

**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.)	

NOTICE OF OBJECTION

Pursuant to the Court’s Order entered on July 28, 2021 (ECF No. 210), the undersigned hereby files the Notice of Objection to the Motion of Counsel for Leave to Withdraw (ECF No. 207) provided to the undersigned by a representative of Defendant Powhatan Energy Fund, LLC (“the Fund”), on its own behalf.

Respectfully Submitted,

/s/
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Counsel for Powhatan Energy Fund, LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 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
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Powhatan Energy Fund LLC
Notice of Objection to Motion of Counsel for Leave to Withdraw

On July 26, 2021, Williams Mullen PC (the “Firm”) filed a Motion of Counsel for Leave to Withdraw (the “Motion”) requesting to withdraw as counsel. Powhatan Energy Fund LLC (“Powhatan”) objects to the Motion and requests an opportunity to be heard before the Court.

By email dated July 27, 2021, the Firm informed Powhatan that this Court authorized the Firm to file Powhatan’s objection or opposition as a “Notice of Objection.” Powhatan made good faith efforts in this filing to comply with the Court’s local rules, but this Notice of Objection was prepared without the assistance of Virginia counsel.

Without getting into the merits of the underlying case, Powhatan is a co-defendant in a civil enforcement action brought by the Federal Energy Regulatory Commission (the “FERC”). Powhatan and its co-defendants have been defending themselves against the FERC’s Office of Enforcement for eleven years. Powhatan alone has had direct expenses of approximately \$3 million to date defending itself against an arm of the United States Government that has unlimited financial and legal resources at its disposal. Powhatan and its representatives have had indirect expenses multiple of this amount. Powhatan believes it did nothing wrong and it looks forward to proving its innocence on the equal playing field of a court of law. However, this fight has been expensive and exhaustive, and now Powhatan is left with only approximately \$400,000 to continue its defense.

Powhatan understands from the legal standards set forth in the Motion that the Firm may withdraw from representing Powhatan: (1) if withdrawal can be accomplished without material adverse effect on the interests of the client or (2) if the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (3) other good cause for withdrawal exists. Based on the Motion, the Firm is

attempting to establish the standards under (1) and (2) above, but not (3). Powhatan objects to the Firm's withdraw because it will materially impact Powhatan's interests in defending against the FERC. Powhatan addresses each of the Firm's assertions below.

Powhatan first wants to address the Firm's notion that it is only serving as local counsel. Powhatan believes this is incorrect. Instead, the Firm has been serving as Powhatan's lead and sole lawyer since Powhatan's former lead lawyer withdrew from the case in September 2018. In this capacity, the Firm has performed substantial legal work for Powhatan that is typically performed by lead counsel. For example, the Firm unsuccessfully attempted to negotiate a settlement offer with the FERC's Office of Enforcement on behalf of Powhatan and the Firm has primarily represented Powhatan throughout all facets of discovery, including, but not limited to, serving as Powhatan's lead attorney for all written discovery, defending Powhatan in discovery disputes and defending Powhatan's one and only deposition to date. In fact, the Firm has billed Powhatan approximately \$220,000 in legal fees since October 2020 (all of which has been paid to date), the bulk of which relates to discovery matters. Thus, it is Powhatan's belief that the Firm is currently serving as the lead attorney, not in a limited local counsel role.

Permitting the Firm to withdraw will pose a material adverse impact on Powhatan. As an entity, Powhatan is prohibited from representing itself "pro se" before the Court. Further, no individual associated with Powhatan was named by FERC as a defendant in the lawsuit, so there is no individual aligned with Powhatan who can represent himself or herself "pro se." Quite simply, Powhatan needs a lawyer to represent it before the Court. It has no other choice.

Powhatan currently has approximately \$400,000 cash left which could be used for legal expenses. This amount should not surprise the Firm because it has known about Powhatan's financial situation for some time now. Regardless, neither the Firm nor Powhatan believe the

current cash on hand are sufficient to cover the expected legal expenses required to complete this litigation. Indeed, the Firm predicted these monies would be consumed in legal fees by the end of this calendar year.

