

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Houlian Chen
Powhatan Energy Fund, LLC
HEEP Fund, LLC
CU Fund, Inc.

)

Docket No. IN15-3-000

EXPEDITED MOTION FOR THIRTY-DAY EXTENSION OF TIME

The above-captioned respondents hereby move for a thirty-day extension of time to file an answer to the order to show cause.¹ We respectfully request expedited treatment of this motion, and request that Enforcement respond to this motion within three business days and further request that the Commission act on this motion by the end of next week.

Three grounds support this motion for extension of time. *First*, the Commission issued its order to show cause on December 17, then revised the order on December 18. It appears, notwithstanding the “revision,” that our response—ordered in thirty days—is due on January 16. That brief period spans the year-end holiday season. For that reason alone, the requested extension is warranted.

Second, Enforcement’s Report is 84 pages—several times longer than its original preliminary findings letter, which was the most comprehensive statement of Enforcement’s position (the 1b.19 letter does not really add much additional substance). While the additional detail is misguided, missing the mark at every turn, we still have considerable additional material to analyze and address. A thirty-day extension is reasonable in these circumstances. After all, Enforcement has been working on this case for over *four years* and demands total sanctions of

¹ *Houlian Chen*, 149 FERC ¶ 61,261 (2014).

over \$33 million. Granting our request for a thirty-day extension to respond to Enforcement’s mammoth Report is, we submit, appropriate by any measure.

Third, on December 18, we received a CD with voluminous additional materials, as well as authorization to obtain a deposition transcript—materials that we had not previously seen, but that are being sent to the Commission and advisory staff. The need to review and analyze these new materials—and in the case of the new deposition transcript, the need to actually order and eventually receive the transcript in the future—also justifies this extension request.

We expect Enforcement to oppose this motion. When we asked Enforcement for the courtesy of a one-month extension, they responded by conditioning their agreement on tolling the statute of limitations. First they demanded six-month’s tolling and then, when we replied that we would simply ask the Commission without their agreement, they requested one month. We think that no tolling agreement is appropriate and therefore seek an extension of time over Enforcement’s presumed objection. We are, in fact, puzzled by Enforcement’s proposal of any tolling agreement at all. Given their position in *Lincoln Paper* and *Silkman*,² Enforcement would presumably (albeit erroneously) take the position that the five-year statute of limitations has not even started running (and will begin only upon issuance of an Order Assessing Civil Penalties). Thus, by their own lights, they have over five years remaining before the statute of limitations runs. We have never controlled or even affected the timing of any staff or Commission action in this matter, and will not agree to any tolling, particularly given Enforcement’s position in

² See *FERC v. Lincoln Paper & Tissue, LLC*, No. 1:13-CV-13056-DPW, FERC Opp’n to Resp’s Mot. to Dismiss at 13-14 (D. Mass. Mar. 14, 2014) (“[W]here a statute contemplates an administrative proceeding followed by a court suit, a second five-year clock on the court action accrues after the agency assesses a penalty through an administrative proceeding.”) (citing *United States v. Meyer*, 808 F.2d 912, 914 (1st Cir. 1987)); *FERC v. Silkman*, No. 1:13-CV-13054-DPW, FERC Opp’n to Resp’s Mot. to Dismiss at 5 (D. Mass. Jan. 9, 2014) (stating and citing same).

Lincoln and *Silkman*, which indicates that they think, in our case, the statute of limitations has not even started to run.

For these reasons, we respectfully request a thirty-day extension of time in this case.

Respectfully submitted,

/s/
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