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

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 )  
 FEDERAL ENERGY REGULATORY )  
 COMMISSION )  
 )  
 v. ) Civil Action  
 ) No. 3:15CV452  
 POWHATAN ENERGY FUND, LLC, et al.)  
 ) September 13, 2021  
 -----  
 )

COMPLETE TRANSCRIPT OF STATUS HEARING  
BEFORE THE HONORABLE M. HANNAH LAUCK  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Steven C. Tabackman, Esquire  
Daniel T. Lloyd, Esquire  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Counsel for FERC

Patrick R. Hanes, Esquire  
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DIANE J. DAFFRON, RPR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

1 APPEARANCES: (Cont'd)

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3 Robert W. Warnement, Esquire  
4 Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, DC 20005

5 Counsel for Houlian Chen and CU Fund

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I N D E X

DIRECT      CROSS      REDIRECT

KEVIN GATES                      25                      31                      --

1 (The proceedings in this matter commenced at  
2 11:15 a.m.)

3 THE CLERK: Case No. 3:15CR452, the *Federal*  
4 *Energy Regulatory Commission versus Powhatan Energy*  
5 *Fund, LLC, et al.*

6 FERC is represented by Steve Tabackman and  
7 Daniel Lloyd. Powhatan Energy Fund is represented by  
8 Patrick Hanes. Houlian Chen and CU Fund are  
9 represented by William Barksdale and Robert Warnement.

10 Are counsel ready to proceed?

11 MR. HANES: We are, Your Honor.

12 MR. TABACKMAN: Yes, Your Honor.

13 THE COURT: Was that three yeses?

14 MR. BARKSDALE: Yes, Your Honor.

15 THE COURT: Okay. So we're here on several  
16 motions. I'm going to take off my mask because I'm  
17 not within 6 feet of anyone. I've been vaccinated,  
18 and we have all these plastic barriers.

19 You all can proceed as you wish inside the  
20 courtroom. I see you're sitting closer than 6 feet to  
21 each other. And you should keep your masks on while  
22 you're here. But if you're speaking, we always  
23 approach the lectern, in any event, and you can take  
24 your mask off there.

25 If you wish, we have disinfectant wipes and

1 hand sanitizer on the lectern so that whoever follows  
2 you can just walk on up. That's how we've been doing  
3 it.

4 Does anybody object to that procedure?

5 Okay. So we're here on several motions, and  
6 I guess I'd like to just -- we have several motions to  
7 seal. Is anybody objecting to any others' motion to  
8 seal? So if you're not objecting, say it on the  
9 record. If you are, tell me which one you're  
10 objecting to.

11 MR. TABACKMAN: No objections from FERC as to  
12 any of the motions to seal.

13 THE COURT: Okay.

14 MR. BARKSDALE: No objections from Alan Chen  
15 or his two funds on motions to seal.

16 MR. HANES: No objections by Powhatan Energy  
17 Fund.

18 THE COURT: All right. So I'm going to ask  
19 you all to doublecheck me, and I'm just going to go  
20 through the docket. Most of the motions to seal  
21 pertain to financial records that no party here wants  
22 to have on the public record. And I do find that the  
23 redacted versions are sufficient to put the public on  
24 notice as to what's at issue, and there's no harm to  
25 the access to the Court or this matter by placing

1 portions or all of documents under seal.

2 So I am granting the motion 192, which is to  
3 file under seal portion of defendants' response in  
4 opposition to the motion to quash. And that is  
5 document 187.

6 I am also granting ECF No. 232, which is the  
7 motion to file under seal FERC's response to the  
8 motion to withdraw by Williams Mullen.

9 Am I missing any motions to seal?

10 MR. HANES: Your Honor, if I may. Patrick  
11 Hanes on behalf of Powhatan Energy Fund.

12 I believe there was another motion, but it  
13 was already granted by the Court.

14 THE COURT: Okay.

15 MR. HANES: With respect to the sealed  
16 submissions that the Court requested.

17 THE COURT: All right.

18 MR. HANES: I do believe that that had  
19 already been ruled on by the Court.

20 THE COURT: All right. I thought there were  
21 three. But thank you for reminding me what I've  
22 already done.

23 All right. So we have here a motion, I  
24 think, initially, for Mr. Hanes to withdraw as  
25 counsel, and I'm prepared to proceed on that.

1           Is there any other matter that any party  
2           wants me to address in advance of that?

3           MR. TABACKMAN: Nothing for FERC, Your Honor.

4           MR. BARKSDALE: Nothing from Alan Chen, Your  
5           Honor.

6           MR. HANES: Nothing, Your Honor, from  
7           Powhatan.

8           THE COURT: All right. Okay. So I'll hear  
9           argument as to that, and then we will proceed.

10          MR. HANES: Your Honor, may I approach the  
11          lectern?

12          THE COURT: Please do. So I'll tell you all  
13          that the only way my court reporter can hear anything  
14          that you're saying is if you speak into the  
15          microphone. You can see she's wearing headphones, and  
16          so, please, wherever you are, be sure to speak into  
17          that so she can hear you, too.

