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               IN THE UNITED STATES DISTRICT COURT
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              FOR THE EASTERN DISTRICT OF VIRGINIA
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                         RICHMOND DIVISION
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     FEDERAL ENERGY REGULATORY
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     COMMISSION
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                                        ) Civil Action
     v.
 7
                                        ) No. 3:15CV452
     POWHATAN ENERGY FUND, LLC, et al.)
                                       ) September 13, 2021
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             COMPLETE TRANSCRIPT OF STATUS HEARING
             BEFORE THE HONORABLE M. HANNAH LAUCK
12
                 UNITED STATES DISTRICT JUDGE
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     APPEARANCES:
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     Daniel T. Lloyd, Esquire
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                    OFFICIAL COURT REPORTER
                 UNITED STATES DISTRICT COURT
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(The proceedings in this matter commenced at 11:15 a.m.)

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

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

Are counsel ready to proceed?

MR. HANES: We are, Your Honor.

MR. TABACKMAN: Yes, Your Honor.

THE COURT: Was that three yeses?

MR. BARKSDALE: Yes, Your Honor.

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

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

If you wish, we have disinfectant wipes and

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

Does anybody object to that procedure?

Okay. So we're here on several motions, and

I guess I'd like to just -- we have several motions to

seal. Is anybody objecting to any others' motion to

seal? So if you're not objecting, say it on the

record. If you are, tell me which one you're

objecting to.

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

THE COURT: Okay.

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

MR. HANES: No objections by Powhatan Energy Fund.

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

portions or all of documents under seal.

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

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

Am I missing any motions to seal?

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

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

THE COURT: Okay.

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

THE COURT: All right.

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

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

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

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Is there any other matter that any party wants me to address in advance of that? MR. TABACKMAN: Nothing for FERC, Your Honor. MR. BARKSDALE: Nothing from Alan Chen, Your Honor. MR. HANES: Nothing, Your Honor, from Powhatan. THE COURT: All right. Okay. So I'll hear argument as to that, and then we will proceed. MR. HANES: Your Honor, may I approach the lectern? THE COURT: Please do. So I'll tell you all that the only way my court reporter can hear anything that you're saying is if you speak into the microphone. You can see she's wearing headphones, and so, please, wherever you are, be sure to speak into that so she can hear you, too. MR. HANES: Your Honor, good morning. May it please the Court. I am Patrick Hanes on behalf of, on this motion, of Williams Mullen, my law firm, with respect to a motion ECF -- it's ECF No. 207 to -- for leave of the Court, as required by Local Rule 83.1(g), for leave to withdraw as counsel for Powhatan Energy Fund in this case. We have filed a motion, a memoranda,

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

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

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

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

And, alternatively, under subparagraph 5 of

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

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

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

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

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

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

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

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

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

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

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

THE COURT:

THE COURT:

Okay. And I don't want to sort

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

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

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

 $$\operatorname{MR.}$$ HANES: Your Honor, just one last thing that I will add.

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

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

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

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

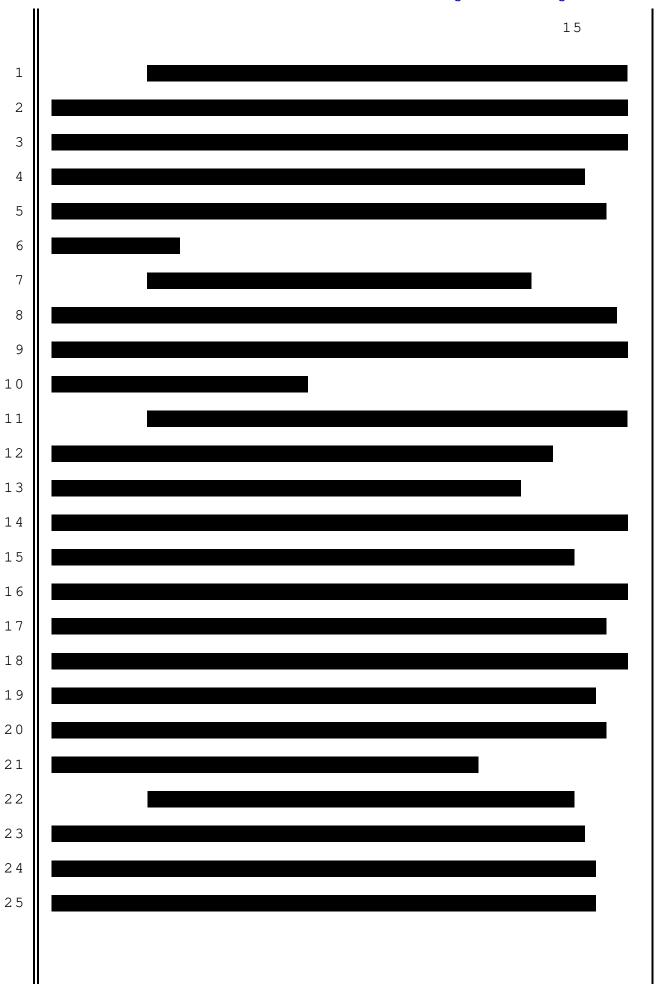
I just noted that that language was -- and is completely inadvertent -- was not provided in our proposed order, but it is there in the language of the Portsmouth Redevelopment case. We would have no -- obviously, no problem if that were made part of the order by the Court should it decide to grant our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

