

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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

**PLAINTIFF FEDERAL ENERGY REGULATORY COMMISSION’S NON-  
CONFIDENTIAL MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE  
UNDER SEAL**

Plaintiff Federal Energy Regulatory Commission (“FERC”) submits this memorandum in support of its motion for leave to file documents under seal. Under Local Civil Rule 5(C), a party seeking leave to file documents under seal must provide: (1) “A non-confidential description of what material has been filed under seal;” (2) “A statement why sealing is necessary, and why another procedure will not suffice, as well as appropriate evidentiary support for the sealing request;” and (3) References to the governing case law, an analysis of the appropriate standard to be applied for that specific filing, and a description of how that standard has been satisfied.”

FERC seeks to file its Brief in Support of Motion to Amend Complaint to Add Relief Defendants under seal, along with Exhibits B through F thereto. FERC is obligated to seek sealing of these documents because they refer to, excerpt, or constitute, documents that have been marked “Confidential” by Powhatan pursuant to the Protective Order governing discovery entered by the Court in this case. As such, FERC has moved to file the documents under seal,

though, consistent with the Local Civil Rules, Powhatan bears the ultimate burden of persuading the court as to the necessity of sealing the documents at issue. See Local Civ. R. 5(C) (“When a party moves to file material under seal because another party has designated that material as confidential, the party designating the material as confidential must file a response to the motion complying with” the rule’s requirements).

FERC anticipates that it will oppose Powhatan’s sealing request, as the sealed documents simply contain discussions of the flow of Powhatan’s profits to its investors, rather than genuine business confidences. (FERC would of course redact any personal identifying information as required by Federal Rule of Civil Procedure 5.2 and Local Civil Rule 7(C).)

Respectfully Submitted,

/s/ Kevin Dinan

Kevin Dinan (Va. Bar No. 25517)

Damon Taaffe (*Pro Hac Vice*)

Daniel T. Lloyd (*Pro Hac Vice*)

888 First Street, N.E.

Washington, DC 20426

Telephone: (202) 502-6214

Email: kevin.dinan@ferc.gov

*Attorneys for Federal Energy Regulatory  
Commission*

Dated: December 3, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2021, I filed the foregoing motion with the Clerk's Office, using the CM/ECF system, which will send a notification of such filing to counsel of record in this matter.

/s/ Kevin Dinan  
Kevin Dinan

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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

**[PROPOSED] ORDER**

This matter is before the Court, pursuant to Local Rule 5(C), on the motion by Plaintiff Federal Energy Regulatory Commission to seal its Brief in Support of Motion to Amend Complaint to Add Relief Defendants, and Exhibits B through F thereto. FERC states that portions of its Brief and certain of the exhibits reflect material produced by Defendant Powhatan Energy Fund, LLC, and marked as “CONFIDENTIAL” pursuant to the Protective Order in this case. FERC has filed a redacted version of the Brief that is available for public viewing.

Upon consideration of the motion to seal and the needs of the case, the Court **FINDS** that less drastic alternatives to sealing the Brief and exhibits are not feasible.

Accordingly, the Court **ORDERS** that the Brief and Exhibits B through F thereto shall be maintained **UNDER SEAL** by the Clerk.

**SO ORDERED**, this the \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_