

Federal Energy Regulatory Commission

NON-PUBLIC - DO NOT DISCLOSE

Date: May 8, 2012

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Case: In Re: Investigation of PJM Up-Tos Congestion Transactions



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BEFORE THE UNITED STATES
FEDERAL ENERGY REGULATORY COMMISSION

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In the Matter of: THE :
INVESTIGATION OF :
PJM UP-TOS CONGESTION :
TRANSACTIONS :
- - - - -x

DEPOSITION OF GREGORY M. SEKELSKY

NONPUBLIC - DO NOT DISCLOSE

Philadelphia, Pennsylvania
Monday, May 7, 2012

REPORTED BY:
DONALD R. THACKER

Gregory M. Sekelsky Non-Public, Do Not Disclose
 In Re: Investigation of PJM Up-Tos Congestion Transactions - May 8, 2012

<p style="text-align: right;">Page 2</p> <p>1 Deposition of GREGORY M. SEKELSKY called for 2 examination pursuant to Notice of Deposition, on Monday, 3 May 7, 2012, in Philadelphia, Pennsylvania at the, Offices 4 of Drinker, Biddle & Reath, One Logan Square, Suite 2000 at 5 1:48 p.m., before DONALD R. THACKER, a Notary Public within 6 and for the Commonwealth of Virginia, when were present on 7 behalf of the respective parties: 8 9 STEVEN TABACKMAN, ESQ. 10 JAMES C. OWENS, ESQ. 11 Attorney Advisors 12 Division of Investigation 13 Federal Energy Regulatory Commission 14 Office of Enforcement 15 888 First Street, Northeast 16 Washington, DC 20426 17 On behalf of FERC 18 19 WILLIAM M. McSWAIN, ESQ. 20 Drinker, Biddle & Reath, LLP 21 One Logan Square, Suite 2000 22 Philadelphia, Pennsylvania 19103-6996 23 215.988.2775 24 William.McSwain@dbr.com 25 On behalf of Powhatan and the witness</p>	<p style="text-align: right;">Page 4</p> <p>1 know we did one this morning, but Will McSwain from 2 Drinker, Biddle for Powhatan. 3 MR. TABACKMAN: Yeah, I was going to do all that 4 stuff. 5 BY MR. TABACKMAN: 6 Q Mr. Sekelsky, just so you understand, my name is 7 Steve Tabackman, this is James Owens, and we are officers, 8 staff members at FERC, and we are for the purposes of this 9 investigation, officers of the United States; do you 10 understand that? 11 A Yes. 12 Q Do you understand this is a formal non-public 13 investigation that is being conducted by the Federal Energy 14 Regulatory Commission? 15 A Yes. 16 Q I need to advise you that if you willfully or 17 knowingly state something under oath that you know to be 18 false, you can be guilty of perjury and go to prison for 19 that; do you understand that? 20 A Yes. 21 Q I want to give you some general instructions. 22 Number one, we are on the record here. Everything you say 23 is being taken down by the reporter; do you understand 24 that? 25 A Yes.</p>
<p style="text-align: right;">Page 3</p> <p>1 PROCEEDINGS 2 Whereupon, 3 GREGORY M. SEKELSKY 4 was called as a witness and, having first been duly sworn, 5 was examined and testified as follows: 6 EXAMINATION 7 BY MR. TABACKMAN: 8 Q Would you please state your full name for the 9 record and spell your last name, please. 10 A Gregory M. Sekelsky, S-e-k-e-l-s-k-y. 11 Q And where do you live, Mr. Sekelsky? 12 A Richmond, Virginia. 13 Q Where do you work? 14 A TFS Capital. 15 Q What is your job there? 16 A I am the CFO. 17 Q How are you compensated by TFS Capital? 18 A How do you mean? 19 Q Do you get a salary? 20 A Yes, a salary. 21 Q Do you also have an equity interest? 22 A No, I don't have like an official equity 23 interest. 24 MR. McSWAIN: If I could just jump in for a 25 second since this is a separate deposition transcript, I</p>	<p style="text-align: right;">Page 5</p> <p>1 Q Everything is on the record unless I say that we 2 are going to go off the record; do you understand that? 3 A Yes. 4 Q One of the things that we need to try to 5 observe, sometimes it will be breached, is not talking over 6 each other because then he can't get it down, so if you 7 will wait, hopefully wait until I end my question, and that 8 will be clear, and sometimes it is not, and I apologize for 9 that, and I will try to wait until the end of your answer; 10 can we have that agreement? 11 A Yes. 12 Q Okay, and then because it is on the record and 13 because we don't have a video, nods, shaking of your head, 14 shrugging of your shoulders, none of that counts because it 15 doesn't get down on the record; there can only be oral 16 answers; do you understand that? 17 A Yes. 18 Q We need to have an agreement also that if you 19 don't understand my question, then you need to tell me that 20 you don't understand it, because if you just answer it 21 there will be the assumption that you did understand it, 22 and then it will be part of the record. So if you don't 23 understand anything you are not certain about in terms of 24 the question, just say so and I will try to clarify it; 25 okay?</p>

