

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

FEDERAL ENERGY REGULATORY
COMMISSION,

Plaintiff,

V.

Case No. 3:15-CV-00452-MHL

POWHATAN ENERGY FUND,
LLC, et al.,

Defendants.

**PLAINTIFF FEDERAL ENERGY REGULATORY COMMISSION'S
MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO LIFT STAY**

On February 22, 2022, this Court entered an Order staying this case. ECF No. 303. That Order followed Powhatan’s filing of a Suggestion of Bankruptcy, reporting that it had filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Delaware, Case No. 22-10142-MFW (the “Bankruptcy Proceeding”). ECF No. 302. Thereafter, David W. Carickhoff Jr. (the “Trustee”) was appointed as the Chapter 7 trustee of Powhatan’s bankruptcy estate (the “Estate”).

Following the closure of the claims period in the Bankruptcy Proceeding, FERC and the Trustee entered into a Stipulation whereby the Trustee consented to the lifting of the stay in this proceeding. The Bankruptcy Court approved the Stipulation on February 14, 2023 and lifted the Bankruptcy Code's Automatic Stay (11 U.S.C. § 362) as it pertains to this proceeding. *See* Exhibit A (Bankruptcy Proceeding Stipulation) and Exhibit B (Bankruptcy Court Order).

FERC's purpose in seeking to lift the stay is to allow it to seek a default judgment against

Powhatan and bring this long-running litigation to a formal close.¹ As outlined in Exhibit A, the Trustee has indicated that, at present, it does not intend to continue defending this litigation by opposing the present motion to lift the stay or challenging FERC's subsequent motion for entry of a default judgment. As also outlined in Exhibit A, FERC has agreed to make no attempt to enforce, execute, or otherwise collect upon any judgment this Court enters following the lifting of the stay outside of the pending Bankruptcy Proceeding.

Accordingly, FERC respectfully requests the Court enter an Order lifting the stay.

Respectfully submitted,

Dated: February 16, 2023

/s/ Kevin Dinan
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¹ FERC will promptly request an entry of default from the clerk and file a motion seeking default judgment against Powhatan upon the Court granting this motion and lifting the stay.

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

POWHATAN ENERGY FUND LLC,

Debtor.

Chapter 7

Case No. 22-10142 (MFW)

STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY

The parties to this Stipulation, by and through their undersigned counsel, state and stipulate as follows:

1. On July 31, 2015, the Federal Energy Regulatory Commission (“FERC” or “Commission”) filed in the United States District Court for the Eastern District of Virginia a complaint to enforce a Commission Order Assessing Penalties (“OAP”) against Powhatan Energy Fund LLC (“Powhatan” or the “Debtor”) pursuant to 16 U.S.C. § 823b(d)(3)(B). *See FERC v. Powhatan Energy Fund LLC*, No 3:15-cv-00452 (MHL) (E.D. Va. Jul. 31, 2015), ECF No. 1 (“FERC Enforcement Action”). A First Amended Complaint was filed on January 29, 2018. *See FERC Enforcement Action*, ECF No. 93.

2. In particular, by the FERC Enforcement Action, the Commission seeks to enforce its OAP directing Powhatan to pay disgorgement of unjust profits plus applicable interest in the amount of \$3,465,108 and civil penalties plus applicable interest in the amount of \$16,800,000. *See FERC Enforcement Action Am. Compl.* at 36-37.

3. On February 16, 2022 (the “Petition Date”), the Debtor filed a Chapter 7 voluntary petition. Thereafter, David Carickhoff (the “Trustee”) was appointed as the Chapter 7 trustee of the Debtor’s bankruptcy estate (the “Estate”).

4. On the Petition Date, the FERC Enforcement Action was pending in the United States District Court for the Eastern District of Virginia.

5. On February 22, 2022, the District Court in the FERC Enforcement Action entered an Order staying that matter pursuant to the automatic stay under 11 U.S.C. § 362. *FERC v. Powhatan Energy Fund LLC*, ECF No. 303 (Feb. 22, 2022).

6. On August 9, 2022, the Commission filed a proof of claim, claim no. 6, for the corresponding amounts awarded in the OAP (the “FERC Proof of Claim”).

7. The parties have discussed the FERC Enforcement Action and FERC provided the Trustee with additional information on FERC's policy objectives regarding the energy markets.

8. FERC asserts that the automatic stay does not apply to the FERC Enforcement Action under the police and regulatory power exception of 11 U.S.C. § 362(b)(4).

9. Subject to Bankruptcy Court approval, the automatic stay, to the extent applicable, shall be modified for the sole purpose of: (a) permitting the FERC Enforcement Action to continue to final judgment or resolution and (b) liquidating the claims of FERC.

10. The Trustee does not intend on (but shall not be prohibited from) participating in the FERC Enforcement Action on behalf of the Debtor. The Trustee understands that FERC presently intends to move for a default judgment against the Debtor in the FERC Enforcement Action in order to bring that proceeding to a final resolution. The Trustee does not presently intend to oppose or otherwise challenge that motion, but reserves all rights to intervene at his sole discretion.

11. Except as expressly set forth in paragraph nine (9) hereof, the automatic stay shall remain in place for all other purposes.

12. FERC shall be precluded from enforcing, executing on, or collecting any claim or judgment against the Debtor or the Estate by any means other than through the Chapter 7 process in connection with the FERC Proof of Claim.

13. The Bankruptcy Court shall retain jurisdiction over any dispute arising under this Stipulation, and to enforce the terms of this Stipulation for such time as this bankruptcy case remains open.

14. The Order approving this Stipulation shall take effect immediately, and the provisions of Bankruptcy Rule 4001(a)(3) are waived.

STIPULATED, APPROVED, and AGREED:

DATED: February , 2023.

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EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: POWHATAN ENERGY FUND LLC, Debtor.		Chapter 7 Case No. 22-10142 (MFW) Re: Dkt. No. ____
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**ORDER APPROVING STIPULATION FOR RELIEF FROM
THE AUTOMATIC STAY**

After considering the Stipulation for Relief from the Automatic Stay attached hereto as Exhibit 1 (the “Stipulation”)¹ by and between the Federal Energy Regulatory Commission (“FERC”) and the chapter 7 trustee David Carickhoff (the “Trustee”), and the Court having found that it has jurisdiction to consider the Stipulation pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found venue of this proceeding and the Stipulation in this district proper pursuant to 28 U.S.C. §§ 1408 and 1409; and good and sufficient cause having been shown, it is hereby ORDERED THAT:

The Stipulation is hereby approved and its terms are incorporated herein in their entirety; and

To the extent applicable, the automatic stay shall be modified for the sole purpose of: (a) permitting the FERC Enforcement Action to continue to final judgment or resolution and (b) liquidating the claims of FERC; and

Except as expressly set forth herein, the automatic stay shall remain in place for all other purposes; and

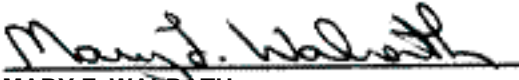
¹ Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Stipulation.

FERC shall be precluded from enforcing, executing on, or collecting any claim or judgment against the Debtor or the Estate by any means other than through the Chapter 7 process in connection with the FERC Proof of Claim; and

The Stipulation and this Order are effective immediately and the provisions of Bankruptcy Rule 4001(a)(3) are waived; and

This Court shall retain jurisdiction to interpret, implement and enforce the provisions this Order and the Stipulation and resolve any disputes arising under or in connection with this Order or the Stipulation.

Dated: February 14th, 2023
Wilmington, Delaware


MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE