

177 FERC ¶ 61,076
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Allison Clements, and Mark C. Christie.

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

Docket No. IN15-3-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 29, 2021)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Houlian Chen, HEEP Fund, Inc. and CU Fund, Inc. (collectively the Chen Defendants). This order is in the public interest because the Agreement resolves on fair and equitable terms: (i) the Commission's claims against the Chen Defendants for violations of section 222 of the Federal Power Act (FPA) and 18 C.F.R. § 1c.2; and (ii) the Commission's lawsuit captioned *FERC v. Powhatan Energy Fund LLC, et al.*, No 3:15-cv-00452 (MHL) as it pertains to the Chen Defendants (Federal Court Lawsuit).

2. The Chen Defendants agree to pay disgorgement of \$600,000. The Chen Defendants stipulate to the facts set forth in Section II of the Agreement and neither admit nor deny the alleged violations.

I. Factual and Procedural Background

3. HEEP Fund, Inc. (HEEP) and CU Fund, Inc. (CU) are wholly owned by Dr. Houlian Chen (Dr. Chen).

4. During the Alleged Manipulation Period (June 1, 2010 – August 3, 2010), Dr. Chen traded the Up To Congestion (UTC) product in the markets operated by the PJM Interconnection LLC (PJM) on behalf of HEEP, CU, and Powhatan Energy Fund LLC (Powhatan).

5. The Chen Defendants were the subjects of a Commission investigation and proceeding resulting in an Order Assessing Civil Penalties (151 FERC ¶ 61,179). In that order, the Commission determined that the Chen Defendants violated section 222 of the

FPA and 18 C.F.R. § 1c.2 and assessed disgorgement totaling \$1,253,676 and penalties totaling \$13 million against them.

6. On July 31, 2015, the Commission filed a lawsuit in the United States District Court for the Eastern District of Virginia to request an order affirming the Commission's Orders Assessing Civil Penalties. See *FERC v. Powhatan Energy Fund LLC, et al.*, No 3:15-cv-00452 (MHL).

II. Stipulation and Consent Agreement

7. Enforcement and the Chen Defendants have resolved the Federal Court Lawsuit by means of the attached Agreement.

8. The Chen Defendants stipulate to the facts set forth in Section II of the Agreement but neither admit nor deny the alleged violations set forth in Section III of the Agreement.

9. The Chen Defendants agree to pay disgorgement of \$600,000 to PJM within ten days of the Effective Date of the Agreement.

III. Determination of the Appropriate Sanctions and Remedies

10. In recommending the appropriate remedy, Enforcement considered the Chen Defendants' ability to pay the ordered penalties and disgorgement. Based on this information and the facts as set forth in the Orders Assessing Civil Penalties, the Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned, is in the public interest, and recognizes the specific considerations stated above and in the Agreement.

11. The Commission directs the Chen Defendants to make the disgorgement payment as required by the Agreement within ten days of the Effective Date of the Agreement.

12. The Commission directs PJM to allocate the disgorged funds in its discretion for the benefit of PJM customers.

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The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Commissioner Danly is not participating.

(S E A L)

Kimberly D. Bose
Secretary.

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Houlian Chen
HEEP Fund, Inc.
CU Fund, Inc.

Docket No. IN15-3-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (“Enforcement”) of the Federal Energy Regulatory Commission (“Commission”), Houlian Chen, HEEP Fund, Inc. and CU Fund, Inc. (collectively the “Chen Defendants”) enter into this Stipulation and Consent Agreement (“Agreement”) to resolve: (i) the Commission’s claims against the Chen Defendants for violations of section 222 of the Federal Power Act (“FPA”) and 18 C.F.R. § 1c.2, and (ii) the Commission’s lawsuit captioned *FERC v. Powhatan Energy Fund LLC, et al.*, No 3:15-cv-00452 (MHL) as it pertains to the Chen Defendants (“Federal Court Lawsuit”). In order to fully resolve these claims, the Chen Defendants agree that they shall make a payment in accordance with the terms set forth below totaling \$600,000, and the Commission agrees to dismiss with prejudice its claims against the Chen Defendants in the Federal Court Lawsuit in accordance with the terms set forth below.

II. STIPULATED FACTS

2. HEEP Fund, Inc. (“HEEP”) and CU Fund, Inc. (“CU”) are wholly owned by Dr. Houlian Chen (“Dr. Chen”).

3. During the Alleged Manipulation Period (June 1, 2010 – August 3, 2010), Dr. Chen traded the Up To Congestion (“UTC”) product in the markets operated by the PJM Interconnection LLC (“PJM”) on behalf of HEEP, CU, and Powhatan Energy Fund LLC (“Powhatan”).

4. Dr. Chen had two profit opportunities in mind for the UTC trading strategy that is the subject of the Federal Court Lawsuit. One of those opportunities targeted MLSA. Dr. Chen recalls telling Powhatan that targeting MLSA was the profit opportunity of his UTC trading strategy before or during the Alleged Manipulation Period. To the best of his belief and recollection, targeting MLSA was the only profit opportunity Dr. Chen discussed with Powhatan before or during the Alleged Manipulation Period as a purpose for the trading at issue. To the best of his belief and recollection, before or during the Alleged Manipulation Period, Dr. Chen did not communicate to Powhatan, nor did Powhatan suggest to Dr. Chen, any other profit opportunity, aside from targeting MLSA, presented by the trades at issue. To the best of

his belief and recollection, at no time before or during the Alleged Manipulation Period did Dr. Chen tell Powhatan that having a leg break or a portion of a paired MLSA trade not clear was a desirable outcome or a purpose of the trades at issue, and Dr. Chen took steps to reduce the likelihood of such events occurring for many of the trades at issue.