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<p>1 A Sure thing.</p> <p>2 Q I am going to be asking most of the questions.</p> <p>3 Mr. Owens may have some questions for you. We will try not</p> <p>4 to make it too confusing and give you time, he will usually</p> <p>5 wait until I am finishing asking a line of questions, and</p> <p>6 then if he has something to follow up on, he will do that.</p> <p>7 You need to understand that you have a Fifth</p> <p>8 Amendment privilege under the Constitution not to answer</p> <p>9 any question for which the answer may tend to incriminate</p> <p>10 you; do you understand that?</p> <p>11 A Yes.</p> <p>12 Q You need to also understand that in a civil</p> <p>13 proceeding, or a regulatory proceeding, inferences can be</p> <p>14 drawn about what that answer would be even though you</p> <p>15 haven't given it, unlike in a criminal proceeding where you</p> <p>16 just are not allowed to presume anything like that, but in</p> <p>17 this kind of proceeding, one, if you say I am not going to</p> <p>18 answer a question on that basis, there can be a</p> <p>19 presumption, or I can draw an inference that the answer</p> <p>20 would be unfavorable to you; do you understand that?</p> <p>21 A Yes.</p> <p>22 Q At any time you need a break, please let me know</p> <p>23 and we will try to do that. However, if I have asked a</p> <p>24 question, we won't break until I have received your answer;</p> <p>25 fair?</p>	<p>1 protocol, you know, nothing about what was in his</p> <p>2 deposition, just what do we do, get in a conference room,</p> <p>3 because I have never been deposed before.</p> <p>4 Q Okay.</p> <p>5 A So, it was just a generality, but outside of</p> <p>6 that, I have not discussed the specifics of this case,</p> <p>7 about what the depositions were with any of those</p> <p>8 aforementioned names.</p> <p>9 Q Anybody else from TFS, or anybody involved at</p> <p>10 all with any of the companies Rich Gates or Kevin Gates,</p> <p>11 have you had any conversations with any such people about</p> <p>12 the subject matter, not necessarily just about the</p> <p>13 investigation, but the subject matter of the trades and</p> <p>14 what was going on in 2008, 2009 and 2010?</p> <p>15 A No, we have not had like a one-on-one</p> <p>16 conversation. I know we have had, like general TFS related</p> <p>17 meetings, and during that Kevin would update us on the</p> <p>18 status of what has gone on, like just kind of monthly</p> <p>19 updates, if there had been any updates.</p> <p>20 One was that they went through a deposition, it</p> <p>21 was done and it was gone for a while, and they said, okay,</p> <p>22 they are asking for more depositions again, so that was</p> <p>23 basically to the extent.</p> <p>24 Q Did he talk at all about the kinds of questions</p> <p>25 he was asked in his deposition?</p>
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<p>1 A Okay, I understand.</p> <p>2 Q Okay, thank you. I may be showing you some</p> <p>3 exhibits, and I would just ask you, or advise you, not to</p> <p>4 take notes on them, or write anything on them, because we</p> <p>5 take them back at the end and I don't want to see your</p> <p>6 notes, but you can't keep the exhibits either; so do you</p> <p>7 understand that?</p> <p>8 A Yes.</p> <p>9 Q Other than, I don't know anything about</p> <p>10 conversations that you have had with Mr. McSwain, or</p> <p>11 anybody at this law firm, what have you done, if anything,</p> <p>12 to prepare for today's deposition, and I am including</p> <p>13 talking to Kevin Gates, Rich Gates, anybody else at TFS,</p> <p>14 looking at any documents, reading any depositions, any of</p> <p>15 those things?</p> <p>16 A You said outside of --</p> <p>17 Q Outside of talking to, conversations that you</p> <p>18 have had with Mr. McSwain or his associate, I don't want to</p> <p>19 know about those, but if you have read a deposition, if you</p> <p>20 have talked with Kevin Gates about an issue, if you have</p> <p>21 talked with Rich Gates about an issue, if you have talked</p> <p>22 with Larry Eiben about an issue that you think about their</p> <p>23 testimony, anything like that, I would like to know about</p> <p>24 that?</p> <p>25 A I talked with Larry Eiben just about matter of</p>	<p>1 A No.</p> <p>2 Q Who attended these monthly meetings?</p> <p>3 A It would be the equity owners of TFS as well as</p> <p>4 the phantom equity owners.</p> <p>5 Q Are you a phantom equity owner?</p> <p>6 A Yes.</p> <p>7 Q And what does that mean?</p> <p>8 A That means from, I guess, a tax perspective,</p> <p>9 like S corporations, there are only certain shareholders</p> <p>10 that are allowed to be S corporation owners, and without</p> <p>11 getting into, because there is only one class of stock,</p> <p>12 without getting some people like buying into it, kind of</p> <p>13 gives some credence to them as ownership, as owners, but</p> <p>14 not technically owners.</p> <p>15 Q And does that mean that you said some of your</p> <p>16 compensation is based upon --</p> <p>17 A Yeah, that is what I was going to come back to</p> <p>18 you in trying figure out exactly what your question is. My</p> <p>19 compensation is more or less based on the profit and loss</p> <p>20 of the company like an owner would be, so --</p> <p>21 Q Okay.</p> <p>22 A -- so I am 100 percent variable on my</p> <p>23 compensation.</p> <p>24 Q So you have no fixed salary at all?</p> <p>25 A No.</p>

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1 Q And how long have you worked for TFS?
 2 A It will be eight years in August.
 3 Q We were talking about the monthly meetings, so
 4 it would be the owners are, could you tell me?
 5 A The five owners are Kevin Gates, Rich Gates,
 6 Larry Eiben, Chao Chen and Eric Newman. Now, Chao Chen and
 7 Eric Newman became owners on January 1st of 2012.
 8 Q Okay, but they have attended these update
 9 meetings?
 10 A Yes.
 11 Q Now, how long are these update meetings? Do
 12 they take place everybody around a table, or a conference
 13 call, or --
 14 A It is a conference call. We have two offices,
 15 as I believe you might be aware, and the three of us that
 16 are in Richmond are on the conference call with the five, I
 17 guess three of us are in the same room, I can't see them,
 18 but for the most part I would assume that all five of them
 19 are, like occasionally somebody will call in from, like,
 20 call in from out of town, or something, that might listen
 21 in, but generally it is two offices on a conference call.
 22 Q And who is in the Richmond office?
 23 A Larry Eiben, myself and Sam Harris.
 24 Q What is Sam Harris' role; is he another phantom
 25 equity?

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1 A Yes, he is another phantom equity, that is our
 2 Director of Client Relations.
 3 Q And what does the Director of Client Relations
 4 do?
 5 A More or less in marketing, like, talk one on one
 6 to individuals, talking with our like investors and our
 7 financial advisors that invest in our funds.
 8 Q And have you invested in any funds that TFS
 9 manages or has people manage?
 10 A Yes, I invest in all of them.
 11 Q Could you give me the names of the ones that you
 12 are invested in? Are these all proprietary funds that you
 13 are invested in?
 14 A Okay, that was going to be my question. The
 15 funds that TFS actively manages for outside investors are
 16 TFS Market Neutral Mutual Fund, TFS, small cap, mutual
 17 fund, TFS Hedge Futures Fund, which is a mutual fund,
 18 Huntrise Capital Partners, Huntrise Global Partners, and
 19 these are two hedge funds that are managed, and I am
 20 invested in all five of those.
 21 Q Okay. And how about any of the proprietary
 22 funds?
 23 A Okay. There is Huntrise Fund of Funds, Tuckahoe
 24 Energy Fund, Powhatan Energy Fund, and, let's see -- now,
 25 let me just, you are talking about funds that TFS actually

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1 manages, or just the individual, kind of the individuals
 2 that are the owners that manage?
 3 Q I am not sure I appreciate the distinction --
 4 MR. McSWAIN: You can take it in whatever order
 5 that is the most logical.
 6 THE WITNESS: Okay.
 7 MR. McSWAIN: He is just trying to find out how
 8 it is organized.
 9 THE WITNESS: Okay.
 10 MR. McSWAIN: Is that fair?
 11 MR. TABACKMAN: Yes.
 12 THE WITNESS: I would say STS Energy, and those
 13 four funds --
 14 MR. McSWAIN: STS is a proprietary fund.
 15 THE WITNESS: Okay.
 16 MR. MCSWAIN: Just split it up between the ones
 17 that TFS manages money for other people, or just
 18 proprietary funds where you are investing your own money.
 19 THE WITNESS: Okay. Those last four, Huntrise
 20 Fund of Funds, Tuckahoe Energy Fund, Powhatan Energy Fund
 21 and STS Energy, those are all proprietary, meaning we only
 22 manage them with our own internal money.
 23 BY MR. TABACKMAN:
 24 Q All right.
 25 A So the five original funds I talked about, the

