UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

ALAN CHEN'S CITATION OF SUPPLEMENTAL AUTHORITY

We write in the spirit of Rule 28(j) of the Federal Rules of Appellate Procedure to alert the Commission to supplemental authority relevant to this case. Earlier this week, the Supreme Court issued an opinion in a case, *ONEOK, Inc. v. Learjet, Inc.*, 575 U.S. ___, No. 13-271 (Apr. 21, 2015), addressing the scope of the preemptive sweep of the Commission's natural gas regulatory authority. There the Supreme Court stated as follows:

> Other times, the information reported reflected "wash trades," *i.e.*, "*prearranged* pairs of trades of the same good between the same parties, involving no economic risk and no net change in beneficial ownership."

Id. at 7 (quoting FERC, Final Report on Price Manipulation in Western Markets (Mar. 2003), App. 215) (italics in original).

That text is relevant to the arguments we made in Alan Chen's Reply to Enforcement at 9-10. As we explained in that pleading, Enforcement curiously was citing a case, *Amendments to Blanket Certificates*, that contradicts its misplaced position. There the Commission confirmed that its prohibition against wash trades does *not* prohibit purportedly *wash-like* trades, but instead limits the definition of wash trades to positions that completely offset (*id.*), leaving, as the Supreme Court just explained, "*no* economic risk and *no* net change in beneficial ownership." *ONEOK* at 7 (citations omitted) (emphasis added). Supreme Court decisions addressing the Commission's regulatory regime are rare. It thus bears noting that this very recent one confirms our views, and contradicts Enforcement's, about the specific contours of the Commission's pre-existing prohibition against wash trades.

As we have observed before, the Commission is free to consider prospective changes to binding legal norms that it previously announced. But it cannot change the past. Now that the Supreme Court has turned its always-bright spotlight on the Commission's pre-existing definition of wash trades, Enforcement's revisionist views of that definition face yet another insurmountable hurdle. The trades that Enforcement calls "wash-like" were exposed to, and experienced, both profit and loss. They were not wash trades. They did not violate any governing legal norm. They were not fraudulent. And they were not manipulative.

For these reasons, and the ones we previously set forth, the Commission should decline to issue an order assessing civil penalties in this case.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing answer has been served upon counsel for FERC Enforcement in the above-referenced proceeding.

Dated at Washington, D.C., on this 23rd day of April, 2015.

/*s*/

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