

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Aspire Commodities LP, Raiden)
Commodities, LP)
)
Plaintiff,)
)
v.)
)
GDF-SUEZ Energy North America, Inc.,)
Ennis Power Company, LLC, Wise County)
Power Company, LLC, Midlothian Energy,)
LLC, Hays Energy, LLC, Wharton County)
Generation, LLC, And Coleto Power, LP,)
)
Defendants.)

Case No. 4:14- cv-01111

**ASPIRE COMMODITIES L.P.'S AND RAIDEN COMMODITIES, L.P.'S
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

Plaintiffs Aspire Commodities L.P. (“Aspire”) and Raiden Commodities L.P. (“Raiden”) hereby file their Opposition to Defendants’ Motion to Dismiss (Dkt. # 6). Plaintiffs have simultaneously filed their First Amended Complaint for Damages and Injunctive and Declaratory Relief (the “Amended Complaint”) as permitted under Fed. R. Civ. P. 15(a)(1)(B), rendering the Motion to Dismiss moot.

Plaintiffs filed their original Complaint in this action on April 22, 2014 (Dkt. # 1) (the “original Complaint”), alleging four counts against the Defendants. On June 23, 2014, Defendants filed their Motion to Dismiss Plaintiffs’ Complaint and Brief in Support (Dkt. #6) (the “Motion to Dismiss”). Without admitting any deficiency in their original Complaint, Plaintiffs have now filed the Amended Complaint, which supersedes the original Complaint. *See, e.g., Amegy Bank Nat. Ass’n v. Monarch Flight II, LLC*, 870 F. Supp. 2d. 441, 449 (S.D. Tex. 2012) (“An amended complaint ‘supersedes and replaces an original complaint, unless the

amendment specifically refers to or adopts the earlier pleading.” (quoting *Eubanks v. Parker Cnty. Comm’rs Court*, No. 94-10087, 1995 WL 10513, at *2 (5th Cir. Jan. 3, 1995))).

Pursuant to Fed. R. Civ. P. 15(a)(1)(B), “[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b).” Plaintiffs’ Amended Complaint was filed 21 days after Defendants’ Rule 12(b)(6) Motion to Dismiss and, accordingly, is permitted as a matter of course. Defendants’ Motion to Dismiss should be denied as moot.

Dated: July 14, 2014

Respectfully submitted,

/s/ Barrington M. Hammond, Jr.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically via the Court's ECF system on this 14th day of July, 2014. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

/s/ Barrington M. Hammond, Jr.