

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Houlian Chen, Powhatan Energy Fund, LLC,                    )  
HEEP Fund, LLC, and CU Fund, Inc.                            )                    Docket No. IN15-3-000

*NOTICE OF DE NOVO ELECTION*

Pursuant to ordering paragraph D of the Commission’s Show Cause Order<sup>1</sup> in the above-captioned proceeding and section 31(d)(1) of the Federal Power Act,<sup>2</sup> the respondents—Houlian Chen, Powhatan Energy Fund, LLC, HEEP Fund, LLC, and CU Fund, Inc.—hereby elect the procedures described in section 31(d)(3) of the Federal Power Act.<sup>3</sup> Specifically, assuming the Commission decides to proceed in this matter, we invoke our statutory rights to the prompt assessment of a penalty<sup>4</sup> and review of that penalty in federal district court, where the court “shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment . . . .”<sup>5</sup>

In several recent court cases, Enforcement has contended that the Commission’s show cause order process constitutes an adjudication, that a penalty assessment order constitutes an agency determination that violations occurred as well as a determination of sanctions, and that, as a result, there is no need for federal district court adjudication of anything. *De novo* review, in Enforcement’s view, can be a perfunctory review of based on an “administrative record” defined

---

<sup>1</sup> *Houlian Chen*, 149 FERC ¶ 61,261 (2014); *Houlian Chen*, 149 FERC ¶ 61,263 (2014).

<sup>2</sup> 16 U.S.C. § 823b(d)(1).

<sup>3</sup> *Id.* § 823b(d)(3).

<sup>4</sup> *Id.* § 823b(d)(3)(A).

<sup>5</sup> *Id.* § 823b(d)(3)(B).

as the materials provided to the Commission, with no discovery or any of the adjudicative rights provided by the Federal Rules of Civil Procedure.

We object to, and oppose, that mangled view of the statutory scheme. The statute does not authorize any show cause order process. Nor does it authorize the Commission to determine whether any violations occurred. It simply authorizes the Commission to issue an order assessing penalties and, if the penalties are not paid within 60 days, to file an action in federal district court, where the court is authorized to engage in *de novo* review of the facts and the law. We will respond to the Commission's show cause order. But we strenuously disagree that anything about that process, and our participation in it, in any way curtails our statutory right to *de novo* review.

Respectfully submitted,

/s/ William M. McSwain  
William M. McSwain  
Drinker Biddle & Reath LLP  
One Logan Square  
Suite 2000  
Philadelphia, PA 19103  
(215) 988-2775  
william.mcswain@dbr.com

*Counsel for Powhatan Energy  
Fund, LLC*

/s/ John N. Estes III  
John N. Estes III  
Skadden, Arps, Slate,  
Meagher & Flom LLP  
1440 New York Ave., NW  
Washington, DC 20005  
(202) 371-7950  
john.estes@skadden.com

*Counsel for Alan Chen, HEEP  
Fund, LLC, and CU Fund, Inc.*

January 12, 2015

Document Content(s)

IN15-3 Notice of De Novo Election 1-12-15.PDF.....1-2