18          MR. HANES: Your Honor, good morning. May it  
19          please the Court. I am Patrick Hanes on behalf of, on  
20          this motion, of Williams Mullen, my law firm, with  
21          respect to a motion ECF -- it's ECF No. 207 to -- for  
22          leave of the Court, as required by Local Rule 83.1(g),  
23          for leave to withdraw as counsel for Powhatan Energy  
24          Fund in this case.

25          We have filed a motion, a memoranda,

1 supporting declaration, and all materials requested by  
2 the Court with respect to consideration of that  
3 motion.

4 My understanding is that it is ripe for  
5 determination. No other party has filed formally a  
6 position except a notice of objection that we  
7 submitted on behalf of Powhatan Energy Fund, our  
8 client, pending a ruling on the motion.

9 And, Your Honor, in our motion, of course, we  
10 did take pains to make sure that the Court understand  
11 that the fund's representatives had notified us that  
12 they intended to object to the motion, which is  
13 somewhat unusual, but not unheard of, and that they  
14 request leave to be heard.

15 Your Honor, we filed our motion, which is  
16 not -- is never a pleasant situation to be in, and  
17 puts me in an uncomfortable and unusual situation in  
18 some ways, but following straightforward grounds as  
19 set forth in the Virginia Code of Professional  
20 Responsibility, the grounds of it is we believe that  
21 we may withdraw from representing the client because  
22 withdrawal can be accomplished in this instance  
23 without material adverse effects on the interests of  
24 the client.

25 And, alternatively, under subparagraph 5 of



1 the Virginia Rule 1.16(b), because the representation,  
2 if it were to continue, would result in an  
3 unreasonable financial burden on the lawyer or has  
4 been rendered unreasonably difficult by the client.

5 On the first point, Your Honor, courts in  
6 this district have, of course, granted leave to  
7 withdraw where the trial is not imminent and  
8 withdrawal will not substantially affect the  
9 administration of justice.

10 We've set out why we believe that to be the  
11 case under the circumstances of this case. It has  
12 been going on a long time, as you're aware, but  
13 Williams Mullen's role in it had -- originally as  
14 local counsel, and then since the case -- since the  
15 stay in this case was lifted after the Fourth Circuit  
16 appeal, the circumstances of which the Court is well  
17 aware, the parties have engaged in paper discovery,  
18 which has been extensive and some of the practice on  
19 that has gone on for some period of time. But,  
20 thankfully, through the good work of all the parties,  
21 the good, hard work of the parties and the magistrate  
22 judge in this case, it has been resolved.

23 So we're standing almost a year now, more  
24 than a year away from trial, when we filed the motion  
25 with the parties having finalized the disputes

1 regarding written discovery, and only one deposition  
2 having been taken and the others to be done in the  
3 weeks to follow following today after the completion  
4 of the production of documents.

5 So it's a time where we believe that Powhatan  
6 would not be adversely affected in any way by engaging  
7 new counsel at this point.

8 We have also, though, explained that even if  
9 the Court were to be concerned about an adverse  
10 effect, the Court should permit leave to withdraw  
11 under these circumstances because of the financial  
12 burden, which we have outlined, Your Honor, and under  
13 circumstances that are familiar to this Court, not  
14 unlike the circumstances in the *Portsmouth*  
15 *Redevelopment and Housing Authority* case, a published  
16 decision of Judge Payne's, essentially that the funds  
17 are not available or have not been made available to  
18 pay for the legal defense, that the fund would be  
19 required in this case. And simply put, the incurrence  
20 of those fees without an adequate source of payment or  
21 assurance of payment would result in an unreasonable  
22 financial burden.

23 In addition, as we outlined in the motion,  
24 during the process, essentially, of trying to work  
25 through those issues, the firm and representatives of

1 the fund have been unable to reach agreement on the  
2 manner of conducting remaining stages of the  
3 litigation. And those differences are substantial.  
4 They have arisen after the lifting of the stay of the  
5 litigation and are irreconcilable.

6 So, Your Honor, that's why we've taken this  
7 step. We don't like to take it. I don't like to take  
8 it. But I'm convinced that it's the right time to  
9 make that motion and that it will not have a material  
10 adverse effect on the fund.

11 I understand that the fund wants to defend  
12 itself and wants to have counsel, and all of those  
13 opportunities are still there. Nothing that we are  
14 doing today affects their interest and their ability  
15 to take the course that they desire in the litigation  
16 going forward.

