controlled by the same principals, and that those companies each maintained a place of business in the Richmond, Virginia area. Pursuant to this Court’s December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 24 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 24. Defendants deny the allegations in footnote 2.

25. Defendants admit that, at all relevant times, Powhatan was an inhabitant of this District in that it maintained its principal place of business in Henrico, Virginia, within this District.

26. Defendants admit that, at all relevant times, CU Fund was incorporated and maintained its principal place of business in Texas; that Chen was the sole owner and employee of CU Fund; and that CU Fund was controlled by, and operated for the sole benefit of, Chen. The remainder of Paragraph 26 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 26.

**THE COMMISSION’S ANTI-MANIPULATION AUTHORITY**

27. *FERC v. Electric Power Supply Association*, 136 S. Ct. 760 (2016), and FPA section 222, 16 U.S.C. § 824v, speak for themselves and Defendants deny any characterization of

the decision or the statute by FERC. Defendants admit that the Energy Policy Act of 2005 amended the FPA. The remainder of Paragraph 27 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 27.

28. Defendants admit that FERC promulgated the Anti-Manipulation Rule, 18 C.F.R. § 1c.2, in 2006 and refer the Court to the cited order, *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. & Regs. ¶ 31,202 (2006), which speaks for itself. Defendants deny any characterization of the order and Anti-Manipulation Rule by FERC. The remainder of Paragraph 28 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 28.

29. Paragraph 29 and footnote 3 contain legal conclusions, which do not required an admission or denial. To the extent a response is required, Defendants deny the allegations and refer the Court to the text of FPA section 316A, 16 U.S.C. § 825o-1; FERC's advisory Penalty Guidelines, *Enforcement of Statutes, Orders, Rules, and Regulations: Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010); and the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461, and rules promulgated by FERC thereunder. These materials speak for themselves, and Defendants deny any characterization of these materials by FERC.

## **BACKGROUND**

### **A. The PJM Market and the UTC Product.**

30. Defendants admit that Chen placed the trades at issue in this case in a market administered by PJM Interconnection, L.L.C. ("PJM"), a regional transmission organization ("RTO"). Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining assertions in Paragraph 30 and footnote 4 and, therefore, deny them.

31. Defendants admit that Locational Marginal Prices (“LMPs”) are composed of the price of energy, the cost of congestion, and the cost of line losses. Defendants state that the phrase “appropriate price signals” is vague and ambiguous and, therefore, Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in the second sentence of Paragraph 31. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining assertions in Paragraph 31 and, therefore, deny them.

32. Defendants admit that the system-wide price of energy is a component of LMPs. Defendants lack knowledge or information sufficient to form a belief as to the truth of the other assertions in Paragraph 32 and, therefore, deny them.

33. Defendants admit that congestion is a component of LMPs. Defendants lack knowledge or information sufficient to form a belief as to the truth of the other assertions in Paragraph 33 and, therefore, deny them.

34. Defendants admit that line loss is a component of LMPs. Defendants lack knowledge or information sufficient to form a belief as to the truth of the other assertions in Paragraph 34 and, therefore, deny them.

35. Defendants admit that PJM operates both a day-ahead and a real-time market. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining assertions in Paragraph 35 and, therefore, deny them.

36. Defendants admit that real-time market participants engage in transactions involving energy that will flow through power lines the same day and that PJM provides trading platforms. Defendants state that the term “oversees” is vague and ambiguous and, therefore, Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in the last sentence of Paragraph 36. Defendants lack knowledge or information

sufficient to form a belief as to the truth of the remaining assertions in Paragraph 36 and, therefore, deny them.

37. Defendants admit that this case involves UTC, a financially settled “virtual” product in PJM. Defendants state that the phrases “better price formation,” “clearer price signals,” and “more efficient dispatch” are vague and ambiguous and, therefore, Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in the last sentence of Paragraph 37. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining assertions in Paragraph 37 and footnote 5 and, therefore, deny them.

38. Pursuant to this Court’s December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 38 and, therefore, deny them.

39. Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 39 and, therefore, deny them.

40. Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 40 and, therefore, deny them.

41. Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 41 and, therefore, deny them.

42. Defendants admit that during the Relevant Period, UTC traders reserved transmission for their intended transactions. Defendants lack knowledge or information sufficient

to form a belief as to the truth of the remaining assertions in Paragraph 42 and footnotes 6 and 7 and, therefore, deny them.

43. Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 43 and, therefore, deny them.

**B. Marginal Loss Surplus and Its Allocation.**

44. Defendants admit that line loss is a component of LMPs. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining assertions in Paragraph 44 and, therefore, deny them.

45. Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 45 and, therefore, deny them.

46. Defendants admit that FERC in September 2009 approved a PJM proposal to distribute marginal loss surplus by a marginal loss surplus allocation. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining assertions in Paragraph 46 and, therefore, deny them.

**C. Defendants Partner to Fraudulently Trade and Collect MLSA Payments.**

47. Defendants state that the phrase “familiar with” is vague and ambiguous and, therefore, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in Paragraph 47 that is based on such phrase and, on that basis, deny that allegation. Defendants admit the remaining allegations in Paragraph 47.

48. Defendants admit the allegations in Paragraph 48 and footnote 8.

49. Defendants admit the allegations in the first sentence of Paragraph 49. Defendants deny the allegations in the second sentence of Paragraph 49.

50. Defendants admit the allegations in the first, third, and fourth sentences of Paragraph 50. Defendants admit that Huntrise Energy Fund, LLC (“Huntrise”) was a private

investment fund with a place of business in Richmond, Virginia and that Huntrise has been shut down.

51. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 51 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants admit that, between September 2007 and October 2009, Chen lawfully traded UTC and that his UTC trades were based on analyses he developed. Defendants further admit that the Penalty Assessment Order contains the language quoted in Paragraph 51. Defendants state that the phrases "market fundamentals" and "careful, low-risk approach" are vague and ambiguous and, therefore, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 that are based on such phrases and, on that basis, deny those allegations.

52. Defendants admit the allegations in the first sentence of Paragraph 52. Defendants deny the allegation in the second sentence of Paragraph 52.

53. Defendants admit that Paragraph 53 quotes from or summarizes the Penalty Assessment Order, but deny all allegations and conclusions contained therein.

54. Defendants deny the allegations in Paragraph 54. Regarding the communications purportedly quoted and summarized in Paragraph 54, Defendants deny the truth of the matters asserted and refer to the purportedly quoted materials for their complete and accurate contents.

55. Defendants state that the term "substantial" is vague and ambiguous and, therefore, Defendants lack knowledge or information sufficient to form a belief as to the truth of the

allegations in the first sentence of Paragraph 55 and, on that basis, deny those allegations. Defendants deny the allegations in the second sentence of Paragraph 55.

56. Defendants deny the allegations in Paragraph 56.

57. Defendants deny the allegations in Paragraph 57. Regarding the communication purportedly quoted and summarized in Paragraph 57, Defendants deny the truth of the matter asserted and refer to the purportedly quoted communication for its complete and accurate contents.

58. Defendants admit that Powhatan was created in March 2010. Defendants state that the term “fellow investors” is vague and ambiguous and, therefore, Defendants lack knowledge or information to form a belief as to the remaining allegations in Paragraph 58 and, on that basis, deny those allegations.

59. Defendants admit the allegations in Paragraph 59.

60. Defendants state that the terms “failed,” “sharp,” and “significant” are vague and ambiguous and, therefore, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 and, on that basis, deny those allegations.

61. Pursuant to this Court’s December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all allegations in Paragraph 61.

62. Defendants admit the allegations in the first sentence of Paragraph 62. Defendants deny the allegation in the second sentence of Paragraph 62. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation in the third sentence because it lacks any temporal context and, on this basis, Defendants deny the allegation.

63. Paragraph 63 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all allegations in Paragraph 63.

64. Paragraph 64 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all allegations in Paragraph 64.

65. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegation in the second sentence of Paragraph 65 and, therefore, deny it. Defendants deny the remaining allegations in Paragraph 65.

#### **ENFORCEMENT'S INVESTIGATION OF DEFENDANTS**

66. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 66 and, therefore, deny them. With respect to footnote 10, in accordance with this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), Defendants deny that the materials filed by FERC constitute "the Administrative Record" and deny that FERC conducted an administrative hearing.

67. Defendants admit that they received document preservation letters on August 18, 2010 and that FERC issued an order of formal investigation on August 25, 2010. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 67 and footnote 11 and, therefore, deny them. Regarding footnote 12, Defendants admit that Enforcement issued data requests and took investigative testimony from Chen, Kevin Gates, Eiben, and others. Defendants further admit that they made written submissions to Enforcement and that FERC issued a revised Order to Show Cause on December 18, 2014. The remainder of footnote 12 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all remaining allegations in footnote 12.