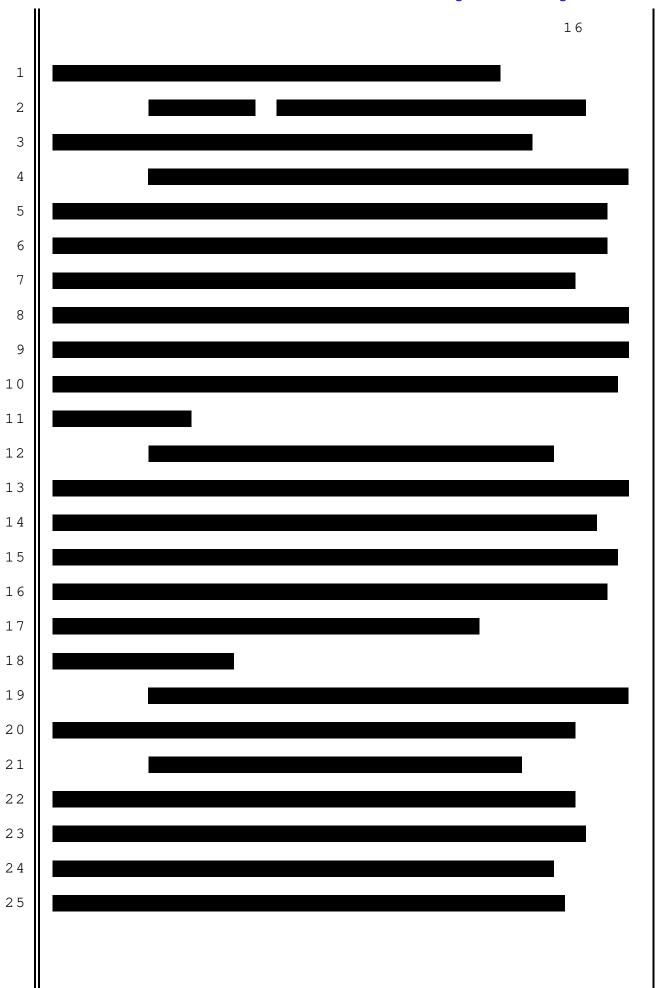
THE COURT: All right. Thank you.

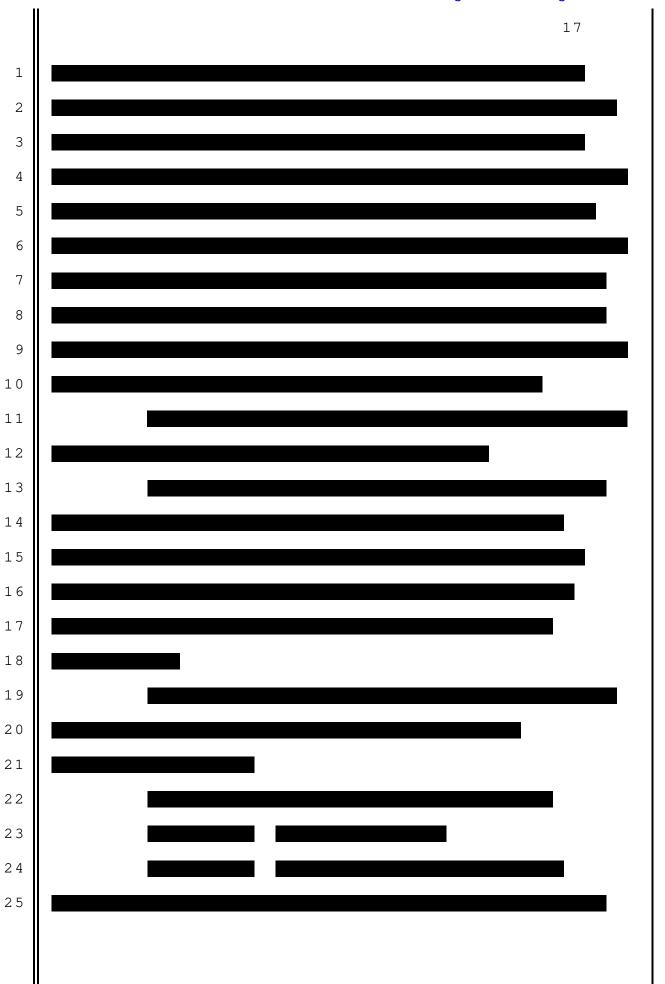
MR. HANES: Thank you.

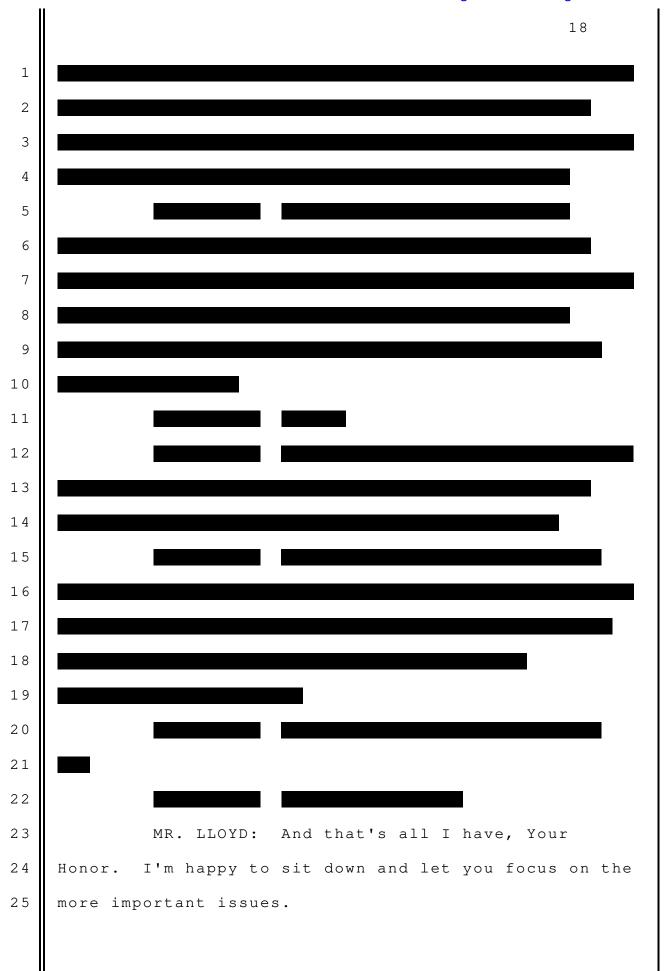
THE COURT: All right. So I'll hear from FERC next.

