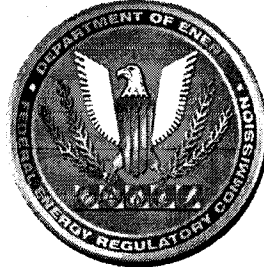


FEDERAL ENERGY REGULATORY COMMISSION
Office of Enforcement
Washington, D.C. 20426



November 1, 2011

VIA EMAIL & U.S. MAIL

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RE: Third Data Request to Powhatan Energy Fund LLC in *In Re PJM Up-To Congestion Transactions*, Docket No. IN10-5-000

Dear Counsel:

As you know, the Division of Investigations of the Office of Enforcement (OE) of the Federal Energy Regulatory Commission (Commission) is conducting a formal investigation of certain Up-To Congestion transactions in the PJM market.

This investigation is being conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2011). Under section 1b.9 of the Commission's regulations, 18 C.F.R. § 1b.9 (2011), all information and documents obtained during the investigation shall be treated as non-public by the Commission and its staff, except to the extent described in that section.

Please provide all materials responsive to the requests set forth in Attachment A by November 14, 2011 to:

Steven C. Tabackman
Room 51-69
Division of Investigations
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Your response to this Data Request is to follow the attached General Instructions, Specifications and Definitions. As explained in the attachments, all responses are to be made under oath.

You are reminded to preserve and maintain, and not to discard or destroy, any and all information, in any form that it currently exists, responsive to this Data Request or related to the subject matter of this investigation.

If you have any questions regarding this data request, the definitions and instructions for responding to the data request, or the investigation, please contact me at (202) 502-8311 or at steven.tabackman@ferc.gov; or Thomas Olson at (202) 502-6278 or at thomas.olson@ferc.gov.

Very truly yours,

/s/

Steven C. Tabackman

ATTACHMENT A
THIRD DATA REQUEST TO POWHATAN ENERGY FUND LLC
October 31, 2011

All references in the requests below to Powhatan Energy Fund LLC (“Powhatan”) include the directors, officers, employees, agents, contractors, consultants, attorneys, affiliates, subsidiaries, parents, holding companies, and any other person acting or purporting to act on behalf of Powhatan. Unless otherwise indicated, the documents sought by these data requests are those created (by anyone) or received by Powhatan between June 1, 2007 and August 1, 2010.

14. **Paired transactions** In this Request, we refer to transactions having the following characteristics as “paired transactions”: (i) in opposite directions between the same two nodes; (ii) scheduled to occur at the same hour; (iii) at the same MWh volume; and (iv) bid at the same congestion cap in each direction. (See Affidavit and Appendices of Richard Tabor at 19, ¶¶ 2 & 3.)

Please identify (by Bates number) any document that you contend falls within any of the following categories, and state which subpart you contend it is responsive to. If you have not previously produced a document that you identify in your response to this Request, please produce it.

Requested documents:

a. Any document that implicitly or explicitly states (in words or substance) that among the reasons Dr. Chen engaged in paired transactions was his belief that he would or might “hit it big if one of the legs of his trades did not clear.” (See Powhatan October 21, 2011 Written Submission at 12.)

b. Any document that implicitly or explicitly states (in words or substance) that when Dr. Chen “employed a ‘spread trading’ strategy” by “frequently enter[ing] into Trades which did not have the maximum congestion limit” he was “intentionally” trying to “increas[e] the possibility that *one* of the legs would be rejected” because “he *hoped* to hit it big if *one* of the legs did not clear.” *Id.* (emphasis added)

c. Any document in which Dr. Chen advised Powhatan (in words or substance) that by engaging in paired transactions, he intended to increase the probability that he could “hit it big” or otherwise enjoy substantial profits if one leg failed to clear.

15. **Partially-Paired transactions** In this Request, we refer to transactions having the following characteristics as “partially paired transactions”: (i) in opposite directions between the same two nodes; (ii) scheduled to occur at the same hour; (iii) bid at the same congestion cap in each direction (either the maximum allowed dollar value or some lower amount); but (iv) with different MWh volumes in each direction. (See Affidavit and Appendices of Richard Tabor at 19, ¶¶ 4 & 5.)

The following questions relate to the portions of partially paired transactions that are “offsetting.” Using Dr. Tabor’s example (*id.*), we refer to 5MW of the 10 MW from MISO to Mt. Storm bid and the 5 MW from Mt. Storm to MISO as “offsetting.”

Please identify (by Bates number) any document that you contend falls within any of the following categories. If you have not previously produced a document that you identify in your response to this Request, please produce it.