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1 mutual funds, and the two hedge funds.
 2 Q And do you have investments in Huntrise Fund of
 3 Funds?
 4 A Yes.
 5 Q Tuckahoe Energy?
 6 A Yes.
 7 Q Powhatan?
 8 A Yes.
 9 Q STS?
 10 A Yes.
 11 Q And then you also have in each of the other, the
 12 five --
 13 A Yes.
 14 Q -- mutual and hedge funds.
 15 Okay. And on the proprietary funds, what I will
 16 calling the proprietary funds, internal money --
 17 A Okay.
 18 Q -- how is it term determined that you could,
 19 your investment in those, how much money you invested? Is
 20 that your choice, or is that part of your compensation?
 21 A We -- well, the Huntrise Fund of Funds we were
 22 originally trying to keep like almost like what our
 23 ownership, like a phantom equity/ownership percent, we were
 24 trying to keep that, it was proving to be a little bit too
 25 difficult to kind of keep everybody because, like, what we

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<p>1 would invest in, say, we would invest in Huntrise Capital 2 Partners, and then along with that Huntrise Capital 3 Partners, well, some members wanted to invest more and some 4 wanted to invest less, and it was just getting, it was 5 just -- well, we are going to use this Huntrise Fund of 6 Funds as a way to possibly find new strategies for our 7 other funds, we are just going to use internal money to try 8 and do that, but then once those strategies were done, then 9 we were just going to distribute the money out and everyone 10 could reinvest back into the original fund. 11 Like, say, we had Huntrise Capital Partners, and 12 then we just distributed, sold those shares, distributed 13 the money, out and then the individuals either invested it 14 all back into Huntrise Capital Partners, or kind of did 15 what they felt the need for. 16 MR. McSWAIN: But was it discretionary how much 17 you could invest of your own money, I think is what he is 18 asking you. 19 THE WITNESS: Yeah, it became discretionary, 20 everything became discretionary. We wanted to try and do 21 the, that kind of via percentages that we were doing, but 22 it turned out that discretionary was the most suitable for 23 everybody. 24 BY MR. TABACKMAN: 25 Q And how --</p>	<p>1 reopen, and at that point sometimes we would let them know 2 about these hedge funds that are still open that have 3 similar strategies. 4 Q And are the mutual funds, well, let's focus on 5 mutual funds, are they managed by outside managers? 6 A No. 7 Q They are managed by one or more of the owners at 8 TFS? 9 A Yes, by TFS. We have got co-portfolio managers. 10 Q And who is the portfolio managers for market 11 neutral? 12 A Larry Eiben, Kevin Gates, Rich Gates, Eric 13 Newman, Chao Chen and Yan Liu. 14 Q How about for small cap? 15 A The same six. 16 Q Do the same six manage all of those -- six, did 17 I count right? 18 A Yes. 19 Q Okay. 20 A Yes, the same six. 21 Q Then the proprietary funds, is there, does any 22 one person have greater role in any one of them among the 23 owners as far as you know? 24 A Well, I would say I have a lesser role than 25 everyone else. I generally am the bookkeeper, I am not</p>
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<p>1 A Just let me step back. 2 Q Sure. 3 A There is one investor fund that I forgot that 4 TFS manages, and that is Oakstone Partners, however, I 5 mean, that is kind of a hard between proprietary because 6 the only outside investor are the Huntrise Capital Partners 7 and Huntrise Global Partners. 8 Q And the mutual funds, are they closed or open? 9 A The market neutral fund is like on a hard close, 10 it is at a hard close, but it still has some exceptions to 11 the hard close. The other two mutual funds are open still 12 trying to increase assets. 13 Q Okay, and Huntrise Capital Partners and Huntrise 14 Global Partners are hedge funds? 15 A Yes. 16 Q How do you get investors in that? 17 A Usually word of mouth of people that are 18 interested and that have found like from our, are pleased 19 from our mutual fund products, and have found it via our 20 web site. There are a lot of people that are, like, 21 looking for hedge funds to invest in, and come across our 22 thing and try to find more information on us. 23 With the hard close of our market neutral fund, 24 others have been calling us, calling in about it and 25 requesting information about, like, if it was going to</p>	<p>1 involved in the investment decisions. 2 Q Who makes the investment decisions for Fund of 3 Funds, as far as you know? 4 A I guess it depends on what strategy is being 5 invested in. I think when we were first looking at energy 6 trading, I think Kevin was more the lead with that. Then 7 when we were looking at futures, like kind of future 8 trading, Eric and Yan were more involved with that. So, it 9 just depends, it depends on who was, what strategy was 10 being looked at. 11 Q And how much interaction do you have like in a 12 typical week, if there is a typical week, with Kevin Gates? 13 A I mean, it is week to week. Sometimes I 14 probably can go a week without talking to him at all, and 15 then sometimes -- 16 MR. McSWAIN: Why don't you start with physical 17 interactions. You guys are in different offices; right? 18 THE WITNESS: Yeah, that's right, he is in a 19 different office, so I see him maybe two to three times a 20 year, so everything is via phone, phone or e-mail 21 interaction, and -- 22 BY MR. TABACKMAN: 23 Q Let me just try to clarify. What is the subject 24 matter, is there a typical kind of subjects that you would 25 have interaction with Kevin Gates on?</p>

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1 A A little -- well, some of the subject matter is
2 a lot about return, like, my doing the return, you know,
3 like reviewing the returns and calculating the monthly
4 return numbers for the hedge funds.
5 Q Okay. What else might you deal with Kevin
6 about?
7 A Some general business because, I guess, I pay
8 attention because I do the salaries as well, and paying
9 out, making sure that if there are some bonuses that were
10 coming, or, although Kevin is not as prone to be with that
11 with the employees like some of the others are.
12 Q Okay, how about -- I am sorry --
13 A I think that is the big portion of it is the
14 returns.
15 Q How about with Richard Gates?
16 A Rich I do a little bit more with the salaries.
17 A lot of times they would ask questions, they will come
18 back, or he will come back like with some tax questions,
19 since I am a CPA he will ask some questions before we go to
20 an outside CPA.
21 Q How about Larry Eiben, you are in the same
22 office with Larry; right?
23 A Right, I am in the same office with him, and we
24 talk a lot regarding the business, I mean, from our back
25 office. I mean, he is the compliance officer but I do a

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1 lot of compliance, like, follow up of making sure that like
2 according to our compliance manual that the employees are
3 not trying to do, like, any trades that are not allowable,
4 like, during our time. And then we talk a lot about
5 employees and salary. He is the signatory on the checks,
6 so when I do payables and I write all the checks, or print
7 out all of the checks, you know, he has got to sign them.
8 He has got more, like, for the wiring out of
9 money out of our hedge funds, he has got the signatory
10 authority, but I, like, if we have investors that are
11 pulling money out, I have got to give him wire instructions
12 for him to sign off, and then I have got to send it off to
13 the dual signatory authority.
14 So, there is just a whole range of things that
15 Larry and I do together that probably need to be like
16 together, whereas Rich and Kevin also have some off those
17 same authorities, like in the company, but, because they
18 are in a different office it is just not as easy to do, so
19 it is basically between Larry and myself.
20 Q How about Chao Chen?
21 A There is not much interaction between Chao and
22 I, you know, not much interaction for TFS purposes.
23 Q But what other --
24 A He will send me receipts, and such, and I might
25 have some questions regarding, because he is kind of a