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

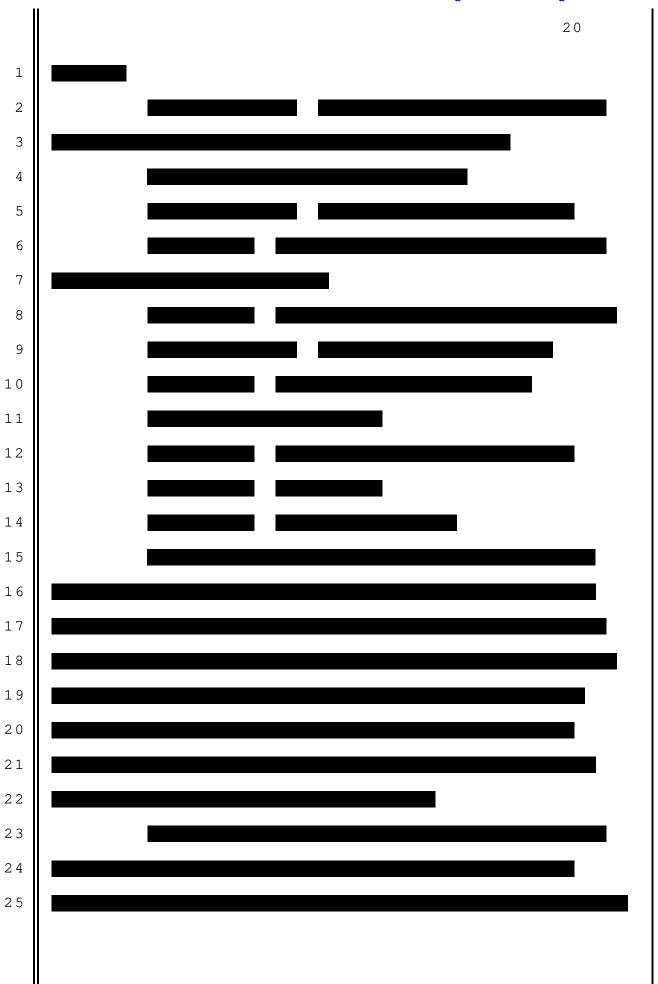








THE COURT: Pardon me? MR. LLOYD: I said I'm happy to sit down and let you focus on the more pressing issue. THE COURT: Right. No, that's great. MR. LLOYD: Thank you, Your Honor. THE COURT: Uh-huh. All right. I will hear from Mr. Chen. MR. BARKSDALE: Good morning, Your Honor. Will Barksdale on behalf of Alan Chen. I'll keep this very short. I'm happy to answer any questions that Your Honor has, but Alan Chen and his funds are taking no position on the motion.



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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 because settlement was going to happen. 15 16 officers of the court tell me over and over and over 17 again that settlement was going to happen. And so

obviously it did not.

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

You all have lost my confidence, and I can

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

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

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

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

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

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

And I take at your word what the United

States of America says to a federal judge. I used to
represent the United States of America. And what you
say is extremely meaningful.

It would never occur to me that a United

States agency would put a case on hold for more than a

year telling the judge that they were going to settle

when they weren't.

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

If you weren't going to settle a year and a half ago, just go to trial. That's my job. I don't care. But don't tell me "Let's have another six months. We're going to settle the case. We are.

We're working on it. It's complicated. We have to get regulatory approval, but, you know, we can do it."

And I'll tell you, I have gotten regulatory approval for settlements. I now exactly how it works.

And I know it's possible. I've had the United States

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

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

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

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

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

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

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

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

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

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

MR. KEVIN GATES: I am Kevin.

THE COURT: Kevin Gates. All right.

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

DIRECT EXAMINATION

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

26 K. GATES - DIRECT testify. They may not ask you but they could. 1 2 want you to know. 3 All right. So, Mr. Gates, I want you to testify about your position, and I'm going to keep the 4 5 parameters as to that position where it should be for purposes of this motion, and then I'm going to allow 6 7 the parties to cross-examine you. Okay? MR. KEVIN GATES: Yes. 8 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. MR. KEVIN GATES: Your Honor, I do not recall 21 22 telling somebody --

THE COURT: I do.

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

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

Unfortunately, we were unable to do that. We reached out to the recommendations that Williams

Mullen had provided. We reached out to other law firms. I live and work in Pennsylvania. I don't have a lot of -- and I don't work as an attorney. So I don't have a lot of deep connections in Virginia, but we made a good faith effort to reach out to other attorneys, even as recent as last week. I reached out

K. GATES - DIRECT

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

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

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

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

MR. KEVIN GATES: Okay.

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

K. GATES - DIRECT

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

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

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

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

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

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

K. GATES - DIRECT

1 I've over the years or over the decades, for that

2 matter, I've filed things and had attested to it.

I've never had this problem, and I don't know exactly where the breakdown occurred to the extent that it --

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

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

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

MR. KEVIN GATES: Okay.

THE COURT: They're public.

