

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

FEDERAL ENERGY REGULATORY COMMISSION,	)	
	)	
	)	
Plaintiff,	)	
v.	)	Civ. Action No. 3:15-cv-00452 (MHL)
	)	
POWHATAN ENERGY FUND, LLC, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM IN SUPPORT OF  
MOTION OF COUNSEL FOR LEAVE TO WITHDRAW**

For the following reasons, and pursuant to Local Rule 83.1(G), undersigned counsel for Defendant Powhatan Energy Fund, LLC (“the Fund”), on behalf of Williams Mullen, hereby respectfully request that the Court grant leave to withdraw as counsel for the Fund in this case.

**STANDARD**

Pursuant to Local Rule 83.1(I), “the ethical standards relating to the practice of law in civil cases in this Court shall be Section II of Part Six of the Rules of the Virginia Supreme Court . . . .” Section II integrates the Virginia State Bar Professional Guidelines and Rules of Professional Conduct. *Portsmouth Redevelopment & Hous. Auth. v. BMI Apartments Assocs.*, 851 F. Supp. 775, 782 (E.D. Va. 1994) (Payne, J.) (“[T]he court applies the rules in the Virginia Code of Professional Responsibility as the first step in deciding whether [counsel] may be given leave to withdraw.”).

Pursuant to the Virginia Code of Professional Responsibility, “a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client,” *or* if:

...

- (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (6) other good cause for withdrawal exists.

Virginia Code of Professional Responsibility Rule 1.16(b).

### ARGUMENT

Courts in this district have granted leave to withdraw when, as here, “[t]he trial is not imminent and . . . withdrawal will not substantially affect the administration of justice.” *Portsmouth Redevelopment & Hous. Auth.*, 851 F. Supp. at 786–87. Here, as set forth in the accompanying Declaration of Patrick R. Hanes (Exhibit 1) (“Hanes Declaration” or “Hanes Decl.”), trial is not set to begin until August 15, 2022, more than a year away. The parties are finalizing disputes regarding written discovery, which is expected to leave the Fund with no further written discovery obligations during fact discovery. *Hanes Decl.* ¶ 9. Only one deposition has occurred to date, and deposition dates have not yet been finalized for the remaining principals for the Fund. *Id.* As part of its withdrawal, undersigned counsel will deliver all papers and research generated on the Fund’s behalf and cooperate with any such replacement counsel as the Fund deems fit in order to facilitate such a transition. For these reasons, permitting Williams Mullen to withdraw now will not pose a material adverse effect on the interests of the Fund, which can replace Williams Mullen with counsel of its choosing and continue to litigate this case as it chooses.

Even if the Fund argues that withdrawal would result in an adverse effect on its interests, the Court should permit leave to withdraw because continued representation will result in an unreasonable financial burden. Williams Mullen was engaged in 2015 to serve as local counsel in this case. *Hanes Decl.* ¶¶ 5-8 (providing background on counsel’s role in the representation of the Fund). The Fund’s representatives now expect that the Fund’s assets will be fully depleted by the

end of 2021 because of its expected legal costs. *Id.* ¶ 11. Without disclosing confidential communications between Williams Mullen and the Fund, the undersigned counsel represents that despite his requests, representatives of the Fund have not provided an adequate source or assurance of payment of the substantial legal fees and expenses that Williams Mullen would be required to incur as the sole counsel acting on the Fund's behalf prior to trial. *Id.* ¶ 12. The incurrence of fees, without any adequate source or assurance of payment, would result in an unreasonable financial burden on Williams Mullen. *Id.* ¶ 13.

In addition, despite efforts, and without disclosing confidential communications between Williams Mullen and the Fund, the undersigned counsel represents that he and representatives of the Fund have been unable to reach agreement on the manner of conducting the remaining stages of the litigation. *Id.* ¶ 14. The differences between Williams Mullen and the Fund are substantial, have arisen after the lifting of the stay in this litigation, and are irreconcilable. *Id.* ¶ 15. As a result of the foregoing, the continued representation of the Fund by Williams Mullen has been rendered unreasonably difficult by the Fund. *Id.* ¶ 16.