17 THE COURT: [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 THE COURT: Okay. And I don't want to sort

1 of go into an area you're not comfortable with, so I'm  
2 going to allow you to answer as much as you are or are  
3 not comfortable with.

4 Let me also say on the record that any  
5 discussion that we have that refers to sealed  
6 information will be sealed on the record for the same  
7 reasons. What that means is that you all will be  
8 responsible for going through the transcript and  
9 submitting to me what you think should be removed.  
10 And then I will approve it or not approve it. All  
11 right?

12 [REDACTED]  
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11 [REDACTED] [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 Okay. So I'll hear from the other parties.  
15 Thank you.

16 MR. HANES: Your Honor, just one last thing  
17 that I will add.

18 In the proposed order that we submitted, we  
19 did mention in our motion that, of course, we would  
20 cooperate with a replacement counsel of Powhatan's  
21 choosing. I did note in preparing for today's hearing  
22 that there's language in Judge Payne's opinion, the  
23 Portsmouth matter, when he grants leave to withdraw  
24 for counsel in that matter that embodies that  
25 commitment with counsel, which we are perfectly --

1 would be perfectly comfortable if it were added to the  
2 proposed order.

3 Specifically, Judge Payne mentions that --  
4 grants, in that case, withdrawal subject to the  
5 condition that the withdrawal will occur once the firm  
6 files a pleading reciting that all papers, property,  
7 and research generated on behalf of the client have  
8 been delivered to the fund, which we would be readily  
9 able to do.

10 And that (2) after its withdrawal, the law  
11 firm shall at its expense reasonably cooperate with  
12 replacement counsel to facilitate a transition.

13 I just noted that that language was -- and is  
14 completely inadvertent -- was not provided in our  
15 proposed order, but it is there in the language of the  
16 *Portsmouth Redevelopment* case. We would have no --  
17 obviously, no problem if that were made part of the  
18 order by the Court should it decide to grant our  
19 motion.

20 THE COURT: All right. Thank you.

21 MR. HANES: Thank you.

22 THE COURT: All right. So I'll hear from  
23 FERC next.

24 MR. LLOYD: Good morning, Your Honor. Daniel  
25 Lloyd for FERC.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

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22 [REDACTED] [REDACTED]  
23 MR. LLOYD: And that's all I have, Your  
24 Honor. I'm happy to sit down and let you focus on the  
25 more important issues.

1 THE COURT: Pardon me?

2 MR. LLOYD: I said I'm happy to sit down and  
3 let you focus on the more pressing issue.

4 THE COURT: Right. No, that's great.

5 MR. LLOYD: Thank you, Your Honor.

6 THE COURT: Uh-huh.

7 All right. I will hear from Mr. Chen.

8 MR. BARKSDALE: Good morning, Your Honor.  
9 Will Barksdale on behalf of Alan Chen.

10 I'll keep this very short. I'm happy to  
11 answer any questions that Your Honor has, but Alan  
12 Chen and his funds are taking no position on the  
13 motion.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

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6 [REDACTED] [REDACTED]

7 THE COURT: All right. Well, I'm going to  
8 address that motion in a minute, but I want you all to  
9 know that I brought you in here, and, first of all,  
10 I'm sorry for the delays. That was unavoidable for  
11 reasons that we're all dealing with complications.  
12 But you all have been with me for a pretty good long  
13 time. And I want to remind you that when this case  
14 first came to me, I had repeated requests for stays  
15 because settlement was going to happen. I had  
16 officers of the court tell me over and over and over  
17 again that settlement was going to happen. And so  
18 obviously it did not.

19 I want you all to know I am troubled by those  
20 representations. Extremely troubled by those  
21 representations because you could have done this  
22 litigation two years ago. It's absurd. And you don't  
23 come to me and tell me you're going to settle and ask  
24 for my good grace and then not do it.

25 You all have lost my confidence, and I can

1 tell you I was a magistrate judge for nine years, and  
2 I conducted over 600 settlement conferences. Over 600  
3 settlement conferences.

4 I represented government agencies. I know  
5 exactly what a government agency can and cannot do in  
6 a settlement. And it's the lawyers' job to make sure  
7 they understand what is reasonable as to what they can  
8 do and not do. And it is your lawyer's job to make it  
9 reasonable as to what you do with respect to  
10 settlement.

11 What I am hearing is there is an entity who  
12 is being sued and is claiming it's broke. Now, that  
13 to me suggests what are you going to get? You're  
14 going to get years of litigating money that they say  
15 they don't have.

16 We're going to have a trial, and if you win,  
17 you're going to get years of litigation about money  
18 that they say they don't have. And I can tell you I  
19 know in this circumstance, not through anything I have  
20 heard from a magistrate judge, but from my nine years  
21 of experience settling over 600 cases that somebody or  
22 more than one somebody is being completely  
23 unreasonable.

24 There is no reason this case should not  
25 settle. It's absurd. And so what I want you to know

1 is that you took advantage of my good grace. All of  
2 you. I'm going to say FERC especially. They were the  
3 ones coming in and telling me, "Listen, we're going to  
4 do it. We're going to do it. We're going to settle  
5 the case. We're going to settle the case."

6 And I take at your word what the United  
7 States of America says to a federal judge. I used to  
8 represent the United States of America. And what you  
9 say is extremely meaningful.

10 It would never occur to me that a United  
11 States agency would put a case on hold for more than a  
12 year telling the judge that they were going to settle  
13 when they weren't.

14 Now, I can tell you, I don't know who's being  
15 unreasonable, but it better not be FERC because I feel  
16 lied to. I'm going to tell you that.

17 If you weren't going to settle a year and a  
18 half ago, just go to trial. That's my job. I don't  
19 care. But don't tell me "Let's have another six  
20 months. We're going to settle the case. We are.  
21 We're working on it. It's complicated. We have to  
22 get regulatory approval, but, you know, we can do it."

23 And I'll tell you, I have gotten regulatory  
24 approval for settlements. I now exactly how it works.  
25 And I know it's possible. I've had the United States

1 Attorney General sign off on a settlement in a  
2 settlement conference in this court because I talked  
3 to the United States Attorney General, his DAG  
4 actually, and said, "I may need to call you." And  
5 they were ready either to agree or not agree.

6 I don't know what is happening with you all,  
7 but you are spending an absurd amount of money on a  
8 case that imminently should be one that is resolved.  
9 It has to become at some point a business decision.

10 And so I don't know who's being unreasonable,  
11 but I'm going to tell you, every client is here  
12 because some of you are being unreasonable, and you  
13 don't have a lawyer tell me as an officer of the court  
14 that you are prepared to settle and then don't do it.  
15 Take the two years you took and try the case.

16 So I want the clients all to know I think  
17 this is ridiculous, and I don't know who is the cog in  
18 the wheel, but I don't appreciate it. You are  
19 wasting -- you did already waste years of my time.

20 You can go to trial now if you want to, but  
21 you should have done it two years ago. I am done with  
22 you all.

23 I'm going to send you back to Mark Colombell,  
24 Magistrate Judge Mark Colombell. And I want you all  
25 to know you've got to stop being obstreperous and



1 abstinent. This is a business decision. So that's  
2 why all the clients are here.

3 Now, with respect to the motion to withdraw,  
4 we're in an awkward position, Mssrs. Gates, because  
5 you cannot represent yourself. So if you want to take  
6 a position on this, one of you can testify under oath,  
7 but that's the only way I'm going to hear your side of  
8 it. You have to be under oath. And, understand,  
9 anybody, once you testify, can ask you questions,  
10 including me, and I will.

11 MR. KEVIN GATES: I'd like to testify under  
12 oath.

13 THE COURT: All right. Well, you have to be  
14 put under oath and put your name on the record. I  
15 don't know which is which Mr. Gates.

16 MR. KEVIN GATES: I am Kevin.

17 THE COURT: Kevin Gates. All right.

18

19 KEVIN GATES, called in his own behalf, first being  
20 duly sworn, testified as follows:

21

22 DIRECT EXAMINATION

23 THE COURT: Just so you know, Mr. Gates, you  
24 can bring that up, but any party would have the right  
25 to look at it, what you're referring to, while you

K. GATES - DIRECT

26

1 testify. They may not ask you but they could. I just  
2 want you to know.

3 All right. So, Mr. Gates, I want you to  
4 testify about your position, and I'm going to keep the  
5 parameters as to that position where it should be for  
6 purposes of this motion, and then I'm going to allow  
7 the parties to cross-examine you. Okay?

8 MR. KEVIN GATES: Yes.

9 THE COURT: All right.

10 MR. KEVIN GATES: So our position is that  
11 this is all about money, unfortunately. We've had a  
12 six-year relationship with Williams Mullen. As Mr.  
13 Hanes had mentioned, it was originally as local  
14 counsel. It morphed into lead counsel.

15 We have spent an enormous amount of money.  
16 Me, individually, directly and indirectly, defending  
17 this case. Like you, we were hoping for the case to  
18 get resolved.

