

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

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

**PLAINTIFF’S OBJECTIONS REGARDING
DEFENDANTS’ DISCOVERY RESPONSES**

Pursuant to the procedures in Paragraph 21 of the Court’s December 21, 2020 Initial Pretrial Order (ECF No. 160), Plaintiff Federal Energy Regulatory Commission (“Plaintiff,” the “Commission,” or “FERC”) submits this notice of its objections to the discovery responses propounded by Defendants Powhatan Energy Fund, LLC, Houlian “Alan” Chen, HEEP Fund, Inc., and CU Fund, Inc. (collectively, “Defendants”).

The parties have met and conferred multiple times before and after exchanging discovery responses and have narrowed or eliminated several areas of disagreement. Despite these efforts, the parties remain unable to resolve certain issues.¹ Accordingly, as permitted

¹ FERC requests a single hearing to address FERC’s objections as well as those raised by Defendants (ECF No. 176). In Defendants’ second Motion to Modify the Discovery Deadline (ECF No. 172), to which FERC consented in consideration of Defendant Chen’s medical challenges, Defendants asked the court to extend the deadline for providing written discovery responses to April 14, 2021. This extension had the effect of contracting the period originally designated for addressing discovery disputes (March 24 – April 23) from 30 days to 9 days. Accordingly, Defendants stated in their Motion, “[t]o the extent additional time is required beyond April 23, 2021 to resolve any discovery disputes, the parties propose that such disputes

under the Court's Initial Pretrial Order, Rule 37(a) of the Federal Rules of Civil Procedure, and Local Civil Rule 37(A), FERC respectfully requests that, following the filing of a joint discovery chart on FERC's discovery objections and a hearing on Plaintiff's and Defendants' objections, the Court issue an Order compelling Defendants to:

1. Produce all materials submitted to the Office of Enforcement during the investigation or confirm that those documents may be deemed produced for purposes of this litigation, as requested of all Defendants in FERC's Request for Production 1, and as required by Fed. R. Civ. P. 34 and 37;²
2. Produce communications between Defendants and the third parties that Defendants identified as experts during the Order to Show Cause proceeding before the Commission, as requested in FERC's Requests for Production 34 – 39 (Powhatan) and 32 – 37 (Chen, HEEP Fund, CU Fund), and as required by Fed. R. Civ. P. 34 and 37;

be resolved concurrently with the start of the period for depositions in order to preserve the schedule set forth in the Court's [Initial Pretrial Order]." Despite this representation, Defendants notified FERC on April 16, two days after the parties exchanged discovery, that Defendants intended to notice their objections later that day regardless of FERC's interpretation. FERC is working with Defendants to prepare a joint discovery chart pertaining to Defendants' objections. As a result of the parties' divergent understanding of the relevant timelines, FERC intends to file a separate joint discovery chart relating to its objections within 14 days of this filing. Defendants have stated that they will not oppose that filing. FERC requests a joint hearing on both Plaintiff's and Defendants' discovery objections after that time. Defendants consent to this request.

² Alternatively, FERC has offered that it would waive the request if Defendants agree to waive any potential objections regarding the admissibility of those materials solely based on the time they were produced (i.e., in response to FERC's investigation as opposed to during discovery). Defendants have, to date, refused, though the parties continue to work towards a possible resolution of this issue.

3. Produce non-privileged communications that were exchanged on non-email platforms, such as Twitter and LinkedIn, as requested of Powhatan in FERC's Request for Production 32, and as required by Fed. R. Civ. P. 34 and 37;
4. Identify which of the trades previously identified as manipulative by FERC are trades that Defendants contend would have been profitable absent MLSA, as asked of all Defendants in FERC's Interrogatory 7, and as required by Fed. R. Civ. P. 33 and 37.
5. Explain the economic justification for the trades identified as manipulative by FERC, as requested of Powhatan in FERC's Interrogatory 6, and as required by Fed. R. Civ. P. 33 and 37.

Because Powhatan has indicated that its document production remains ongoing, FERC reserves any objections to issues raised by future productions that cannot be resolved by a good faith conference between the parties, for such a time when those issues are ripe.

FERC certifies that it has made a good faith effort to resolve the disputes listed above and that it will continue to work cooperatively with Defendants towards a possible resolution of these issues. FERC will also file the Court's discovery dispute chart on or before May 14, 2021.

FEDERAL ENERGY REGULATORY COMMISSION

By its attorneys,

Dated: April 30, 2021

_____/s/_____
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CERTIFICATE OF SERVICE

I certify that on April 30, 2021, I filed the foregoing notice using the CM/ECF system, which will send a notification of such filing to counsel of record in this matter.

_____/s/_____
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