

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FEDERAL ENERGY REGULATORY
COMMISSION,
Plaintiff,

v.

Civil No. 3:15-cv-00452 (MHL)

POWHATAN ENERGY FUND, LLC, *et al.*,
Defendants.

ORDER

The Federal Energy Regulatory Commission (“FERC”), moves for entry of a protective order (ECF No. 251) in response to Powhatan Energy Fund LLC’s (“Powhatan’s”) notice of deposition pursuant to Fed. R. Civ. P. 30(b)(6). A hearing was held on December 14, 2021 at 9:30 a.m. with counsel for the parties present. After reviewing the pleadings, considering the arguments of counsel, and for the reasons stated from the bench, the Court made the following findings:


(1) Fed. R. Civ. P. 30(b)(6), by its very terms, applies to FERC; (2) there is no categorical prohibition on Powhatan taking a Rule 30(b)(6) deposition of FERC; (3) FERC’s counsel previously agreed that it would provide a Rule 30(b)(6) witness, subject to agreement with Powhatan regarding the topics and scope of the deposition; (4) the parties have been unable to agree on a list of topics and the scope of the 30(b)(6) deposition; and (5) many of the 30(b)(6) topics currently identified by Powhatan are overly broad and/or may seek information protected by privileges and/or the work product doctrine.

Based on these findings, the Court took the Motion for Protective Order under advisement and directed the parties to explore other means of discovery, including, but not limited to, stipulations and/or deposition through written questions to address FERC’s concerns of privilege

and work product disclosures. The parties were further directed to attend a status conference phone call on December 28, 2021 at 9:30 a.m. to apprise the Court of the progress made in resolving this discovery dispute.

The Clerk is directed to send a copy of this Order to all counsel of record.

It is so ORDERED.



/s/ Mark R. Colombell
United States Magistrate Judge

Richmond, Virginia
Date: December 14, 2021