68. Defendants admit that Enforcement obtained Defendants' emails, trade records, and responses to interrogatories and that Enforcement attorneys took investigative testimony from Chen and investors and officers of Powhatan. Defendants lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 68 and, therefore, deny them.

69. Defendants admit that Enforcement on August 9, 2013 provided Defendants with "Preliminary Findings," although Defendants deny any implication that FERC made findings based on an evidentiary record developed in a contested proceeding before an objective trier of fact and deny any implication that any purported findings by FERC should be considered by the Court as part of its *de novo* adjudication of the law and facts. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 69 and, therefore, deny them. To the extent Paragraph 69 contains legal conclusions, such conclusions do not require an admission or denial; however, to the extent a response is required, Defendants deny the remaining allegations in Paragraph 69.

70. Defendants admit the allegations in Paragraph 70, except that Defendants deny any implication that they agreed with Enforcement's characterization of the trades at issue here.

71. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 71 and, therefore, deny them. The second sentence of Paragraph 71 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants admit the allegations in the second sentence of Paragraph 71.

72. Defendants admit the allegation in Paragraph 72.

73. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 73 and, therefore, deny them.

**THE CONTESTED ON-THE-RECORD ORDER TO SHOW CAUSE  
PROCEEDING AND ORDER ASSESSING PENALTIES**

74. Defendants admit the allegations in Paragraph 74.

75. Defendants admit the allegation in the first sentence of Paragraph 75. The remainder of Paragraph 75 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants admit the remaining allegations in Paragraph 75.

76. Paragraph 76 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 76.

77. The first sentence of Paragraph 77 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants admit that the show cause order process was subject to FERC's *ex parte* rule, 18 C.F.R. § 385.2201, and FERC's separation of functions rule, 18 C.F.R. § 385.2202. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 77 and, therefore, deny them.

78. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 78 regarding FERC's decision-making process and, therefore, deny them. The remainder of Paragraph 78 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants admit that FERC's separation of functions rule, 18 C.F.R. § 385.2202, applied and admit that the four Commissioners that voted on the Penalty Assessment Order constituted a quorum.

79. Defendants admit the allegations in Paragraph 79.

80. Defendants admit that on January 12, 2015, Defendants elected the procedures of FPA section 31(d)(3), 16 U.S.C. § 823b(d)(3), including the opportunity for *de novo* review in federal district court. The remainder of Paragraph 80 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 80.

81. Defendants admit the allegations in the first two sentences of Paragraph 81. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 81 and, therefore, deny them.

82. Defendants admit that Enforcement staff filed a revised reply to Defendants' answers on March 3, 2015.

83. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 83 and, therefore, deny them. Defendants admit that FERC issued the Penalty Assessment Order on May 29, 2015. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny all remaining factual findings alleged in Paragraph 83. Defendants further deny all allegations contained within the Penalty Assessment Order, attached to the Amended Complaint as Exhibit 1 (ECF No. 93-1), and object to FERC's attempt to adopt and incorporate by reference the Penalty Assessment Order in the Amended Complaint, on the ground that such incorporation and all of the allegations and statements therein violate the requirements of Federal Rule of Civil Procedure 8(a)(2), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief,"

and Federal Rule of Civil Procedure 10, which states that “[a] party must state its claims . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstances,” and is appropriate for the Court to strike under Federal Rule of Civil Procedure 12(f), which provides that “[t]he court may [on its own] strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter.”

### **DEFENDANTS’ VIOLATIONS**

84. Paragraph 84 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants state the FPA section 222, 16 U.S.C. § 824v, and FERC’s Anti-Manipulation Rule, 18 C.F.R. § 1c.2, speak for themselves and Defendants deny any characterization of the statute or the rule by FERC. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 84 regarding FERC’s adoption of the Anti-Manipulation Rule and, therefore, deny them. Defendants deny all remaining factual findings alleged in Paragraph 84.

85. Defendants deny the allegations in Paragraph 85.

#### **A. Defendants Engaged in a Manipulative Scheme.**

86. Paragraph 86 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 86.

87. Pursuant to this Court’s December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 87 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 87.

88. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 88 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 88.

89. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 89 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 89.

**B. Defendants Acted Knowingly and Intentionally.**

90. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 90 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 90.

91. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 91

contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 91.

92. Defendants admit that they provided an explanation for their trading during the investigation and show-cause order process. Defendants deny any characterization of such explanation in Paragraph 92 and deny that such theory is disproven by contemporaneous evidence. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 92 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 92.

93. Paragraph 93 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 93.

94. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 94 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the allegations in Paragraph 94.

**C. Defendants' Manipulative Scheme Caused Harm.**

95. Defendants deny the factual allegations in Paragraph 95. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty

Assessment Order. The remainder of Paragraph 95 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 95.

96. Defendants deny the factual allegations in Paragraph 96. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 96 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 96.

**D. Defendants' Manipulative Scheme Involved Jurisdictional Transactions.**

97. Paragraph 97 contains legal conclusions, which do not require an admission or denial. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny the allegations in Paragraph 97.

98. Defendants admit that their UTC transactions involved reservation of transmission. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 98.

99. Defendants aver that FPA section 222, 16 U.S.C. § 824v, speaks for itself and Defendants deny any characterization of that statute in Paragraph 99. The remainder of Paragraph 99 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 99.

100. Defendants admit the allegations in the first sentence of Paragraph 100. The remainder of Paragraph 100 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants admit the remaining allegations in Paragraph 100, but deny any implication that such allegations establish FERC jurisdiction with regard to the trades at issue here.

**E. The Commission Determined Appropriate Civil Penalties.**

101. Defendants admit that the Penalty Assessment Order purported to assess civil penalties in the amounts listed in Paragraph 101. Defendants deny that they are liable for damages, penalties, or any other relief sought in the Amended Complaint. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 101.

102. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny the allegations in Paragraph 102.

103. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 103 and, therefore, deny them.

104. Defendants aver that FPA section 316A(b), 16 U.S.C. § 825o-1(b), speaks for itself and Defendants deny any characterization of the decision or the statute in Paragraph 104. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 104.

105. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants admit that FERC purported to apply its Penalty Guidelines with respect to Powhatan, HEEP Fund, and CU Fund and deny the allegations in Paragraph 105.

106. Defendants admit that the Penalty Assessment Order purported to hold Powhatan and HEEP Fund jointly and severally liable for the \$1,920,000 penalty that FERC purported to assess against HEEP Fund. Defendants deny that they are liable for damages, penalties, or any other relief sought in the Amended Complaint. Pursuant to this Court's December 28, 2017 Order

and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 106. Regarding the communication purportedly quoted and summarized in Paragraph 106, Defendants deny the truth of the matter asserted and refer to the purportedly quoted communication for its complete and accurate contents.

107. Defendants admit that the Penalty Assessment Order purported to hold Powhatan and HEEP Fund jointly and severally liable for the \$16,800,000 penalty that FERC purported to assess against Powhatan. Defendants deny that they are liable for damages, penalties, or any other relief sought in the Amended Complaint. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants deny the remaining allegations in Paragraph 107.

108. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. The remainder of Paragraph 108 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the assertions in Paragraph 108 regarding FERC's decision-making process and, therefore, deny

them. Defendants deny that they are liable for damages, penalties, or any other relief sought in the Amended Complaint.

109. Pursuant to this Court's December 28, 2017 Order and Memorandum Opinion (ECF Nos. 89, 92), this action is a *de novo* review of the law and the facts involved; it is not a review of an administrative order under the APA. As such, no response is required to the purported findings or legal conclusions in the Penalty Assessment Order. To the extent a response is required, Defendants admit that FERC purported to assess a \$1,000,000 civil penalty on Chen and deny all remaining factual findings alleged in Paragraph 109. Defendants deny that they are liable for damages, penalties, or any other relief sought in the Amended Complaint.

#### **CLAIM FOR RELIEF**

110. In response to Paragraph 110, Defendants repeat and restate their responses to Paragraphs 1 through 109, inclusive, as if fully incorporated by reference and set forth herein.

111. Paragraph 111 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all allegations in Paragraph 111.

112. Defendants admit that FERC purports to bring this action for an order affirming and enforcing civil penalties that FERC purported to assess under FPA section 31(d)(3)(B), 16 U.S.C. § 823b(d)(3)(B), and ordering disgorgement. Defendants deny that they are liable for damages, penalties, or any other relief sought in the Amended Complaint.

#### **JURY DEMAND**

113. Paragraph 113 contains legal conclusions, which do not require an admission or denial. To the extent a response is required, Defendants deny all allegations in Paragraph 113.

114. Defendants admit that FERC demanded a jury trial on all issues so triable.

### **RELIEF REQUESTED**

Defendants deny that FERC is entitled to the requested relief described on pages 36 and 37 of the Amended Complaint.

### **DEFENSES**

Defendants assert the following affirmative and other defenses. By alleging the defenses set forth below, Defendants do not agree or concede that they bear the burden of proof or the burden of persuasion on any of these issues, whether in whole or in part.

#### **First Defense**

Neither the Amended Complaint nor the claims for relief alleged therein states a claim upon which relief can be granted against Defendants or alleges facts sufficient to state a claim for relief against Defendants.

#### **Second Defense**

FERC's claims are barred for lack of subject matter jurisdiction. FERC has no authority under the FPA to regulate financial UTC transactions, which do not result in the sale at wholesale or transmission of electric energy in interstate commerce.

#### **Third Defense**

FERC's claims are barred because the conduct of Defendants was at all times relevant to the allegations in the Amended Complaint with all applicable tariffs, statutes, and regulations.

#### **Fourth Defense**

FERC's claims are barred because FERC's definition of fraud exceeds the power granted to FERC by Congress and is void for vagueness.

#### **Fifth Defense**

FERC's claims are barred by the doctrine of fair notice.

**Sixth Defense**

FERC's claims against Defendants violate the due process guarantees of the U.S. Constitution.

**Seventh Defense**

FERC's claims are barred because Defendants' trades were not manipulative.

**Eighth Defense**

FERC's claims are barred because it cannot prove scienter.

**Ninth Defense**

FERC's claims are barred by the Filed Rate Doctrine.

**Tenth Defense**

FERC is barred from any recovery against Defendants because FERC has failed to plead fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure.

**Eleventh Defense**

FERC's claims against Defendants are barred by the doctrine of estoppel.

**Twelfth Defense**

The doctrine of waiver precludes FERC from obtaining any recovery.

**Thirteenth Defense**

FERC's claims are barred in large part by the applicable statute of limitations.

**Fourteenth Defense**

FERC is barred from any recovery against Defendants due to the doctrine of laches and undue delay in giving notice to Defendants of the matters alleged in the Amended Complaint, in issuing the Penalty Assessment Order, and in commencing this litigation.

**Fifteenth Defense**

FERC's claims are barred because of inequitable conduct and unclean hands.

**Sixteenth Defense**

FERC's claims are barred because FERC's structure is unconstitutional.

**Seventeenth Defense**

Any purported injury or harm alleged was, either wholly or in part, the legal fault of persons, firms, corporations, or entities other than Defendants and that legal fault reduces the percentage of responsibility, if any, which is to be borne by Defendants.

**Eighteenth Defense**

There is no lawful basis for imposing disgorgement in this action.

**Nineteenth Defense**

FERC's claims are barred because the purported unjust profits and harms FERC alleges are speculative in nature.

**Twentieth Defense**

The claims against defendant Chen are barred because he is not an "entity" subject to FERC's jurisdiction.

**Twenty-First Defense**

The civil penalties requested violate the criteria in FPA section 316A(b), 16 U.S.C. § 825o-1(b).

**Twenty-Second Defense**

The civil penalties requested violate the Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution.

**DEFENSES RESERVED**

Defendants reserve the right to amend this Answer to add additional defenses based on legal theories that may or will be divulged through clarification of the Amended Complaint,

through discovery, through change or clarification of the governing law, or through further legal analysis of FERC's position in this proceeding.

**DEFENDANTS' PRAYER FOR RELIEF**

**WHEREFORE**, Defendants deny that FERC is entitled to any relief and respectfully request that the Court enter:

- A. A judgment dismissing with prejudice FERC's Amended Complaint and denying all claims therein for relief against Defendants;
- B. An order awarding Defendant's fees pursuant to 28 U.S.C. § 2412(d)(1)(A); and
- C. Such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Defendants hereby demand a trial by jury on all issues triable as such.

Respectfully Submitted,

Dated: October 2, 2020

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