Both parties agree Powhatan is already in a dire situation. Powhatan, however, believes losing its only counsel would make its situation much worse, particularly in light of the fact that this case likely will not be resolved before trial. Thus, Powhatan's need for a lawyer to defend itself against the FERC is of the utmost importance and allowing the Firm to withdrawal now simply based on Powhatan's potential inability to pay its legal fees will materially and adversely impact Powhatan.

The Firm relies on the fact that the scheduled trial is over one year away, Powhatan and the FERC are in the process of finalizing written discovery disputes and deposition dates for the remaining Powhatan principals have not been finalized. The Firm states that this timeline allows Powhatan to "replace Williams Mullen with counsel of its choosing and continue to litigate this case as it chooses." First, Powhatan has had discussions with other lawyers in Richmond to serve as replacement counsel, including lawyers suggested by the Firm. No lawyer that Powhatan has talked to will represent Powhatan because of Powhatan's dire financial situation. In other words, contrary to the Firm's belief, Powhatan cannot find another Virginia lawyer to represent it and believes it would be impossible to find such an attorney. Second, Powhatan has paid the Firm approximately \$220,000 in legal fees and expenses since October 2020, mostly for discovery related matters. This was a significant portion of Powhatan's cash on hand at that time. This spend is not surprising since the Firm has served as Powhatan's lead attorney for all discovery matters. Discovery is ongoing, near term deposition preparation and defense may be needed and outstanding discovery disputes remain. Assuming for the sake of argument that Powhatan can

find replacement counsel, allowing the Firm to withdraw now will require Powhatan to spend a significant portion of its remaining cash on a new lawyer to gain the knowledge that the Firm already has about the case. Among other things, a new lawyer will have to quickly get up to speed on all discovery matters and prepare to defend against discovery related matters and depositions against the federal government (who has unlimited financial and personnel resources to throw at this case). This not only will cost Powhatan a significant portion of its remaining cash, but it will further deplete Powhatan's cash to a level that makes it unlikely a new lawyer will take the case. It is a material adverse impact to Powhatan.

Even if Powhatan runs out of money before the end of trial, continued representation by the Firm will not cause an unreasonable financial burden. Powhatan has paid the Firm approximately \$300,000 in total and approximately \$220,000 since last October. The Firm is the third largest firm in Virginia based on attorney headcount according to Firm's Wikipedia page.¹ According to the Firm's own website, it is an AmLaw 200 law firm with 2020 gross revenue of \$148 million.² And according to law.com, the Firm's profit per equity partner in 2020 was \$837,000.³ The Firm collected government assistance from the SBA PPP loan program last year in the amount of \$9.5 million dollars.⁴ Because of its experiences interfacing with FERC, Powhatan is acutely aware that it is not ideal to be forced to work for free. However, the Firm would not face an unreasonable financial burden if it is required to continue representing Powhatan after Powhatan exhausts its remaining funds.

Finally, the Firm states that it has been unable to reach agreement with Powhatan on the manner of conducting the remaining stages of litigation. Powhatan is surprised by this statement.

¹ https://en.wikipedia.org/wiki/Williams_Mullen

² <https://www.williamsmullen.com/news/williams-mullen-ranked-american-lawyers-2021-am-law-200>

³ <https://www.law.com/law-firm-profile/?id=327&name=Williams-Mullen&slreturn=20210627144402>

⁴ <https://www.federalpay.org/paycheck-protection-program/williams-mullen-clark-and-dobbins-pc-richmond-va>

And without more, it simply cannot respond to this statement. Powhatan is unaware of any differences between Powhatan and the Firm, other than Powhatan's financial situation, which are irreconcilable or otherwise result in a continued representation that is unreasonably difficult. In other words, Powhatan does not believe that its relationship with the Firm has deteriorated to the point where continued representation is impossible. To the contrary, Powhatan and the Firm have continued to amicably work together on discovery and other legal matters after the Firm filed the Motion with this Court.

Respectfully submitted on July 30, 2020 by Powhatan Energy Fund LLC.