III. COMMISSION DETERMINATION OF VIOLATIONS

5. The Chen Defendants were the subjects of a Commission investigation and proceeding resulting in an Order Assessing Civil Penalties (151 FERC ¶ 61,179). In that order, the Commission determined that the Chen Defendants had violated section 222 of the FPA and 18 C.F.R. § 1c.2 and assessed disgorgement totaling \$1,253,676 and penalties totaling \$13 million against them.

6. The Chen Defendants have claimed an inability to pay the assessed penalties, and have furnished documentation to Enforcement sufficient to substantiate their claim.

IV. REMEDIES AND SANCTIONS

7. For purposes of this Agreement, the Chen Defendants admit and stipulate to the facts set forth in Section II but neither admit nor deny the violations set forth in Section III of this Agreement.

8. For purposes of settling any and all disputes, allegations, and claims relating to the Chen Defendants' alleged violations and the Federal Court Lawsuit, the Chen Defendants agree to pay \$600,000 in disgorgement to PJM.

9. The Chen Defendants shall promptly notify Enforcement when they make the required payment by providing proof of payment by email to the Director of the Office of Enforcement. Enforcement shall promptly confirm the receipt of such payments from the Chen Defendants.

10. Within three business days of receiving proof of payment, the Commission shall file on behalf of the parties a Joint Stipulation of Dismissal with Prejudice in the Federal Court Lawsuit.

11. Dr. Chen shall continue to participate in the Federal Court Lawsuit as a witness and shall not legally challenge any attempt or request regarding that participation. Dr. Chen waives any objections regarding the service of subpoenas for either deposition or trial testimony purposes. Should his testimony be required, Dr. Chen shall testify truthfully.

12. Dr. Chen agrees to a trader ban from FERC-jurisdictional markets of two years from the Effective Date of this Agreement.

13. The Commission and the Chen Defendants agree to bear their own costs and fees from the case and neither party shall pursue a claim of costs or fees against the other.

V. TERMS

14. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to the Chen Defendants and any affiliated entity or person, and their respective agents, officers, directors, members, owners, or employees, both past and present.

15. Commission approval of this Agreement without material modification shall release the Chen Defendants and forever bar the Commission from holding the Chen Defendants, any affiliated entity or person, any successor in interest, and their respective agents, officers, directors, members, owners, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the above described investigation and Federal Court Lawsuit, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

16. Failure by the Chen Defendants to make the disgorgement payment or to comply with the obligations agreed to herein, or any other provision of this Agreement, shall be deemed a breach of this Agreement and a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, *et seq.* The Chen Defendants acknowledge and agree that this may subject the Chen Defendants to additional action under the enforcement provisions of the FPA, which in turn may result in additional sanctions separate and apart from the \$600,000 disgorgement payment made by the Chen Defendants pursuant to this Agreement.

17. If the Chen Defendants do not make the required disgorgement payment described above within the times agreed by the parties, interest will begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a)(2)(iii) from the date that payment is due.

18. This Agreement binds the Chen Defendants and their agents, successors, and assignees. This Agreement does not create any additional or independent obligations on the Chen Defendants, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

19. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or the Chen Defendants has been made to induce the signatories or any other party to enter into the Agreement.

20. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor the Chen Defendants shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and the Chen Defendants.

21. In connection with the disgorgement provided for herein, the Chen Defendants agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order under the FPA, 16 U.S.C. § 792, *et seq.*, as amended. The Chen Defendants waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

22. This Agreement in no way affects, alters, or resolves the Commission's claims against Powhatan in the Federal Court Lawsuit.

23. This Agreement can be modified only if in writing and signed by Enforcement and the Chen Defendants, and any modifications will not be effective unless approved by the Commission. This Agreement represents the entire agreement and understanding of the parties and supersedes any previous understanding on its subject matter.

24. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

25. The undersigned representative of the Chen Defendants affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

26. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.


Agreed to and Accepted:

**JANEL
BURDICK**

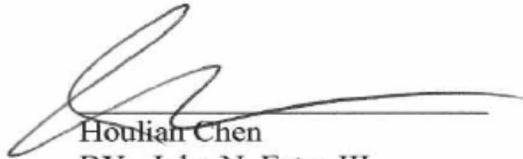
Digitally signed by
JANEL BURDICK
Date: 2021.10.25
10:21:55 -04'00'

Janel Burdick
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: October 25, 2021

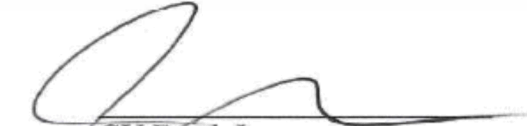

HEEP Fund, Inc.
BY: John N. Estes III
Counsel for HEEP Fund, Inc.

Date: October 22, 2021



Houlihan Chen
BY: John N. Estes III
Counsel for Houlihan Chen

Date: October 22, 2021


CU Fund, Inc.
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Date: October 22, 2021

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