

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

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

**PLAINTIFF FEDERAL ENERGY REGULATORY COMMISSION’S  
REQUEST FOR CLERK TO ENTER DEFAULT AGAINST DEFENANT POWHATAN  
ENERGY FUND LLC PURSUANT TO FED. R. CIV. P. 55(a)**

Plaintiff Federal Energy Regulatory Commission (“FERC” or the “Commission”) hereby requests that the Clerk of this Court, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, enter a default against Powhatan Energy Fund, LLC (“Powhatan”) for failure to defend this litigation.

As set forth in the accompanying Declaration of Daniel Lloyd, on February 18, 2022, Powhatan reported to the Court 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”). On February 14, 2023, in a filing in the Bankruptcy Proceeding, the Trustee stated he no longer intends to defend this litigation. *See* ECF No. 317 Exhibit A (Bankruptcy Proceeding stipulation) and Exhibit B (Bankruptcy Court Order). Moreover, the Trustee stated he was aware that FERC intended to

move for a default judgment based on his failure to defend the litigation and that he did not intend to challenge or otherwise oppose that motion. *Id.*

Under Rule 55(a) of the Federal Rules of Civil Procedure, entry of default is appropriate when “a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise. . . .” FERC has sought a judgment for affirmative relief against Powhatan and ample evidence exists here showing the Trustee has no intent to further defend this litigation.

Accordingly, FERC requests the Clerk of this Court enter a default against Powhatan Energy Fund, LLC.

Respectfully submitted,

Dated: March 6, 2023

/s/ Kevin Dinan  
Kevin Dinan (VA Bar No. 25517)  
Daniel Lloyd (*Pro Hac Vice*)  
Office of Enforcement  
Federal Energy Regulatory Commission  
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Washington, DC 20426  
Tel. (202) 502-6214  
Kevin.Dinan@ferc.gov  
Daniel.Lloyd@ferc.gov

*Attorneys for Plaintiff*  
*Federal Energy Regulatory Commission*

**CERTIFICATE OF SERVICE**

I certify that on March 6, 2023, the foregoing was filed with the Court's CM/ECF system, which caused a copy to be served on counsel of record for all parties to this action.

A copy of the foregoing was also served upon the Trustee (David Carickhoff) and its counsel (Alan Root).

/s/Kevin Dinan  
Kevin Dinan

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

**DECLARATION OF DANIEL LLOYD IN SUPPORT OF  
REQUEST TO ENTER DEFAULT**

1. I am over eighteen years of age, and I am employed as an Attorney-Advisor in the Office of Enforcement for the Federal Energy Regulatory Commission (“FERC” or the “Commission”). I serve as co-counsel of record in the above-captioned litigation. I am making this declaration in support of FERC’s Request to Enter Default against Defendant Powhatan Energy Fund, LLC (“Powhatan”). I make these statements based upon my personal knowledge, information, and belief.

2. FERC filed its original Complaint in this case on July 31, 2015. Dkt. No. 1. That Complaint was Amended on January 29, 2018. Dkt. No. 93. The Complaint followed a contested and adversarial proceeding before the Commission, which resulted in an Order finding that Powhatan had violated the Federal Power Act’s prohibition on market manipulation and assessing penalties and disgorgement totaling \$20,265,108. *See* Ex. 1 to Dkt. No. 1 (Commission Order Assessing Penalties).

3. On February 18, 2022, Powhatan reported to the Court 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. On February 22, 2022, the Court stayed the above-captioned litigation. ECF No. 303. Thereafter, David W. Carickhoff Jr. (the “Trustee”) was appointed as the Chapter 7 trustee of Powhatan’s bankruptcy estate (the “Estate”).

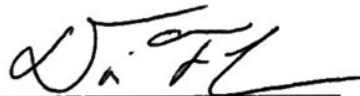
4. On February 14, 2023, in a filing in the Bankruptcy Proceeding, the Trustee stated he no longer intends to defend this litigation. *See* Dkt. No. 317 Exhibit A at ¶10 (Bankruptcy Proceeding Stipulation) and Exhibit B (Bankruptcy Court Order accepting that Stipulation). As the filing indicates, the Trustee is aware that FERC intends to move for a default judgment based on his failure to defend the litigation. *Id.* The Trustee has indicated that he does not presently intend to oppose or otherwise challenge the motion for a default judgment. *Id.*

5. On February 16, 2023, FERC moved to lift the stay in the above-captioned proceeding. ECF No. 316. Consistent with his statement that he no longer intends to defend this litigation, the Trustee did not oppose the motion, which was granted on March 6, 2023. ECF No. 318.

6. Powhatan is not an infant, incompetent, or enlisted in the United States military.

I declare under penalty of perjury that the foregoing is true and correct.

Executed 3/6/23  
Washington D.C.



Daniel Lloyd