Counsel for the Fund has conferred with plaintiff on this issue and FERC has stated that FERC's primary concern at this juncture would be any effect the withdrawal would have on the deposition schedule. It is counsel's understanding that the Fund objects to this motion and its representatives desire to be heard by the Court.

Respectfully Submitted,

/s/

Patrick R. Hanes (Va. Bar No. 38148)  
Gregory A. Crapanzano II (Va. Bar No. 93044)  
WILLIAMS MULLEN  
Williams Mullen Center

200 South 10th Street, Suite 1600  
Richmond, VA 23219  
(804) 420-6000  
phanes@williamsmullen.com  
gcrapanzano@williamsmullen.com

*Counsel for Powhatan Energy Fund, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record. I also emailed a copy to the representatives of the Fund and sent a hard copy of this order by FedEx addressed to Powhatan's office.

By: /s/ Patrick R. Hanes  
Patrick R. Hanes  
WILLIAMS MULLEN  
Williams Mullen Center  
200 South 10th Street, Suite 1600  
Richmond, VA 23219  
(804) 420-6455  
phanes@williamsmullen.com  
*Attorney for Powhatan Energy Fund LLC*

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COMMISSION,	)	
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Plaintiff,	)	
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POWHATAN ENERGY FUND, LLC, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF PATRICK R. HANES**

I, Patrick R. Hanes, in accordance with 28 U.S.C. § 1746, based on my personal knowledge and upon review of records, I declare that:

1. I am over the age of eighteen and competent to testify to the facts below declared.
2. I am an attorney licensed to practice law in this Court and am a Partner in the law firm Williams Mullen.
3. With other attorneys from Williams Mullen, I have appeared as counsel in this matter for defendant Powhatan Energy Fund, L.L.C. (the “Fund”).
4. This Declaration is submitted in support of the Motion of Counsel for Leave to Withdraw from Representation filed herein (the “Motion to Withdraw”).
5. Williams Mullen was engaged by the Fund to serve as local counsel, and initially appeared in this case on September 10, 2015 (ECF No. 8). Lead counsel, who had represented the Fund in the underlying dispute with plaintiff for several years prior to the filing of this action, appeared four days thereafter (ECF Nos. 12 and 13) and directed the Fund’s legal actions.
6. After three years of litigation, the Court denied a Motion to Dismiss, granted a

joint petition for interlocutory appeal, and stayed the proceedings (ECF Nos. 108, 116 and 117). While the Motion to Dismiss was pending, the Fund's lead counsel was permitted leave to withdraw and Williams Mullen remained as the sole counsel for the Fund during the period that the case was appealed and stayed.

7. The appeal was denied and the stay of this case was lifted on October 23, 2020.

8. The Fund has yet to replace its lead counsel to direct or participate in the lawsuit on its behalf.

9. Since the lifting of the stay, the parties have engaged in written discovery, document production, and a single witness deposition. The parties to the case are in the final stages of negotiating a resolution to all written discovery obligations, which would terminate any pending requests for the Fund to search for or produce any additional documents or records in discovery. Dates for the depositions of its two remaining principals have not yet been finalized.

10. The trial in this case is not set to begin until August 15, 2022.

11. The Fund's representatives expect that the Fund's assets will be fully depleted by the end of 2021 because of its expected legal costs. This information is not privileged or otherwise confidential, as it has been affirmatively disclosed by the Fund to the other parties in this litigation.

12. Without disclosing confidential communications between Williams Mullen and the Fund, the undersigned counsel represents that despite his requests, representatives of the Fund have not provided an adequate source or assurance of payment of the substantial legal fees and expenses that Williams Mullen would be required to incur as the sole counsel acting on the Fund's behalf prior to trial.

13. The incurrence of fees, without any adequate source or assurance of payment,