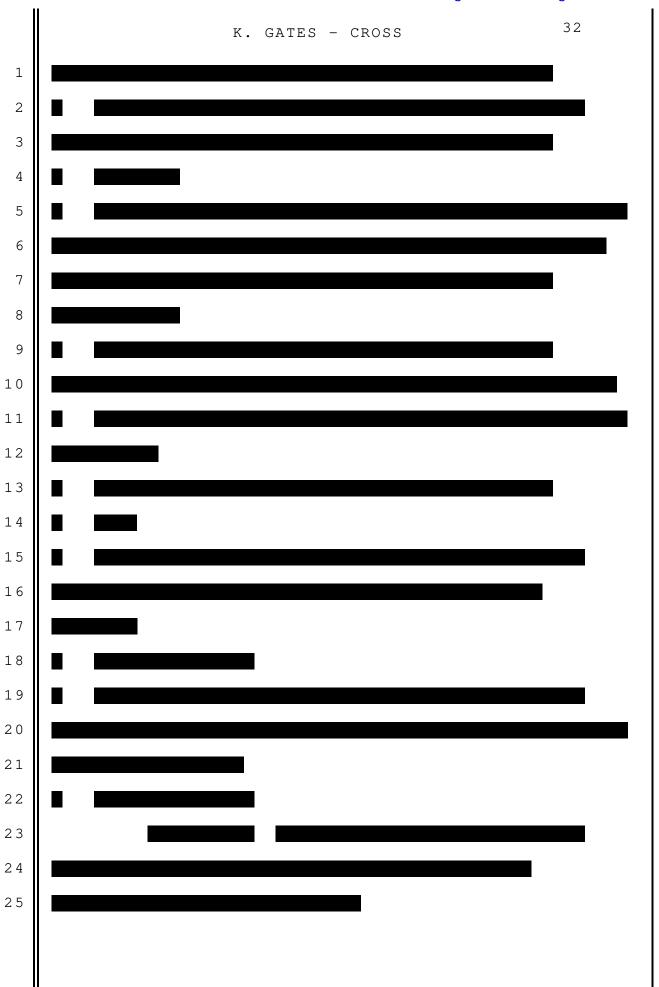
This is why corporations cannot represent themselves.

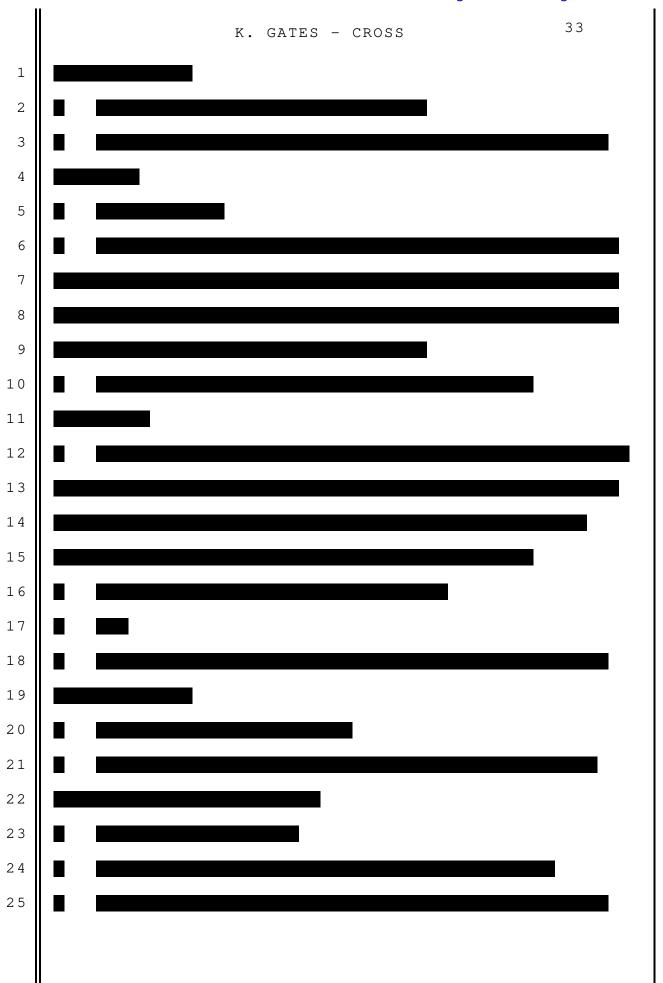
MR. KEVIN GATES: Again, it's our position that we had a good six -- the irreconcilable -- the supposed irreconcilable difference is really just about money.

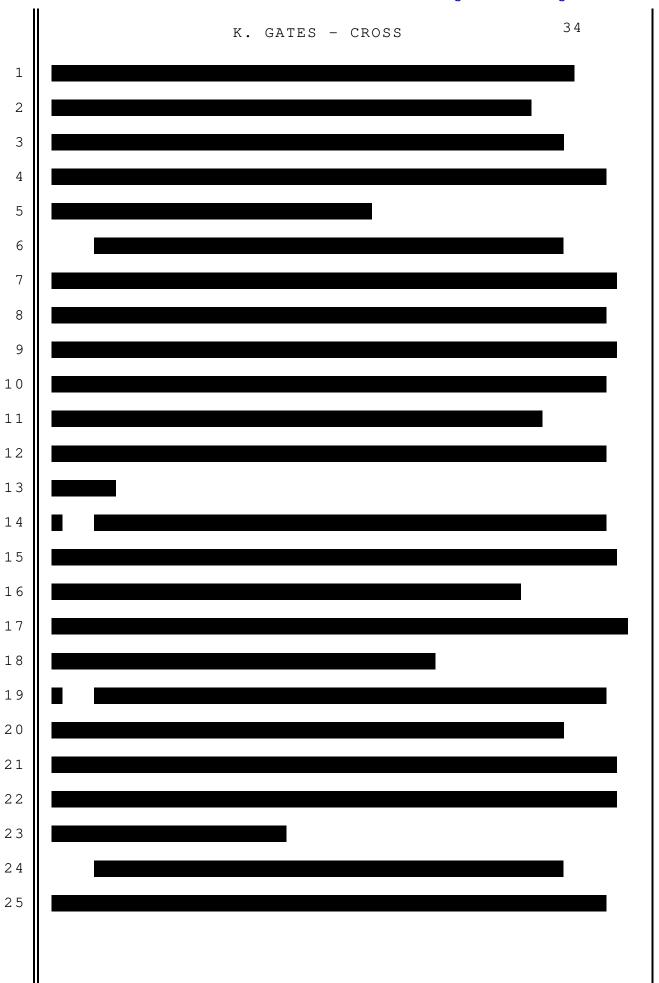
THE COURT: It's always about money.