19 THE COURT: Well, you told somebody to tell  
20 me that. So that's on you. Keep going.

21 MR. KEVIN GATES: Your Honor, I do not recall  
22 telling somebody --

23 THE COURT: I do.

24 MR. KEVIN GATES: Okay. And when, I guess,  
25 last year when the stay was lifted, we realized that

K. GATES - DIRECT

27

1 we were going to have to go through discovery, and we  
2 provided financial information -- well, at the time we  
3 provided financial information to FERC and told them  
4 that we would -- basically, we provided financial --  
5 yeah, financial information to the FERC, and basically  
6 offered to give them all of the money in the funds as  
7 a settlement because we were ready to move on. And  
8 that was not accepted. And then we realized that we  
9 were running full steam toward a brick wall. So we  
10 tried to find other counsel who could either do pro  
11 bono work to assist us or other law firms who would  
12 defend us, perhaps not as vigorously as Williams  
13 Mullen, but with cheaper rates with the hopes that we  
14 could actually make it to litigation realizing that if  
15 we weren't able to resolve this through settlement,  
16 that we wanted to be able to make it through  
17 litigation.

18           Unfortunately, we were unable to do that. We  
19 reached out to the recommendations that Williams  
20 Mullen had provided. We reached out to other law  
21 firms. I live and work in Pennsylvania. I don't have  
22 a lot of -- and I don't work as an attorney. So I  
23 don't have a lot of deep connections in Virginia, but  
24 we made a good faith effort to reach out to other  
25 attorneys, even as recent as last week. I reached out

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1 to a large law firm and asked if they could work for  
2 us pro bono.

3 But Williams Mullen's recommendation was,  
4 basically, hey, we want you to pursue bankruptcy, and  
5 that was very unsatisfying to us to have this resolved  
6 in bankruptcy. We thought if we couldn't settle it,  
7 we at least want the facts to come to light. We  
8 wanted to at least know what we had done -- supposedly  
9 had done that was wrong. We wanted to be able to ask  
10 the FERC conduct a deposition. And we so far to date  
11 after 11 years -- it's been six years in your court,  
12 Your Honor, but we were put through an administrative  
13 meat grinder for five years before that. So we wanted  
14 to be able to collect information.

15 I guess as it relates to -- I wasn't sure I  
16 was able to follow what was said earlier, but in terms  
17 of the barebones financials, that was financial  
18 information that was prepared by an accountant that I  
19 thought was the best attempt that we could do. I  
20 think it was filed a week or so ago.

21 THE COURT: I told you to file it and to  
22 attest to its accuracy. That means you have to swear  
23 it's right.

24 MR. KEVIN GATES: Okay.

25 THE COURT: It's a big difference. You can

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1 say I think it's about anything, and it's also not  
2 audited. That could mean you could be off by  
3 \$10 million. You have to swear to it.

4 MR. KEVIN GATES: Okay. I don't know where  
5 the breakdown -- I don't know if that broke down with  
6 the communication with Patrick.

7 THE COURT: It's in my written order. And  
8 you're responsible for knowing what my written orders  
9 say whether or not Mr. Hanes reminds you. You two are  
10 filing right and left. You say you're paying  
11 attention.

12 MR. KEVIN GATES: Okay. I apologize, Your  
13 Honor. I can attest to it now that that's my  
14 understanding of it. That was accurate information.  
15 I apologize to Mr. Hanes if Powhatan messed up with  
16 inappropriately submitting that.

17 THE COURT: He doesn't have to -- he's trying  
18 to withdraw because he says you all have -- not just  
19 that you're not paying him, but also that you have a  
20 strong difference of opinion about how the case should  
21 go forward. It's essentially like a divorce. You  
22 guys can't agree. And, you know, that happens  
23 sometimes.

24 MR. KEVIN GATES: Understood. So, of course,  
25 as Mr. Hanes has said, it's a little bit awkward now.

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1 I've over the years or over the decades, for that  
2 matter, I've filed things and had attested to it.  
3 I've never had this problem, and I don't know exactly  
4 where the breakdown occurred to the extent that it --

5 THE COURT: Well, the breakdown occurred  
6 because you didn't follow my order.

7 MR. KEVIN GATES: Okay. A breakdown between  
8 Williams Mullen --

9 THE COURT: You all are filing stuff knowing  
10 that Mr. Hanes is not filing it for you. You can't  
11 blame him. Either you read the orders or you don't.

12 MR. KEVIN GATES: Okay.

13 THE COURT: They're public.

14 This is why corporations cannot represent  
15 themselves.

16 MR. KEVIN GATES: Again, it's our position  
17 that we had a good six -- the irreconcilable -- the  
18 supposed irreconcilable difference is really just  
19 about money.

20 THE COURT: It's always about money.

21 MR. KEVIN GATES: Right. Right. And it is  
22 true that over -- earlier this year Williams Mullens  
23 had recommended things, and we inquired or simply  
24 asked "Do we have to do that? Do we have to do  
25 deposition prep? Do we have to -- does Williams

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1 Mullen have to attend all the depositions?" And it  
2 wasn't that we didn't want to. Of course, we wanted  
3 as much vigorous defense or rigorous defense as  
4 possible, but the objective was simply to try to save  
5 resources so that we could at least make it through  
6 discovery and hopefully through summary judgment.