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1 manager overseeing a lot of the programmers, so I will
2 probably convey with him between, you know, regarding the
3 employees, and it usually about salary or bonuses.
4 Q Okay, and Eric Newman?
5 A Eric is similar to Chao, like he manages some
6 employees, like some of the analysts, and along those
7 lines. And he will send me -- he gets a lot more invoices,
8 like, credit card invoices, and such, because like it is on
9 his credit card, so he will be forwarding me more items
10 along those items.
11 Q Do you ever talk with Rich Gates -- well, strike
12 that. Let me go back.
13 How many employees are there of TFS Capital?
14 A 20.
15 Q And can you give me a sense of how that divides
16 up, what do they do?
17 A Okay.
18 Q I'm not looking for exact numbers.
19 A Okay. There are 17 up in the Pennsylvania
20 office and then we have three, so, I mean, give or take,
21 the 20, you know, it could be 19 to 21.
22 Q Sure.
23 A So, there are three of us in Richmond. So in
24 Pennsylvania, 17, there is a lot up there, and basically
25 the functions are trading, traders, analysts, and then

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1 programmers.
2 Q Okay.
3 A And then there is maybe one or two others that
4 float around, like those marketing sales, and IT, you know,
5 making sure that all of our computers are running properly.
6 Q Are you familiar with the name Alan Chen?
7 A Yes.
8 Q How are you familiar with his name?
9 A He has been the energy trader, he is like an
10 independent contractor for trading, like, our funds, like
11 our fund that is more to the point for Powhatan Energy
12 Fund.
13 Q Have you ever met Alan Chen?
14 A I cannot recall if I have talked to him on the
15 phone, but I have never met him face to face.
16 Q And you are not sure if you have ever talked to
17 him on the phone?
18 A I don't think I have ever talked to him on the
19 phone.
20 Q And does anybody in the Richmond office that you
21 know of, and this would be going back from 2008 through
22 2010 and, well, yes, did anybody in the Richmond office, as
23 far as you know, have regular contact with Alan Chen?
24 A No, I don't know if anybody had regular contact
25 with him.

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<p>1 Q Do you know, was there somebody at TFS, as far 2 as you know, that had the most, that was responsible for 3 the contact with Alan Chen? 4 A My presumption is that Kevin Gates had the most 5 contact with Alan. 6 Q And you said that is a presumption, what do you 7 base that on? 8 A That Kevin was more like, as we mentioned 9 earlier about the Fund of Funds, like Kevin was more in 10 tune to the energy trading, that was more like on his side. 11 So, he was the one that seemed to find like independent 12 contractors to trade the energy, so, I am under the 13 assumption that he talked to Alan more than the others. 14 Q And have you ever talked, have you ever talked 15 with Kevin Gates about what Alan does or did? 16 A I don't -- if I have I don't recall any 17 conversations about the trading that he does. 18 Q Did you have an interest in the Powhatan Energy 19 Fund? 20 A Yeah, I had a -- 21 Q Were you -- 22 A -- a small investment proportionately to the 23 others. 24 Q About how much money, do you remember? 25 A Money was put in at different intervals. It</p>	<p>1 Q I was trying to get that straight for the 2 record, I hope I got Chen out of there. 3 A Okay. 4 Q So, Larry Eiben and the Gates brothers, would 5 they typically, if you say if there was a typical way, 6 invest the amount, equal amounts in a proprietary fund like 7 Powhatan? 8 A Yes. 9 Q Was there a rule that they had to do that, like 10 some sort of tax consequences, that you are aware of? 11 A No. 12 Q But that was just the way they did it? 13 A Yes, that is just the way they did it. 14 Q Did you receive communications regarding the 15 financial success, or were you privy to records that showed 16 the financial success or lack of success of Powhatan 17 between -- while it was particularly active in 2010? 18 A Yes. 19 Q And was it regarded as a successful investment, 20 unsuccessful investment, do you recall, or can you 21 characterize one way or the other? 22 A I would characterize it as a successful 23 investment, like towards the tail end, like, it began not 24 successfully, and -- 25 Q What do you remember about that lack of success</p>
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<p>1 probably could have been between 10,000 and 20,000, but I 2 am not a 100 certain on that. 3 Q And did you keep the records, the bookkeeping of 4 how much the owners would have had invested in Powhatan? 5 A Yes. 6 Q I represent to you that Powhatan was started in 7 May of 2010. Do you recall how much the various owners, 8 approximately, if you can, invested each at the outset of 9 Powhatan? 10 A I don't recall, I mean, it sounds -- I want to 11 say -- it is a large discrepancy, but what I want to say is 12 one million or two million. 13 MR. McSWAIN: In total? 14 THE WITNESS: Yes, in total, not per individual, 15 like in total, so I -- 16 MR. McSWAIN: Don't guess, just do your best on 17 what you remember. 18 THE WITNESS: Yeah, that is -- 19 BY MR. TABACKMAN: 20 Q And was there any kind of regular practice that 21 the owners, Eiben and the Gates brothers and Chao, well, 22 they were -- let's focus on those three owners, when they 23 would make an investment -- 24 A You said, you said three owners, but you said 25 the Gates brothers, Eiben and Chao.</p>	<p>1 at the beginning, do you have anything that you recall? 2 A From my personal was that, like I had put in my 3 amount of money and it felt like about half of it was gone, 4 so, that was what I can remember about that first month 5 that we did evaluations, and I did evaluations on a monthly 6 basis, and that is the reason I had privy to the 7 information because I would get monthly statements. 8 Q And that changed at some point, the success, did 9 it become profitable? 10 A Yes, and it turned to be more profitable than 11 that first month. 12 Q Okay. Did you get back the money that you 13 invested in it? 14 A Yes. 15 Q How much did -- did you make money off of the 16 investment? 17 A Yes, I made money. 18 Q Can you say what your return was on your 19 investment percentage wise? 20 A No, I can't. As I mentioned, I am invested in 21 nine different funds that I can't get the specific return, 22 like I can't like off the top of my head short of the 23 return. 24 Q Was Powhatan among your nine funds, was it more 25 successful than most, was it in the middle, was it less?</p>