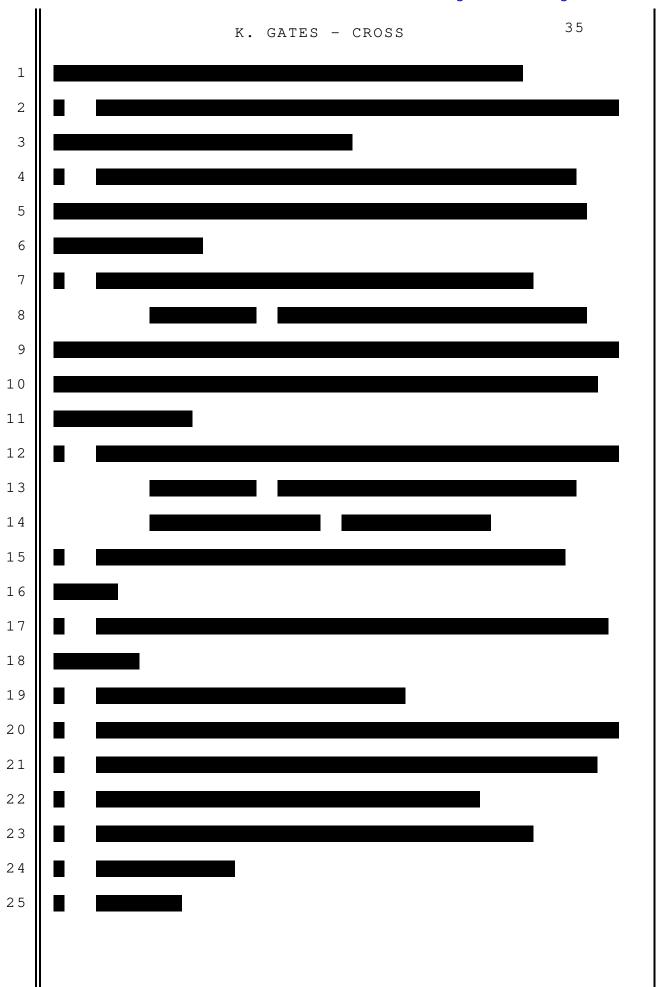
MR. KEVIN GATES: Right. Right. And it is true that over -- earlier this year Williams Mullens had recommended things, and we inquired or simply asked "Do we have to do that? Do we have to do deposition prep? Do we have to -- does Williams

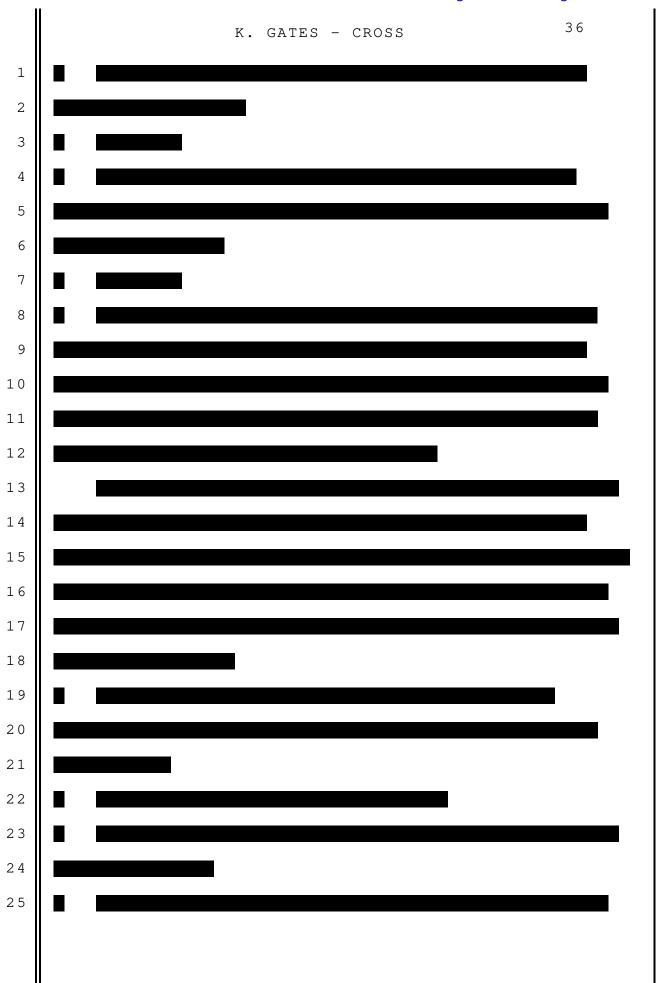
31 K. GATES - CROSS 1 Mullen have to attend all the depositions?" And it 2 wasn't that we didn't want to. Of course, we wanted 3 as much vigorous defense or rigorous defense as possible, but the objective was simply to try to save 4 5 resources so that we could at least make it through discovery and hopefully through summary judgment. 6 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 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 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 22 23 24 25