Requested documents:

a. Any document that implicitly or explicitly states (in words or substance) that Dr. Chen varied the volumes in partially paired transactions while maintaining a maximum \$50 congestion bid in each direction because he believed that his doing so would or might increase the probability that “one of the legs [would] not clear,” which would increase the probability that he could “hit it big.” (See Powhatan October 21, 2011 Written Submission at 12.)

b. Any document that implicitly or explicitly states (in words or substance) that with respect to partially-paired transactions, when Dr. Chen “employed a ‘spread trading’ strategy” by “frequently enter[ing] into Trades which did not have the maximum congestion limit,” his “intention” was to “increas[e] the possibility that *one* of the legs would be rejected” because “he *hoped* to hit it big if *one* of the legs did not clear.” *Id.* (emphasis added)

c. Any document in which Dr. Chen advised Powhatan (in words or substance) that by engaging in partially paired transactions, he intended to increase the probability that he could “hit it big” or otherwise enjoy substantial profits if one leg failed to clear.

16. **Paired or Partially-Paired Transactions** These requests apply to both paired and partially-paired transactions, whether Mr. Chen bid the maximum amount for congestion or some lesser amount.

Requested documents:

a. Any document that implicitly or explicitly states (in words or substance) that in making either type of transaction, Dr. Chen considered the risk that “if one of the legs of the Transaction were not accepted” he and “Powhatan could either make *or lose* significant amounts of money.” (See Powhatan Submission of October 21, 2011 at 16) (emphasis added).

b. Any document that implicitly or explicitly states (in words or substance) that in making either type of transaction, Dr. Chen considered the risk that his trades “exposed Powhatan to *significant risk of loss* and potential for gain” because of the possibility that one of the legs could be rejected. (See Affidavit of Richard G. Wallace at ¶ 55) (emphasis added)).

c. Any document that implicitly or explicitly states (in words or substance) that in making either paired or partially paired transactions, Dr. Chen considered the following: “While a bid with a cap of \$25/MWh will have a greater probability of being rejected, the reciprocal bid with a \$25/MWh cap that always clears in the opposite direction *will also have a greater probability of losing money* if and when there is divergence, rather than convergence, between the day-ahead and real-time markets.” (See Affidavit and Appendices of Richard Tabor at 21) (emphasis added).

d. Any document that implicitly or explicitly states (in words or substance) that, after taking into account the risks described in subparagraphs (a)-(c), Dr. Chen concluded that in any transaction in which a leg did not clear, he was more likely to make than to lose money.

e. Any document that implicitly or explicitly states (in words or substance) that, after taking into account the risks described in subparagraphs (a)-(c), Dr. Chen concluded that he was more likely to make money than to lose money from the totality of transactions in which a leg did not clear.

f. Any document in which Dr. Chen advised Powhatan (in words or substance) of the risks described in subparagraphs (a)-(c) or discussed his views about such risks as described in subparagraphs (d) and (e).

17. For each document identified in response to Request Nos. 14-16, please identify:

a. the specific statement(s) in the document that that is (are) responsive and a narrative explanation of why each identified statement is responsive;

b. the author of the document or, if the document contains statements attributable to more than one person, the author of each identified statement. If the author of either the document, or any statement within the document that you separately identify, is not Dr. Chen, please identify the author of each such statement.

c. the date(s) on which the document (and, if different, the date on which each separately identified statement) was created;

d. if different from your response to subpart 17(c), the first date the document came into Powhatan's possession;

e. how Powhatan obtained the document, including the person(s) gave it to Powhatan and the person(s) who received it on behalf of Powhatan;

18. Please identify (by Bates number) any materials that contain "solid statistical analysis" of the type described in the first paragraph at page 12 of Dr. Tabor's Affidavit and that was performed by or for Dr. Chen. For any document not previously produced, please produce it. In addition, please provide a narrative response explaining (a) why Powhatan believes the document constitutes "solid statistical analysis" as described by Dr. Tabor and (b) what Powhatan contends the analysis shows.

19. To the extent not produced in previous data responses or in response to Requests 14-18, for *each* "trade[]" which did not have the maximum congestion limit," please provide all statistical analyses performed by Dr. Chen that show that the specific prices he selected for his congestion bids increased the probability that *only* one of the two legs would be rejected, or, conversely, that *only* one of the two legs would clear. Please state when Powhatan received any such documents.

20. Please state when and for how long Dr. Tabor spoke with Dr. Chen about Dr. Chen's strategies in engaging in Up-To Congestion transactions and provide any notes or other documents memorializing or otherwise relating to those conversations. If Dr. Tabor communicated with Dr. Chen in writing, please provide all communications between them.

Attachment B
General Instructions, Specifications and Definitions

The following General Instructions, Specifications and Definitions apply to each data request.

