

153 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Houlian Chen
Powhatan Energy Fund, LLC
HEEP Fund, LLC
CU Fund, Inc.

Docket No. IN15-3-000

ORDER DENYING CLARIFICATION

(Issued October 26, 2015)

1. On May 31, 2015, Mr. Eric S. Morris (Mr. Morris) requested clarification of the Commission's May 29, 2015 order assessing civil penalties against Dr. Houlian Chen, Powhatan Energy Fund, LLC, HEEP Fund, and CU Fund, Inc. (collectively, Respondents) in the above-captioned proceeding.¹ As discussed below, we deny Mr. Morris's request for clarification.

Background

2. On December 17, 2014, the Commission issued an Order to Show Cause, commencing a public proceeding against the Respondents.² In the Office of Enforcement (OE) Staff Report attached to the Order to Show Cause, OE Staff alleged that Respondents violated section 222 of the Federal Power Act (FPA)³ and section 1c.2 of the Commission's regulations⁴ by engaging in fraudulent Up-To Congestion (UTC) transactions within PJM Interconnection L.L.C.'s (PJM) energy markets.⁵ Subsequently, in the Order Assessing Civil Penalties, the Commission found that the Respondents

¹ *Houlian Chen, et al.*, 151 FERC ¶ 61,179 (2015) (Order Assessing Civil Penalties).

² *Houlian Chen, et al.*, 149 FERC ¶ 61,261 (Order to Show Cause), *revised*, 149 FERC ¶ 61,263 (2014).

³ 16 U.S.C. § 824v(a) (2012).

⁴ 18 C.F.R. § 1c.2 (2015) (Anti-Manipulation Rule).

⁵ Order to Show Cause, 149 FERC ¶ 61,261 at P 3.

violated section 222 of the FPA and the Commission's Anti-Manipulation Rule through a scheme to engage in fraudulent UTC transactions in PJM energy markets to garner excessive amounts of certain credit payments to transmission customers.⁶ In light of the seriousness of the Respondents' violations, the Commission found that it was appropriate to assess civil penalties pursuant to section 316A of the FPA and to further direct the disgorgement of unjust profits, plus applicable interest, pursuant to section 309 of the FPA.⁷

3. As relevant here, on February 3, 2015, in response to the Order to Show Cause, Mr. Morris submitted a protest in support of the Respondents. On April 1, 2015, PJM submitted comments in this proceeding supporting the penalty assessment. In the Order Assessing Civil Penalties, the Commission rejected both Mr. Morris's protest and PJM's comments because, under Rule 214 of the Commission's Rules of Practice and Procedure, "[n]o person . . . may intervene as a matter or right in a proceeding arising from an investigation pursuant to Part 1b of this chapter."⁸ Additionally, the Commission stated that Mr. Morris and PJM were not parties to this proceeding and that it would not accept their protest and comments.⁹

Request for Clarification

4. Mr. Morris seeks clarification of paragraph 33 of the Order Assessing Civil Penalties, asking the Commission to clarify the application of Rule 211 of the Commission's Rules of Practice and Procedure.¹⁰ Mr. Morris agrees that the Order to Show Cause proceeding was initiated pursuant to Part 1b of the Commission's regulations and, therefore, interventions pursuant to Rule 214 of the Commission's Rules of Practice and Procedure are not permitted. However, Mr. Morris emphasizes that Rule 211 of the Commission's Rules of Practice and Procedure permits any person to file a protest "to object to any application, complaint, petition, order to show cause . . .," and that the "filing of a protest does not make the protestant a party to the proceeding. . . ."¹¹ Additionally, Rule 211(a)(3) of the Commission's Rules of Practice and Procedure states that the Commission "will consider protests in determining further appropriate action."¹²

⁶ Order Assessing Civil Penalties, 151 FERC ¶ 61,179 at P 1.

⁷ *Id.*

⁸ 18 C.F.R. § 385.214(a).

⁹ Order Assessing Civil Penalties, 151 FERC ¶ 61,179 at P 33 nn.71, 73.

¹⁰ 18 C.F.R. § 385.211.

¹¹ *Id.* § 385.211(a)(1) – (2).

¹² *Id.* § 385.211(a)(3).

Therefore, Mr. Morris argues that, under Rule 211, he and PJM are permitted to file protests and comments, and the Commission should have considered their respective protest and comments.

Commission Determination

5. We deny Mr. Morris's request for clarification. As stated in the Order Assessing Civil Penalties, under Rule 214 of the Commission's Rules of Practice and Procedure, "[n]o person . . . may intervene as a matter of right in a proceeding arising from an investigation pursuant to Part 1b of this chapter."¹³ While the Rule 214 provision denying the right to intervene is not repeated in Rule 211, we find that the same principle applies to protests and comments.¹⁴ Rule 101(b)(1) similarly recognizes that investigations and proceedings arising from investigations are different from other matters and that different procedures may apply.¹⁵ Rule 101 further provides the Commission with the ability to waive any provisions of its rules for good cause and we find that such cause applies here.¹⁶

The Commission orders:

Mr. Morris's request for clarification is hereby denied, as discussed in the body of the order.

By the Commission. Chairman Bay is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

¹³ *Id.* § 385.214(a)(4).

¹⁴ As we found in Order No. 718, "because a proceeding arising from an investigation is focused on the alleged conduct of a specific entity, intervention ordinarily is inappropriate and may delay or sidetrack the proceeding." *Ex Parte Contacts and Separation of Functions*, Order No. 718, 125 FERC ¶ 61,063, at P 2 (2008).

¹⁵ Rule 101 makes clear that the Commission's Rules of Practice and Procedure do not apply to investigations under 18 C.F.R. Part 1b. *Id.* § 385.101(b)(1).

¹⁶ *Id.* § 385.101(e).