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1 A That is hard to answer. It is just -- like
2 dollar wise probably not as successful as some of the
3 others that I have been probably in longer. Percentage
4 wise it could be, and I am scratching for you, I am sorry.
5 I don't know.
6 Q That's fine, that is fine. Did you, were you
7 party, did you get regular reports on how well, apart from
8 your CFO role and doing statements, were you privy to
9 communications about what was happening in the Powhatan
10 fund?
11 A I want to say that maybe weekly, maybe biweekly
12 Kevin would send some things that Alan was doing fairly
13 well, like this week. I could get weekly statements from
14 PJM, the exchange, so I could see money coming into the
15 bank account or if it lost money, money going out of the
16 bank accounts.
17 Q Was there, did the other partners, in other
18 words apart from Kevin, inquire of you as to what, you
19 know, how well Powhatan was going in terms of its return,
20 ask you for information?
21 A No, I think everyone, like they would know that
22 I would at certain time at the end of the month, say if it
23 was maybe 10 business days, and I would send out how the
24 return was for that previous month.
25 Q And then would you be also cutting the checks to

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1 Alan Chen for any compensation that he got?
2 A Yeah. Yes, I would calculate the amount of
3 money that we would owe. We had -- there was, with Alan
4 and Powhatan there was, and with any of the energy traders
5 that we did, I don't know the specifics, there would be
6 something like we might pay out after a quarter, we would
7 pay quarter of what we owed you, and then after 12 months
8 we would pay out the residual.
9 Q Who were the other energy traders that you
10 recall?
11 A There was Ken Parkhill, Chuck Labenski.
12 Q How about Krishna?
13 A Oh, yes, Krishna Sinha, I think, S-i-n-g-h-a, I
14 am not 100 percent.
15 Q Okay. And did they do the same kind of energy
16 trading as far as you know that Alan did?
17 A I have no -- I honestly I have no idea what type
18 of energy trading was done. I just know that those were
19 involved in energy trading at one point in time.
20 Q Do you know anything about the kinds of energy
21 trading that Alan Chen did?
22 A No.
23 Q Have you heard of Up To Congestion trading?
24 A I have heard the term, but I have no idea what
25 it means.

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1 Q Okay. Have you heard, do you remember where you
2 heard the term?
3 A No.
4 Q Have you heard the term Transmission Loss
5 Credit?
6 A Yes.
7 Q How have you, what is your recollection, where
8 did you hear that term?
9 MR. McSWAIN: Let me just give you a reminder.
10 Do not disclose any information that we have talked about,
11 that is privileged information, but if you have heard
12 something elsewhere that is fine.
13 THE WITNESS: The PJM statements they have like
14 a line item.
15 BY MR. TABACKMAN:
16 Q And do you understand what Transmission Loss
17 Credits are?
18 A No.
19 Q Do you recall that there was a time when --
20 well, strike that. With were you invested in the Huntrise
21 Energy Fund?
22 A No, no. Well -- let me, Huntrise Energy Fund
23 only had one investor.
24 Q Who was that?
25 A Huntrise that was Huntrise Fund of Funds, so at

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1 some point in time I might have like crisscrossed with
2 that. Now, I became an investor in Huntrise Fund of Funds
3 after most of the other ones were invested in it. So I
4 don't know at the time I came into the time Huntrise Fund
5 of Funds was no longer investing in Huntrise Energy Fund.
6 Q Okay. When did you get into Huntrise Fund of
7 Funds?
8 A I want to say January 1st of 2009, I am not --
9 January 1st, I am fairly certain was the year. I do not
10 know.
11 Q Were you privy to the conversations about
12 decisions to invest in the energy market?
13 A No.
14 Q Did you ever talk about why Huntrise Fund of
15 Funds or the owners were, had decided to go into the energy
16 market? And you can take them one at a time if you wants.
17 A I can't recall that. I somewhat recall that
18 Kevin was talking that he was going to actively start
19 looking at energy trading, that energy trading might be
20 something that we could possibly even run in, turn into a
21 mutual fund, we are always looking to try to do ideas for a
22 mutual fund.
23 And we weren't sure because no one knew anything
24 about energy trading and basically I think Kevin was the
25 one that was contacting these and trying to understand what

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1 they were doing. But I don't recall the conversations that
2 led to the beginning of us getting involved in energy
3 trading.
4 Q Did you ever discuss Alan, and if I asked you
5 this I am sorry but let me go back, did you ever discuss
6 Alan Chen's trading success or lack of success with Kevin
7 Gates?
8 A Nothing one on, probably other than him
9 mentioning maybe in an e-mail that Alan had a good month,
10 Alan was down this month, other than that I don't recall
11 anything else.
12 Q How often would these e-mails come out?
13 A You are going back. Are we specifically talking
14 about Alan's trading or any of the other energy --
15 Q Yes, Alan, Alan Chen's.
16 A I can't remember because I mean we had that 2010
17 I think it was about maybe a month later, bimonthly, but
18 Alan was trading, and I am not sure which fund he was
19 trading in. I want to say it might have been Huntrise
20 Energy Fund, I am not 100 percent positive that it was that
21 Huntrise Energy Fund, and then that would have been the,
22 kind of the almost the same thing, I could get monthly
23 statements and I might sent something out Kevin, like what
24 the return was and Kevin might have said well, this energy
25 fund did a little bit better this month, but it wasn't

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1 anything like weekly or daily tracking it.
2 Q How about with Rich Gates, did you ever talk
3 about Alan Chen with Rich Gates?
4 A No.
5 Q How about with Larry Eiben?
6 A No, I can't recall anything that I talked with
7 Larry about it.
8 Q Was Alan, if you can characterize this, was Alan
9 considered a very active trader, high volume trader, did
10 you have any sense of that?
11 A I don't have any idea of what active or
12 nonactive energy trading is, because I have no idea about
13 energy trading.
14 Q Would you get, on the documents that would come
15 to you, would you see the volume of megawatts or the
16 quantities of how many trades he was doing in the course of
17 a day?
18 A Like occasionally I think Alan would send
19 something to Kevin, then Kevin I guess would forward it on
20 to everybody, or Alan kind of copied everyone. I think it
21 was Kevin, and Kevin would forward what the trades were. I
22 would probably open up a spreadsheet and not know anything
23 what I was looking at.
24 So I don't know and have no recollection looking
25 in to it and saying, oh, wow, he is trading a lot. No, I

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1 would not have any idea what that was. My general thing is
2 I would look at the bottom number, of what, did he make
3 money this month or lose money this month, because keeping
4 the books that is what I had. I had to be sure, I had to
5 accrue his, Alan's payable that we had.
6 Q If a trader that was, I mean these outside
7 managers in any area that you are familiar with in terms of
8 the dollars, the profit that that trader made for a month
9 was over \$3 million, would that be a very high number in
10 terms of profitability from what you have seen?
11 A From energy trading?
12 Q From any kind of trading that you have seen on
13 the, let's just focus on the proprietary trades, or
14 proprietary funds, Tuckahoe, Powhatan and those?
15 A Yes, \$3 million probably would be -- would be
16 more for the energy trading, I mean for the proprietary
17 funds.
18 Q And is that, is there just a different metric on
19 the other non-proprietary funds?
20 A I guess part of it depends on what the
21 investment was and how much that we had in it. Let's say
22 the Tuckahoe Energy Fund, we never really got that started
23 with an energy trader, so it had nothing in there. Then we
24 started doing options trading, but we had like a limited
25 amount of money in there, so I mean we don't even have, I