7 THE COURT: All right. I'll have some more  
8 questions, but if any parties wants to ask questions  
9 of Mr. Gates, you may.

10 MR. LLOYD: Your Honor, if may I?

11 THE COURT: Yes.

12

13 CROSS-EXAMINATION

14 BY MR. LLOYD:

15 Q Good morning, Mr. Gates. My name is Daniel Lloyd.  
16 I'm an attorney at FERC. I believe we've met before;  
17 is that right?

18 A I think we might have met a couple weeks -- we  
19 were together a couple of weeks ago, but I don't  
20 believe we officially met. I saw you.

21 ■ [REDACTED]

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6 ■ [REDACTED]

7 MR. LLOYD: Thank you, Your Honor.

8 THE COURT: Are there any questions from  
9 Mr. Chen?

10 MR. BARKSDALE: No, Your Honor.

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 MR. KEVIN GATES: Your Honor, while we wait,  
18 may I make an additional comment?

19 THE COURT: If you want to. I'm not sure  
20 you're helping yourself. Go ahead.

21 MR. KEVIN GATES: Mr. Hanes had said that we  
22 could find another attorney and that discovery is  
23 largely complete. I will note that we haven't even  
24 received all the documents yet from the FERC. And  
25 there's been a lot of back and forth over the last



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1 couple of months on that. And, unfortunately, it  
2 seems that that's continuing, but we still have not  
3 received documents from the FERC and another party in  
4 this case, the independent market monitor.

5 THE COURT: Unfortunately, that suggests that  
6 a new lawyer -- there would be less prejudice because  
7 Mr. Hanes hasn't seen that stuff.

8 MR. HANES: Your Honor, if I may be clear.  
9 What we have mentioned and represented in our papers  
10 is that the written discovery disputes, the process,  
11 has essentially been -- has been resolved. The  
12 parties both have certain things that they are  
13 supplementing and continuing to produce pursuant to  
14 the agreements that were reached by counsel.

15 So just to be clear, we didn't intend to  
16 represent all written discovery has been exchanged,  
17 reviewed, anything like that.

18 THE COURT: Okay.

19 MR. HANES: Thank you, Your Honor.

20 MR. LLOYD: And, Your Honor, if I may. We  
21 agreed to a rolling production schedule. I actually  
22 have the last production to defendants in my briefcase  
23 with me and was going to hand it to Patrick after this  
24 hearing was over.

25 THE COURT: All right.

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17 And so I'm not going to have you testify  
18 anymore. It is not to your advantage to do so. But I  
19 don't think that the two of you appreciate that when  
20 you're in litigation, you have to be accurate. And if  
21 you're not, there are sanctions. Do you understand  
22 that?

23 MR. KEVIN GATES: Yes, Your Honor.

24 THE COURT: All right. You can have a seat.

25 (The witness was excused from the witness

1 stand.)

2 THE COURT: Now, I want to be clear that  
3 Mr. Gates testified of his own volition without  
4 representation because there's no way that Mr. Hanes  
5 could do that.

6 And it is the case that he essentially  
7 duplicated what he improperly filed in front of the  
8 Court as far as his defense as to why the motion to  
9 withdraw should not be granted.

10 So it's formally in the record now, which is  
11 how it has to go if you don't have counsel to speak  
12 for you. And Mr. Hanes, in his current stance, would  
13 have a conflict.

14 So here it is the case that under Virginia  
15 Code of Professional Responsibility 1.16(B), that a  
16 counsel may withdraw if it can be accomplished without  
17 material adverse effect on the interests of the client  
18 or, Subsection 5, the representation will result in an  
19 unreasonable financial burden on the lawyer or has  
20 been rendered unreasonably difficult by the client,  
21 or, Subsection 6, other good cause for withdrawal  
22 exists.

23 And the case that speaks about that most  
24 directly is a case by Judge Payne, who sits in this  
25 court, *Portsmouth Redevelopment v. BMI Apartments*.

1 It's at 851 F.Supp 775, 782. It's in the Eastern  
2 District of Virginia, and it's from 1994.

3 And so to be clear, because it's published it  
4 is precedent. It is a dictate that I must take into  
5 consideration when making a finding.

6 Now, it is the case that Mr. Hanes has filed  
7 on your behalf certain documents, the second one I  
8 denied, and Mr. Gates then testified on his own  
9 behalf. And, as I said, it's pretty close to what was  
10 filed. And I'm not going to pretend I didn't read  
11 what was filed. I read it.