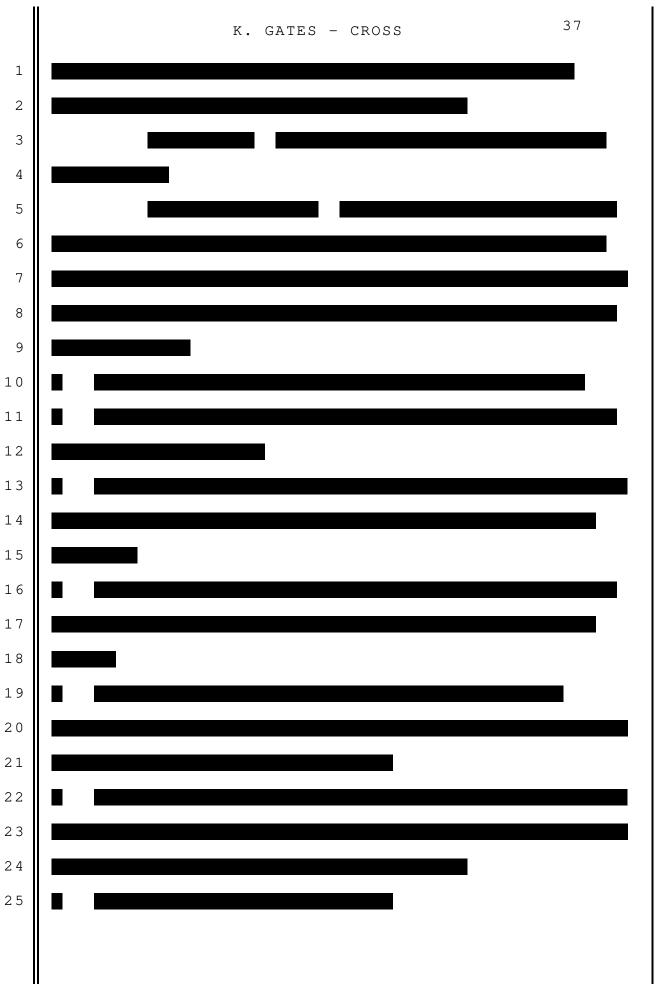


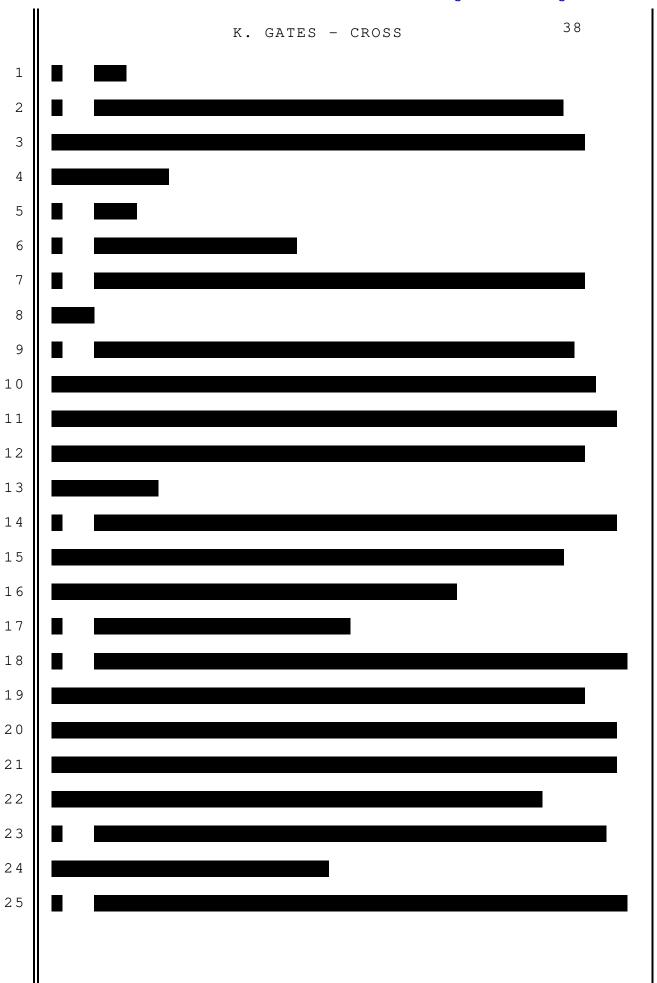


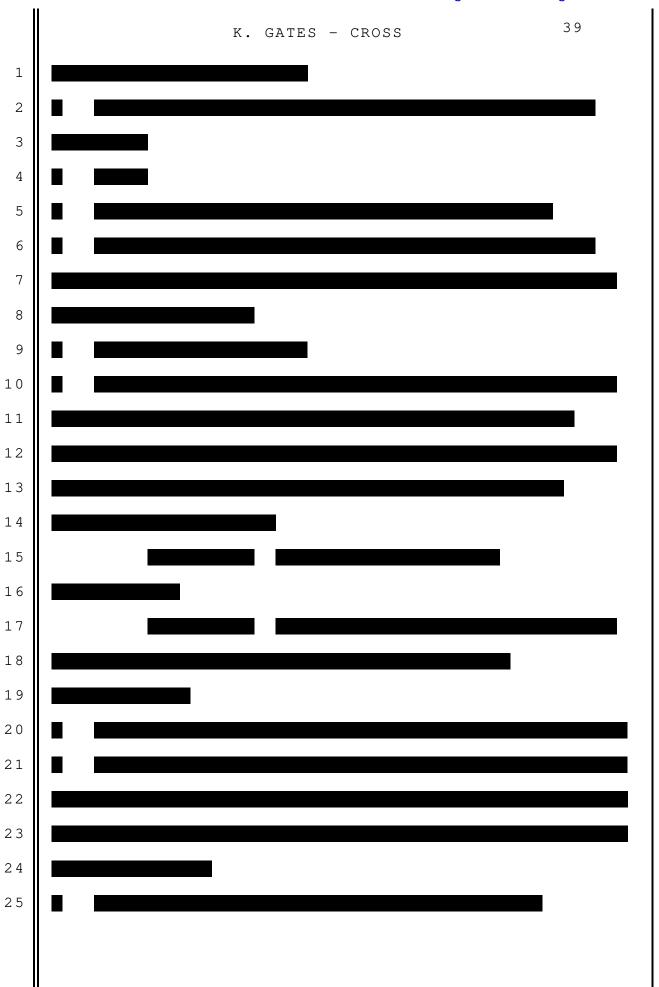












K. GATES - CROSS MR. LLOYD: Thank you, Your Honor. THE COURT: Are there any questions from Mr. Chen? MR. BARKSDALE: No, Your Honor. MR. KEVIN GATES: Your Honor, while we wait, may I make an additional comment? THE COURT: If you want to. I'm not sure you're helping yourself. Go ahead. MR. KEVIN GATES: Mr. Hanes had said that we could find another attorney and that discovery is largely complete. I will note that we haven't even received all the documents yet from the FERC. And there's been a lot of back and forth over the last