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1 would say we don't even have \$3 million in there, so if,
2 yeah, we made \$3 million, but in like Powhatan we had less
3 like money in there and it kind of grew and then pulled
4 back.
5 But there is also, I knew like how much that we
6 lost to begin with in Powhatan was a lot of money, so if it
7 can swing one way, I figure it can swing the other without
8 having much thought about it.
9 Q Did you regard -- did you have any views on the
10 volatility of energy trading?
11 A I just viewed that it, you could lose money, you
12 could make money, just that it is was highly volatile.
13 Like I almost kind of thought like a beginning dot com
14 bubble, Lay, the volatility like when I was trying to day
15 trade on my own before I started with TFS Capital, I could
16 be in JD Uniphase and it would be up \$50 a day, and then it
17 would be back down like \$60, and that is a volatility like
18 in an energy because I don't know enough about energy. I
19 just thought that was a new market and so it could go up
20 and go down awfully quickly.
21 Q And your sense of how quickly it could go up and
22 down, was that because of what you saw in your monthly
23 reports or on some other basis?
24 A I -- it just, kind of as I mentioned, I don't
25 have a full basis. Basically it was my feeling like it was

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1 a new market that the volatility goes up and down like in a
2 new market, and that is based on that experience that I had
3 in the stock market in the late '90's.
4 Q Sure. Was there an e-mail traffic that you saw
5 going back and forth among the owners, Kevin, Rich Gates,
6 Larry Eiben, about the success or lack of success that you
7 recall?
8 A As I recall there might have been something,
9 hey, we have done good this month, keep in mind we could
10 lose it the next month.
11 Q Were Alan Chen's results any more a topic of
12 conversation than say other managers were during the time
13 that they were doing the energy trading for Powhatan?
14 A Alan, from seeing like those other four, and if
15 we want to go pre-2010 because I am --
16 Q Sure.
17 A -- you are not focused on, as far as you I know
18 you are not focused on the pre-2010 --
19 Q Right, let's --
20 A So before that time Alan of those four traders
21 was the best, like the best performer of the traders.
22 Q How about when you, relative to non-energy
23 traders?
24 A I don't have anything about the non-energy
25 traders. The only traders that we had were like kind of

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1 our mutual funds and our hedge funds and we always did
2 really well. And I can say before probably, before I came
3 on board, before Chao Chen, before Newman came on, I worked
4 in the CPA firm where TFS Capital was my client, and their
5 returns for the hedge funds, this was before the mutual
6 funds were launched, were fairly, I am sorry you can't see
7 my hands, fairly volatile, but they would have 30 to
8 40 percent returns in a year, and drop down maybe to 10
9 percent and then back up. So yes, seeing volatility with
10 what this group has done, like I have seen it over the
11 time, and we have tried to over time reduce the volatility
12 and not have the 40 percent growth per year but try to be
13 consistently around 15 percent.
14 Q Okay. And was there one person, who was
15 responsible for that effort to try to manage, I am talking
16 about in the hedge funds now, those returns, was it Kevin
17 Gates --
18 A I was not working for the company at that time.
19 Q Okay.
20 A At that time they only had basically the
21 themselves, Kevin, Rich and Larry were pretty much the
22 three employees. They might have brought in another
23 accountant somewhere early on that was not involved in the
24 trading. And I think at that time they had hired some
25 independent contractors to perform trades for them as well.

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1 Q Did you ever talk with Rich Gates about energy,
2 I am sorry, you said you had no conversations about Alan
3 with either Rich or Larry.
4 How did you come to work for TFS?
5 A As I mentioned, I was with the CPA firm working
6 on them, and they were a client of mine. When their CFO
7 left for another position he called me to tell me that he
8 was leaving, and if I had any interest in the job to
9 contact Larry Eiben.
10 BY MR. OWENS:
11 Q Were you at Richmond at the time?
12 A Yes.
13 Q Was Larry in Richmond at the time?
14 A Yes.
15 BY MR. TABACKMAN:
16 Q Have you ever heard the term marginal surplus
17 allocation?
18 A No.
19 Q Have you ever discussed the line items on the
20 PJM statements with Kevin Gates?
21 A Not the specific line items. We probably
22 discussed at one time the trades that PJM refunded some
23 money, I guess some transmission losses, for 2008 or 2009,
24 refunded money, and I guess discussed with Kevin at that
25 time how best to try and allocate that money across the

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1 owners, because was this money earned in this specific
2 month while in investor might have had a little bit more
3 investment at that point in time, but that is --
4 Q I see.
5 A That would have been the extent of what, of the
6 line item, it was more the reimbursement that PJM was
7 doing, and I want to say it was like about maybe 12 to
8 14 months of reimbursements that they did.
9 Q And do you recall what time period, what
10 timeframe those arrived in?
11 A I want to say that it was late 2009, maybe fall
12 of 2009 to maybe early 2010, like when it finally all came,
13 like the last bit came through.
14 Q And what was your understanding as to the reason
15 for these reimbursements?
16 A I do not know.
17 Q You said something about transmission losses
18 before?
19 A But I think that is, that was the line item I
20 think that showed on the statement of what, where the money
21 was coming from, because that is -- and I want to say that
22 is what the line item was. But as I said, I am more
23 concerned with the bottom line as opposed to the, there is
24 like three pages on each of those PJM statements, whether
25 how much we made or how much we didn't make that month was