1) General Instructions

- a) Each response shall be made under oath, in the form of one or more affidavits signed by an authorized officer or agent of the respondent. The officer or agent shall state under penalty of perjury that the response has been prepared under his or her supervision and control and that the response constitutes a true, complete and accurate response to the request, to the best of his or her knowledge, information and belief. The response shall list the names, employers, titles and addresses of each person acting at the officer's or agent's direction in preparing the response.
- b) In response to each data request, provide information available from corporate and individual files. Where a data request is directed to a particular respondent, and an affiliate, subsidiary, contractor, or agent acts on behalf of that respondent or provides any support, technical or ancillary service relevant to the data request, the respondent shall include the information from the other party and indicate the source of the information.
- c) Each written response shall designate the respective data request and subpart or portion of the item under which it is provided. The data responses shall be provided in numerical order, and in a clear and concise fashion.
- d) Responses shall indicate which documents relate to which data request.
- e) If respondent objects to the production of any material responsive to any of the data requests on the ground of privilege or protection (such as attorney-client privilege or the attorney work product doctrine), respondent shall provide a detailed log containing the following information for each communication or document:
 - i) Identification of the nature of the privilege asserted;
 - ii) The type of communication or document;
 - iii) The subject matter of the communication or document;
 - iv) The date of the communication or document;
 - v) The author(s) or person(s) present and their title or position;
 - vi) The recipient(s) or person(s) present and their title or position;

- vii) All other individuals who received or were present for the communication or document or had access to the item or document and their title or position;
- viii) The purpose for which the communication or document was created;
- ix) A detailed, specific explanation as to why the communication or document (or portion thereof) is privileged or otherwise immune from discovery, including a presentation of all factual grounds and legal analyses in a non-conclusory fashion; and
- x) The number of pages in the document.

NOTE: If respondent claims the attorney-client privilege, the log shall also indicate whether the communication claimed to be privileged was made by the attorney or the client, and whether the communication or document has been communicated to any person other than the attorney and client involved. If the communication claimed to be privileged has been so communicated, identify such third person(s) by name and relationship to the client and the attorney, and indicate the date of such communication. Produce the non-privileged portion(s) of the document or information, if the privileged portion of the document or information is capable of being excised, so that the remainder is no longer privileged.

- f) If any document responsive to any data request has been lost, discarded, destroyed, or is unavailable, state when, and explain why, such document was lost, destroyed, discarded, or is unavailable. Provide the names of all persons who have knowledge of the loss, destruction, or disposal of the document. If respondent claims that the destruction occurred pursuant to a document destruction program, identify and produce a copy of the guideline, policy or manual describing such program, and any correspondence or communication relating to the destruction.
- g) If any documents responsive to any data request are in existence but not in the custody, possession or control of the respondent, identify each such document and provide its present location and custodian.
- h) Each data request is continuing in nature and requires supplemental responses as soon as further information is located or obtained that is responsive to the request.
- i) The terms “and” and “or” shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of each data request any information or document that might otherwise be considered to be beyond its scope.

- j) The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular, whenever appropriate, in order to bring within the scope of each data request any information or document which might otherwise be considered to be beyond its scope.

2) Specifications

a) General

- i) Provide responses in both hard copy and electronic format. Please see detailed specifications below.
- ii) Respondent shall provide a transmittal letter with each response to a data request outlining the contents of the data request.
- iii) Each document shall bear a unique identifier, such as “Bates” labels.
- iv) All documents provided shall be scanned and delivered as single page group 4 TIFF images with an accompanying cross reference load file in a Concordance Image “.OPT” format. Along with the cross reference file to the images, provide the following coded data in a delimited text file (see (2)(a)(iv), (v) and (vi) below):

Description	Field Name
First Page Bates Number	BegNo
Last Page Bates Number	EndNo
Attachment (First Page Bates Number of parent document)	Attachment
The type of communication or document (see (2)(a)(vi) below)	DocType
Document Title or Description	DocTitle
The date of the communication or document	DocDate
The author(s) and Organization (Name/Organization)	Author
The recipient(s) and Organization	Recip
Any other recipient(s) and organization	CC
Path to Native File	DocLink
Response to Data Request Number	RespNum
OCR Text	OCR1
OCR Text	OCR2 (If Needed)
OCR Text	OCR3 (If Needed)

- v) For the delimited text files in the above instructions, the field names shall be the first line and the following delimiters shall be used:

- “|” (ASCII 20) Field Separator
- “p” (ASCII 254) Text Delimiter
- “@” (ASCII 174) New Line Character within a field
- “;” (ASCII 59) Multi Entry Delimiter

