

**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, HOULIAN “ALAN” CHEN, HEEP FUND, INC., and CU FUND, INC.)	
)	
Defendants.)	
)	

**PLAINTIFF FEDERAL ENERGY REGULATORY COMMISSION’S 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 three documents under seal in response to Defendant Powhatan Energy Fund LLC’s supplemental filing regarding its alleged financial statements. (ECF No. 226). First, FERC seeks to file a brief response summarizing several concerns it has regarding the completeness of that filing in order to avoid any confusion regarding the fund’s financial

condition. Second, FERC seeks to file two exhibits in support of that brief that are the source of the information contained in the brief.

The sealing of these documents is necessary because they have been marked confidential by Powhatan who claims they contain confidential financial information. As such, FERC has moved to file the documents under seal, though, consistent with Local Civil Rule 5(c), Powhatan bears the ultimate burden of persuading the court as to the necessity of sealing the documents at issue. (“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 does not object to Powhatan’s request and recognizes that courts routinely hold that not all evidence should be subject to public disclosure, particularly considering the present circumstances where the Court has already granted Defendants’ motion for leave to file related financial information under seal. (ECF No. 228). In accordance with controlling Fourth Circuit precedent, FERC has considered whether less drastic alternatives are available and attempted to limit the evidence to be filed under seal to the minimum necessary. *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288, (4th Cir. 2000) (party seeking to file under seal must: 1) provide notice of the motion to for leave so the public has an opportunity to object; 2) consider of less drastic alternatives; and 3) provide a statement of specific findings in support of a decision to seal and rejecting alternatives to sealing.) Since the records at issue are Powhatan’s, FERC defers to Powhatan regarding the statement of specific findings in support of their desire for the documents to be sealed.

Respectfully Submitted,

/s/ Steven Tabackman
Steven Tabackman (Va. Bar No. 16448)

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*Attorneys for Federal Energy Regulatory
Commission*

Dated: September 13, 2021

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 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/ Steven Tabackman
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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2021, I submitted the attached documents by courier to chambers pursuant to the Court's Local rules regarding the submission of sealed court filings.

I also emailed a copy of the filing to counsel for Defendants.

/s/ Steven Tabackman
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