12

13

14

15

16 It is -- first, I'm going to be clear. This  
17 almost never happens in this court. And so it is  
18 unusual, as folks indicated. And Mr. Hanes suggests  
19 that there's no trial until August 22nd of 2022. He  
20 doesn't just suggest that. That's actually the case.  
21 That there's only one deposition that has been taken;  
22 that Powhatan can replace Williams Mullen with a  
23 counsel of its own choosing, and that that essentially  
24 they disagree. Williams Mullen has given advice and  
25 Powhatan is not taking their advice.

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[REDACTED]

What Powhatan is putting before the Court is that the continued representation by Williams Mullen will not put an unreasonable burden on them. So that's page 4 of their filing that I didn't strike.

They say, you know, Williams Mullen is a big firm. They have lots of lawyers. And they detail their inability to find any other firm to represent them. They say there's no differences, although Mr. Gates just indicated that if there was a



1 discussion about bankruptcy, that that was not well  
2 taken.

3 And, you know, a client doesn't have to do  
4 what a lawyer says. But if it becomes too difficult  
5 to go forward, there can be a basis for a withdrawal.

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 So I want to look at the Mssrs. Gates. You  
10 don't have a right to counsel in a civil matter. In a  
11 criminal matter, you do. But in a civil matter, you  
12 do not. And while lawyers can represent on a pro bono  
13 basis, they don't have to. [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 because there is no burden on you. You have a whole  
17 year. You have a whole year to, or nearly a year, to  
18 get ready for trial with new counsel.

19 So I'm going to allow you 10 days to find new  
20 counsel. And you're going to have to file whoever it  
21 is. And you say that you have not been able to find  
22 anybody, but you cannot represent yourself or your  
23 corporation. And it is the case that Mr. Hanes has  
24 established more than good cause to be removed from  
25 the case.

1           You all unapologetically suggest that  
2 Williams Mullen should just cover you for a company  
3 you're hesitant to name who owns it in front of me in  
4 court. You are not being forthcoming here as far as I  
5 can tell. I don't know how you testify on behalf of a  
6 company and you don't know who owns it. It's totally  
7 inappropriate.

8           You know, I'm not asking about financials.  
9 And we have lots of very complicated cases in this  
10 court, and this is not a very complicated corporate  
11 structure. This one's not. And at the core of it,  
12 whatever iteration it is, are Kevin Gates and Rich  
13 Gates. Both of you are here.

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18           And so in the meantime -- and I'm likely to  
19 ask for tax returns. If you are saying you can't  
20 afford anything, then, you know, you're just going to  
21 have to tell me why. And that can be under seal, in  
22 camera. That means only I see it. It doesn't mean  
23 you're giving up the ghost, necessarily.

24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]

2 [REDACTED] It's

3 interesting.

4           So if you're putting yourself in front of the  
5 Court, you can't just put only part of what you want  
6 to say. You do not have to settle or give over money,  
7 necessarily, but if you don't, you have to follow the  
8 federal rules and the orders of the Court.

9           You're in a federal court. And,  
10 unfortunately, I gave you all too much leeway in the  
11 first instance.

12           So what is ten days from today?

13           All right. I also want to be clear that I  
14 want an understanding of what assets that Powhatan has  
15 that is not just cash, that is other assets. They may  
16 be illiquid, but you're going to have to tell me  
17 they're illiquid. And the same is true of TFS  
18 Capital, how long they paid. What was represented to  
19 me, and I don't know if it's true, is that TFS agreed  
20 to pay 75 percent of the fees for litigation here.

21           So ten days -- normally, we just do straight  
22 days, which would be September 23, but I'm going to  
23 give you ten business days, and that will be until  
24 Monday, September 27, and by then Powhatan will inform  
25 the Court of who is their new counsel.

1           If it is the case that you can't find anyone,  
2 Mr. Hanes will remain counsel for the sole purpose of  
3 submitting the document that says you can't find  
4 anybody. And it is the case I will issue the order  
5 that includes the requirements for Williams Mullen to  
6 be sure to turn over everything and that they  
7 reasonably cooperate with the new counsel at their own  
8 expense. We'll issue an order with respect to that.

9           Now, Mssrs. Gates, if you do not find  
10 counsel, I don't know what comes from that. I've  
11 never had a company that can't find counsel. But it  
12 is the clear law that you cannot represent the  
13 company. You may be deposed individually. And we  
14 have to go through what the parties think that you  
15 would be able to do individually if you can't find  
16 counsel.

17           So, there are other motions. I have I think  
18 it's No. 216 that says it is a joint motion to extend  
19 the deadlines. I'm going to say that I note that the  
20 extension falls pretty close for dispositive motions  
21 to when all the pretrial motions come due.