- vi) The “DocType” field shall be populated with a substantive description of the type of document, such as, but not limited to: letter; email; corporate minutes; organization charts; memoranda; securities filings; deal tickets; handwritten notes, calendars, agendas, deeds, invoices, policy statements, manuals, presentations, *etc.*

b) Hard Copy Documents

- i) Hard copy responses shall consist of an original of each answer and any accompanying documents, and shall be delivered by hand or by express delivery service (not U.S. Mail) to the indicated address.
- ii) Each document of more than one page shall be stapled or otherwise bound.

c) Electronic Documents

- i) Electronic responses may be submitted by email or delivered by hand or by express delivery service.
- ii) Absent unusual circumstances, please provide electronic responses as follows: Microsoft Word for narratives, Powerpoint for presentations, Excel for data, and Outlook 2003 “.PST” file format for emails. If respondent claims such unusual circumstances, it shall provide an explanation of the circumstances in its transmittal letter.
- iii) The electronic versions or images of documents shall be provided in the format and with meta-data specified above. The electronic responses may be submitted by e-mail or hand delivered on standard electronic media.
- iv) Provide audio recordings in “.wav” or “.mp3” formats.
- v) For all audio recordings, provide a tab-delimited text file with at least

the following fields: (i) audio file name; (ii) person calling; (iii) date of call; (iv) time of call; (v) duration of call; (vi) line recorded; (vii) person or number called; and (viii) any other meta-data or bibliographical information associated with call records that is maintained in the ordinary course of business.

3) Definitions

- a) "Affiliate" means another person which controls, is controlled by, or is under common control with, such person.
- b) "All" or "each" shall be construed to mean all and each.
- c) "Communication(s)" includes all verbal and written communications of every kind, including, but not limited to, telephone calls, conferences, electronic mail and correspondence, instant messaging, text messaging, and all documents and memoranda concerning the communication.
- d) "Control" (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a business entity. A voting interest of 10 percent or more creates a rebuttable presumption of control.
- e) "Documents"
 - i) "Documents" refers to the originals of all writings and records of every type in your possession, control, or custody, including but not limited to: memoranda, correspondence, letters, email, instant messaging, text messaging, testimony and exhibits, reports (including drafts, preliminary, intermediate, and final reports), surveys, analyses, studies (including economic and market studies), summaries, comparisons, tabulations, charts, books, pamphlets, photograph forms (including microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, and photocopies), maps, sheets, ledgers, transcripts, vouchers, accounting statements, budgets, work papers, engineering diagrams, communications, speeches, and all other records, written, electronic (including information on electronic or magnetic storage devices), mechanical, or otherwise, and drafts, attachments or appendices of any of the above.
 - ii) "Documents" includes copies of documents, where the originals are not

in your possession, custody, or control. As to any document related to the matter herein that is not in your possession, but that you know or believe to exist, you are requested to identify and indicate to the best of your ability its present or last known location or custodian.

iii) "Documents" includes every copy of a document which contains handwritten or other notations or which otherwise does not duplicate the original or any other copies.

iv) "Documents" includes electronic data and records stored on computer equipment, including electronic devices which are capable of collecting, analyzing, creating, displaying, converting, storing, concealing or transmitting electronic, magnetic, optical, or similar computer impulses or data. These devices include but are not limited to any data-processing hardware (such as central processing units, hard disks, memory typewriters, and self-contained "laptop" or "notebook" computers); internal and peripheral storage devices (such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, optical storage devices, CD-ROMs, printer buffers, Bernoulli drives, smart cards, memory calculators and other memory storage devices); peripheral input/output devices (such as printers and scanners); and related communications devices (such as modems, recording equipment, and RAM or ROM units).

f) "Identify"

i) "Identify" and "identification," when used with respect to a document, includes (but is not limited to) stating the nature of the document (e.g., letter, memorandum, corporate minutes); the date, if known, on which the document was prepared; the title of the document; the general subject matter of the document; the number of pages in the document; the identity of each person who wrote, dictated, or otherwise participated in the preparation of the document; the identity of each person to whom the document was addressed; the location of the document; and the identity of the person having custody, possession or control of the document. Identification of a document includes identifying all documents known or believed to exist whether or not they are in your custody, possession or control.

ii) "Identify" and "identification," when used with respect to a person, includes, unless otherwise indicated, stating (i) his or her full name, (ii) his or her present title and position, (iii) his or her current daytime telephone number and address, and (iv) his or her present and prior

connections or association with, the person or business entity in question.

- iii) "Identify" and "identification," when used with respect to an electronic document or data, includes (but is not limited to) stating the computer software and computer related documentation used to create the document or data and the identity of the person(s) in charge of collecting, processing, programming (if any) and analyzing the electronic document or data.
- g) "Person" means any natural person, or any business or legal entity.
- h) "Related" or "relating to" means in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.