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<p>1 my main focus.</p> <p>2 Q Would you also get the PJM weekly statements?</p> <p>3 A I had access to them.</p> <p>4 Q What does that mean?</p> <p>5 A That I could download them from the PJM website.</p> <p>6 Q But did you do that regularly?</p> <p>7 A Regularly like --</p> <p>8 Q I mean was it your practice?</p> <p>9 A In 2008, 2009 I was regularly, I was regularly</p> <p>10 checking them, but the weekly statements would come about a</p> <p>11 week and a half to two weeks after that specific date</p> <p>12 finished. So I was trying to keep up because I was trying</p> <p>13 to reconcile what was in the bank account and what wasn't.</p> <p>14 In fact, if we eventually were going to owe money I needed</p> <p>15 to make sure there was enough money in the bank account to</p> <p>16 pay, or for it to be pulled out.</p> <p>17 Q Would you discuss that issue with any of the</p> <p>18 owners, is that something that would come up at all in the,</p> <p>19 while you were -- while Powhatan was active?</p> <p>20 A Of getting these reimbursements?</p> <p>21 Q Well, the reimbursements and the statements,</p> <p>22 making sure that the bank account had sufficient money in</p> <p>23 it?</p> <p>24 A Yes, it is like I would probably, if we needed</p> <p>25 money I would try and make it known to Kevin that we needed</p>	<p>1 A Okay, I am done.</p> <p>2 Q Do you remember having any conversation with</p> <p>3 Kevin after receiving this e-mail? Let me identify this</p> <p>4 first this.</p> <p>5 This is an e-mail from Kevin Gates dated</p> <p>6 December 10, 2009, to Greg Sekelsky, with copies to Rich</p> <p>7 Gates, Eric Newman, Larry Eiben, Chao Chen. Subject is</p> <p>8 forward Forward Transmission Losses credit (TLC) refund</p> <p>9 summary, Bates number POW00008263 through 8265.</p> <p>10 Do you recall whether you, do you recall getting</p> <p>11 this e-mail, first of all, or seeing this subject matter?</p> <p>12 A I recall seeing it, I don't recall getting the</p> <p>13 e-mail. I probably don't recall getting any e-mail or how</p> <p>14 many that I received.</p> <p>15 Q All I want to know is if this was something you,</p> <p>16 looked like something that you had seen before?</p> <p>17 A Yes.</p> <p>18 Q Okay. Did you talk with Kevin Gates after you,</p> <p>19 after it was received about the subject matter?</p> <p>20 A As the e-mail in the second page suggests, that</p> <p>21 like I said, it makes my job of allocating gains a little</p> <p>22 difficult. My recollection was after getting this</p> <p>23 information it was to talk about how we would allocate any</p> <p>24 income received.</p> <p>25 Q Did you talk with anybody other than Kevin about</p>
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<p>1 money in the account.</p> <p>2 Q When the reimbursements came, can you relate</p> <p>3 what the conversations you had with Kevin were about? You</p> <p>4 say that they were about the distribution, any other topic?</p> <p>5 A No, I can't recall. It probably -- you know, I</p> <p>6 can't recall, but I would think that he said Alan told him</p> <p>7 that PJM is going to reimburse us for something.</p> <p>8 Q And you had no understanding, I gather -- what</p> <p>9 Transmission losses were?</p> <p>10 A I still don't have an understanding of what</p> <p>11 transmission losses are.</p> <p>12 Q Have you asked anybody to explain that to you?</p> <p>13 A No.</p> <p>14 Q How come?</p> <p>15 A My thought process is this is something that the</p> <p>16 exchange was doing, so my thought process was, hey, the</p> <p>17 exchange is sending this money. And so I was basically</p> <p>18 trained to be more a manager of what the bottom line number</p> <p>19 was, and not really fully ask questions regarding them.</p> <p>20 Q The exchange meaning PJM?</p> <p>21 A PJM, yes.</p> <p>22 (Sekelsky Exhibit 1 identified.)</p> <p>23 BY MR. TABACKMAN:</p> <p>24 Q If you would read that over and let me know when</p> <p>25 you are done.</p>	<p>1 how to allocate the income received?</p> <p>2 A I don't believe I did.</p> <p>3 Q Did you ever, take a look at the second page.</p> <p>4 Do you see the questions that Kevin asks Alan Chen,</p> <p>5 speaking specifically about in the paragraph that has but</p> <p>6 at the top, but I do have some questions for you.</p> <p>7 Looking at those three questions, did you ever,</p> <p>8 do you recall that you ever heard any answers to those</p> <p>9 questions, and if so what you heard?</p> <p>10 A No, I don't recall. I don't recall if I did get</p> <p>11 the answers or not.</p> <p>12 Q But whatever money came in you would have been</p> <p>13 responsible for booking it and at least book the</p> <p>14 allocations?</p> <p>15 A Yes.</p> <p>16 Q And were you responsible for making, for</p> <p>17 calculating how much ownership interest each person had</p> <p>18 during that relevant period, did Kevin put that on to you?</p> <p>19 A Yes.</p> <p>20 Q And you would then report that to him?</p> <p>21 A Yes, as well as the other owners.</p> <p>22 Q Okay. And then do you know who was responsible</p> <p>23 for then deciding what the precise dollar amounts would be,</p> <p>24 if you know?</p> <p>25 A I believe it fell on me to, how the allocations</p>

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<p>1 went.</p> <p>2 Q What would you do to determine that?</p> <p>3 A I, if I recall what I did was, it was different</p> <p>4 because there was two different years. There was one year</p> <p>5 that we have already filed, like we had already filed the</p> <p>6 tax return, and then one year that was still open. I don't</p> <p>7 have 100 percent accuracy on the 2008, because this was</p> <p>8 after the fact and after the 2008 tax year had been closed.</p> <p>9 So more than likely I believe any monies that were due from</p> <p>10 2008 I went back to January 1, 2009, investor percentages</p> <p>11 and allocated along those lines.</p> <p>12 And then 2009 basically recalculated the whole</p> <p>13 year based on if that income had been done in January, that</p> <p>14 income had been done in February, which each month there</p> <p>15 could have been some people investing more money in or</p> <p>16 withdrawing money out, which changed the investment</p> <p>17 percentages. So each month would have gotten its</p> <p>18 investment percentages.</p> <p>19 And along those lines we still probably had to</p> <p>20 pay Alan monies regarding, because I mean as I mentioned</p> <p>21 earlier, like on a 12 month period, like after 12 months we</p> <p>22 paid out the full amount. So if we looked like we got the</p> <p>23 money received from 2008, and it was already 2010 then we</p> <p>24 probably tried to go ahead and try to pay out all the 2008</p> <p>25 money.</p>	<p>1 this is on the bottom, the second part of in e-mail trail</p> <p>2 is an e-mail from Alan Chen to Kevin Gates, and in the</p> <p>3 second paragraph, it says, Attached also please find the</p> <p>4 weekly billing statement for POWHEF. POWHEF's weekly</p> <p>5 total PnL is \$2,127,379.99.</p> <p>6 Did you have any responsibility for checking the</p> <p>7 accuracy of that number in any way, was that part of your</p> <p>8 responsibilities?</p> <p>9 A I would say yes and no. The weekly statements</p> <p>10 were just that. They were basically estimates, and I never</p> <p>11 fully did anything, with the exception of when there were</p> <p>12 losses, being sure that there was enough money in the</p> <p>13 checking account that would get withdrawn. So outside of</p> <p>14 that, checking on the weekly statement was not what I would</p> <p>15 do because the PJM monthly statement would reconcile</p> <p>16 everything.</p> <p>17 On a weekly basis they would want it paid back</p> <p>18 to them or credited to us on a weekly basis, where the --</p> <p>19 where neither party would pay on the monthly total.</p> <p>20 Q I am not sure I understand.</p> <p>21 A So basically if the first week we made \$100,</p> <p>22 they would pay us \$100. The second week we lost \$200, we</p> <p>23 had already received \$100 so we would, but then we would be</p> <p>24 down \$100, so we would pay them the \$200 there, and then at</p> <p>25 the end of the month say we were up \$300 but we had already</p>
<p>Page 43</p> <p>1 Whereas, if you look on there, like say this was</p> <p>2 in December and we received that money in February, well, I</p> <p>3 had to calculate, hey, maybe 25 percent of his, we pay out</p> <p>4 now, and then we have got to wait for the other 12 month</p> <p>5 period to come.</p> <p>6 Q Kevin got it right when he said it was an</p> <p>7 headache for you?</p> <p>8 A That is what I do.</p> <p>9 (Sekelsky Exhibit 2 identified.)</p> <p>10 BY MR. TABACKMAN:</p> <p>11 Q If you need to take a break let me know; okay?</p> <p>12 A No, I am fine, thank you.</p> <p>13 BY MR. TABACKMAN:</p> <p>14 Q Mr. Sekelsky, if you will look that over, it has</p> <p>15 some of the same subjects.</p> <p>16 A I am ready.</p> <p>17 Q Just first looking at Exhibit 2, it appears to</p> <p>18 be an e-mail from Kevin Gates dated Wednesday, July 14,</p> <p>19 2010, to Greg Sekelsky, Larry Eiben, subject: Forward PJM</p> <p>20 billing statements paren (07/01/2010 to 07/07/2010; credit</p> <p>21 of \$2,127,379.99) HEEPF PJM weekly billing statement, and</p> <p>22 then POWHEF weekly billing statement, bearing the Bates</p> <p>23 numbers POW0004491 to 92; did I read that right?</p> <p>24 A Yes.</p> <p>25 Q Now, what I wanted to focus on is just there,</p>	<p>Page 45</p> <p>1 only paid them \$100, they would pay us \$400 to get to that</p> <p>2 point, so that we weren't basically paying the last number</p> <p>3 like monthly. It was like being paid weekly.</p> <p>4 It is kind of like an estimated tax payment,</p> <p>5 basically throughout the months. And I was more concerned</p> <p>6 about the monthly number than I was any of the weekly</p> <p>7 numbers because I knew there was a reconciliation by PJM on</p> <p>8 the monthly end basis.</p> <p>9 Q On the weekly basis would there actually be</p> <p>10 transfers of money into or out of a bank account?</p> <p>11 A Yes, and as I have mentioned previously, it is</p> <p>12 usually about a week and a half to two weeks after the</p> <p>13 statement date from PJM. Sometimes they would consolidate</p> <p>14 two weeks. Like if it was around the month end, sometimes</p> <p>15 they would consolidate two weeks into one payment.</p> <p>16 (Sekelsky Exhibit 3 identified.)</p> <p>17 BY MR. TABACKMAN:</p> <p>18 Q Okay. If you would look at Exhibit 3, please</p> <p>19 and it is an e-mail from Kevin Gates, Friday, August 6,</p> <p>20 2010 to Rich Gates, Eric Newman, Larry Eiben, Chao Chen,</p> <p>21 Frederick Mike, Sam Harris, Greg Sekelsky, power summary,</p> <p>22 and apparently it was a spreadsheet, an Excel spreadsheet,</p> <p>23 power summary 080610; did I read that right?</p> <p>24 A Yes.</p> <p>25 Q And it is Bates number is POW0004065, one page.</p>