22           And so I'm going to deny this without  
23 prejudice. We're going to figure out something that's  
24 not quite so tight. And it makes sense to do that  
25 with new counsel in any event. So I'm denying that

1 without prejudice.

2 And so for the reasons I've stated, I am  
3 going to grant the motion to withdraw, and I think  
4 that just leaves the motion to quash, which I will  
5 take under advisement.

6 Okay. So I'll issue an order that reflects  
7 what I have said from the bench. Is there anything  
8 else anybody wants to address?

9 MR. BARKSDALE: Your Honor, would you like me  
10 to --

11 THE COURT: Please, yes, go to the podium.

12 MR. BARKSDALE: I just wanted to make sure.  
13 The motion to quash, is that the motion to quash the  
14 subpoena to the independent market monitor?

15 THE COURT: Yes.

16 MR. BARKSDALE: So we have worked out an  
17 arrangement with the market monitor that will resolve  
18 that discovery dispute. So we're just waiting for the  
19 market monitor to produce documents, and then we can  
20 go forward with the depositions of the market monitor,  
21 but I did want Your Honor to know that.

22 THE COURT: Well, I noticed that the  
23 deposition time had passed. And so I forgot to ask  
24 you all about that. But if you've worked it out, tell  
25 me.

1 MR. BARKSDALE: We did tell Judge Colombell,  
2 but the market monitor did not want to withdraw its  
3 motion or the discovery disputes. It wanted to just  
4 leave it held in abeyance.

5 THE COURT: Well, okay. I'll leave Judge  
6 Colombell in charge of that. I don't want it pending  
7 much longer.

8 How much longer do you think you need to  
9 resolve that?

10 MR. BARKSDALE: So I think the market monitor  
11 is trying to produce documents by the end of the  
12 month, but, Your Honor, I think we've reached an  
13 agreement with the market monitor. I can -- if  
14 there's a way that the Court would like the market  
15 monitor to proceed, I'm happy to relay that to them.

16 THE COURT: If Judge Colombell is supervising  
17 that, that's fine. It's just been pending for a  
18 period of time, and usually we don't let them go out  
19 there that long.

20 MR. BARKSDALE: Yes, Your Honor. Thank you.

21 THE COURT: I'd much rather it be resolved.  
22 It is the kind of thing that should be resolved.

23 MR. BARKSDALE: Absolutely, Your Honor.

24 THE COURT: Folks know what -- you know what  
25 they want to try to keep confidential. They would

1 know what you want to try to keep confidential, and  
2 what's relevant or not. And the same is true with  
3 every defendant. So I'm glad you did work it out.  
4 And so that will just be under advisement by Judge  
5 Colombell. So, see, he didn't tell me that. I don't  
6 know what you guys did in settlement. He did mention  
7 that the discovery stuff was largely taken care of,  
8 but I didn't ask for details.

9 MR. BARKSDALE: Thank you. We appreciate  
10 Judge Colombell's help with getting us to where we  
11 should have been anyways. But thank you, Your Honor.

12 THE COURT: All right. Okay. Thank you.

13 MR. LLOYD: Your Honor, if I may. I just  
14 want to, for clarity, make sure that we're doing the  
15 right thing. FERC has not yet taken the deposition of  
16 either Mr. Gates or Dr. Chen, who we were saving for  
17 last as he is the key person, and Mr. Gates and  
18 Mr. Gates because of this motion withdrawal issue. I  
19 just want to make clear whether we are okay to  
20 continue waiting to do so pending the resolution of  
21 this issue.

22 THE COURT: Absolutely. They should have  
23 counsel.

24 MR. LLOYD: Thank you.

25 THE COURT: That essentially places a stay on

1 discovery for ten days absent the exchange of  
2 documents that have already begun because we do want  
3 to keep things moving, if at all possible.

4 So I have not talked to Judge Colombell, but  
5 I want you all to go down there and see if there's  
6 another date that you can schedule with him to think  
7 about this like the business decision that it is. And  
8 I want you to think about your representations to me  
9 when you do that. It's extremely disappointing that  
10 officers of the court put me in this position.

11 You can try the case if you want to, but I  
12 certainly wanted the clients to be here. I gave you  
13 leeway because we trust attorneys in this court.

14 So go meet with Judge Colombell and see what  
15 you can do about another settlement date. All right?

16 We can take a recess.

17 (The proceedings were adjourned at 12:44 p.m.)  
18

19 I, Diane J. Daffron, certify that the foregoing is  
20 a correct transcript from the record of proceedings  
21 in the above-entitled matter.

22 /s/

23 \_\_\_\_\_  
24 DIANE J. DAFFRON, RPR, CCR

\_\_\_\_\_  
DATE

25