K. GATES - CROSS

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

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

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

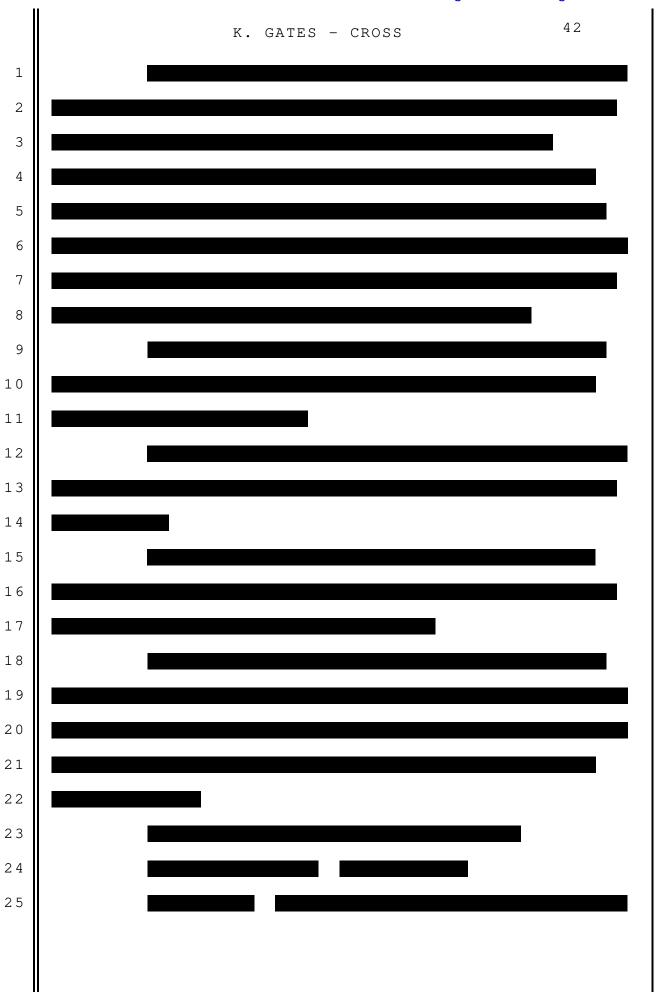
So just to be clear, we didn't intend to represent all written discovery has been exchanged, reviewed, anything like that.

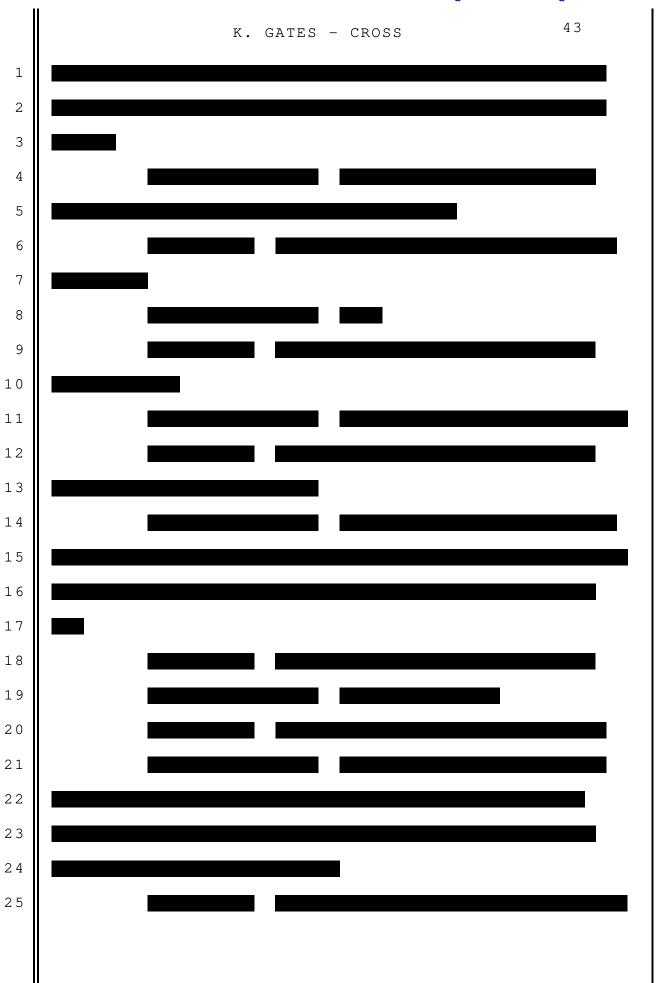
THE COURT: Okay.

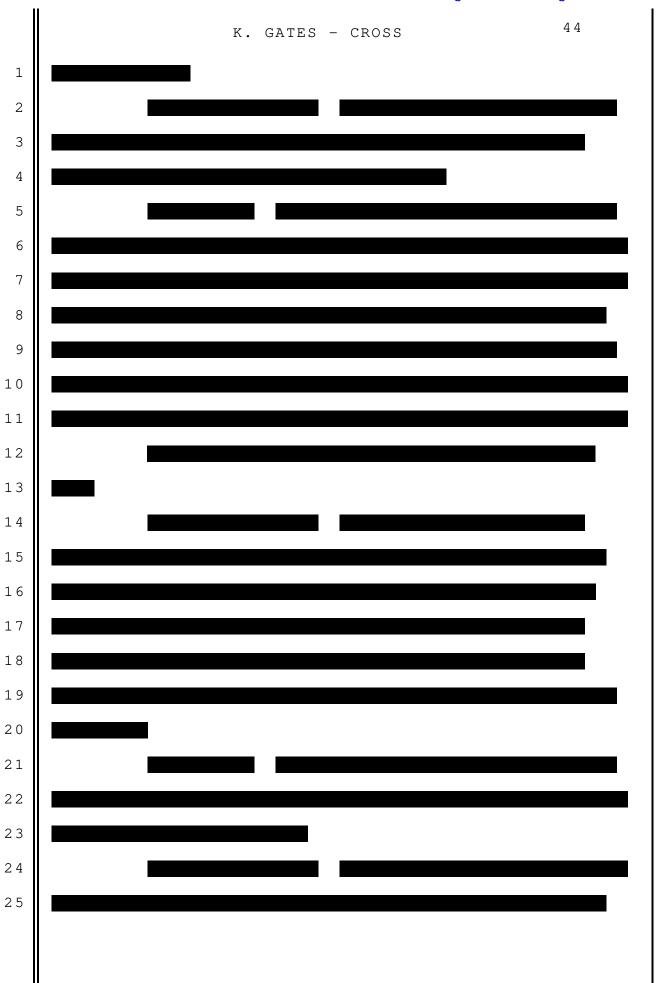
MR. HANES: Thank you, Your Honor.

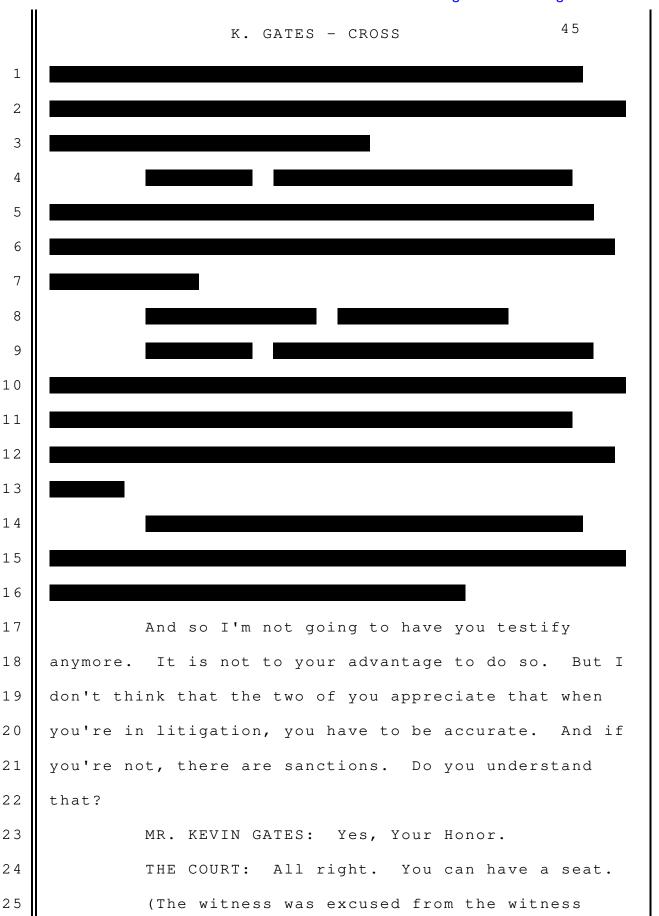
MR. LLOYD: And, Your Honor, if I may. We agreed to a rolling production schedule. I actually have the last production to defendants in my briefcase with me and was going to hand it to Patrick after this hearing was over.

THE COURT: All right.









stand.)

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

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

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

So here it is the case that under Virginia

Code of Professional Responsibility 1.16(B), that a

counsel may withdraw if it can be accomplished without

material adverse effect on the interests of the client

or, Subsection 5, the representation will result in an

unreasonable financial burden on the lawyer or has

been rendered unreasonably difficult by the client,

or, Subsection 6, other good cause for withdrawal

exists.

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

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

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

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

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

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

discussion about bankruptcy, that that was not well taken.

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

So I want to look at the Mssrs. Gates. You don't have a right to counsel in a civil matter. In a criminal matter, you do. But in a civil matter, you do not. And while lawyers can represent on a pro bono basis, they don't have to.

because there is no burden on you. You have a whole year. You have a whole year to, or nearly a year, to get ready for trial with new counsel.

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

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

You know, I'm not asking about financials.

And we have lots of very complicated cases in this court, and this is not a very complicated corporate structure. This one's not. And at the core of it, whatever iteration it is, are Kevin Gates and Rich Gates. Both of you are here.

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

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interesting.

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

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

So what is ten days from today?

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

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

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

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

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

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

without prejudice.

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

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

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

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

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

THE COURT: Yes.

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

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

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

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

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

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

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

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

THE COURT: I'd much rather it be resolved.

It is the kind of thing that should be resolved.

MR. BARKSDALE: Absolutely, Your Honor.

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

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

MR. BARKSDALE: Thank you. We appreciate

Judge Colombell's help with getting us to where we should have been anyways. But thank you, Your Honor.

THE COURT: All right. Okay. Thank you.

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

THE COURT: Absolutely. They should have counsel.

MR. LLOYD: Thank you.

THE COURT: That essentially places a stay on

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

I want you all to go down there and see if there's another date that you can schedule with him to think about this like the business decision that it is. And I want you to think about your representations to me when you do that. It's extremely disappointing that officers of the court put me in this position.

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

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

We can take a recess.

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

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