Gregory M. Sekelsky Non-Public, Do Not Disclose
In Re: Investigation of PJM Up-Tos Congestion Transactions - May 8, 2012

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1 In this e-mail, here we have a reference in first line,
2 Alan made \$3,053,444.71 last month. Now, would you be
3 responsible for reconciling that number, is that something
4 that you would do?
5 A Yes.
6 Q Okay. And then, what would you base that on,
7 would you be looking, would there be transfers from PJM,
8 payments to the company or Powhatan?
9 A Yes, there would be a monthly statement from
10 PJM.
11 Q Okay.
12 A And from the monthly statement they would have a
13 P & L and then they would have like the overall monthly
14 statement, right. And then they would have a number of
15 what we, what the estimated payments to or from had been up
16 to that point, and then there would be like a reconciling
17 number of who owed what to who.
18 And then I would followup that that number that
19 the estimated payments that we did receive in our bank
20 account or paid from our bank account to reconcile that,
21 and then I would follow into the next month when that
22 payment got, that one number, reconciling number that we
23 needed to pay or get paid would come through in the
24 following month.
25 Q And then in the next line it says, it says -- we

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1 will let me keep the whole thing, We keep 80 percent of
2 that \$3,053,000 figure, we keep 80 percent of that. The
3 fund started July with about \$5.3 million, so after fees it
4 appreciated by about 50 percent last month. In your
5 experience with the funds, the proprietary funds, not the
6 hedge funds or the mutual funds, was that a large return
7 for a month?
8 A Yeah, I would think that that was a large
9 return.
10 Q Do you remember having any conversation with
11 anyone, Larry Eiben, Rich Gates, Kevin Gates about the fact
12 that it was a 50 percent return?
13 A No.
14 BY MR. OWENS:
15 Q To the best of your understanding why did Kevin
16 express the need to have a forced redemption?
17 A I would say from my understanding at that time
18 that we wanted to keep the fund at a certain size. So if
19 we ended up like making money then we would pull money out,
20 but there would also be times that we, after we would pull
21 money out, like saying we need to put this money in, don't
22 try and like put it in some illiquid asset or something,
23 have it available to come back in, but we want to try and
24 keep the fund at a certain level.
25 And my assumption is that is similar to why we

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1 do a hard close on our mutual fund, is that you just don't
2 want something too high that this I guess like for the
3 mutual fund it is the strategies don't work with too much
4 fund, because basically you are regulated by certain
5 things. So my assumption would have been it would have
6 been similar to that in energy, but I don't have anywhere
7 near 100 percent positive that that would be the case.
8 BY MR. TABACKMAN:
9 Q And you didn't ask any anybody?
10 A No.
11 (Sekelsky Exhibit 4 identified.)
12 BY MR. TABACKMAN:
13 Q Just to identify the document, it is POW00001889
14 through 1891, though the last two pages are strictly
15 confidentiality notices.
16 It is an e-mail chain. The top one is from Greg
17 Sekelsky on Friday, September 24th, to Kevin Gates, Re:
18 Articles on Powhatan's UTC trading; and have I read that
19 right?
20 A Yes.
21 Q Take a look at the second e-mail down on --
22 well, I take it you got, received from Kevin Gates on the
23 24th some articles about this about this investigation or
24 something related to this investigation; do you recall what
25 those were?

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1 A I assume we got something, but I do not recall
2 what was in that article.
3 Q Does the -- on the next e-mail up from the
4 bottom it says, you write, you sent to Kevin on Friday,
5 September 24, 2010 what does this mean? Were you concerned
6 about, do you recall being concerned about reading
7 something that in the attachments?
8 A I don't remember what was in the attachment, and
9 I don't remember what I meant by my comment what does this
10 mean? I am sure there was something in the article that I
11 was, that I read and just was curious about, and I have no
12 idea what that was.
13 Q And do you have any idea, can you tell me what
14 you talked about with Larry on Monday, which is what you
15 said that you were going to do?
16 A I said I would talk to Larry. I don't recall
17 talking to -- as I mentioned, I am in constant contact with
18 Larry like throughout days on business, different business
19 things. There is times that I have said that I will talk
20 to Larry that I just never talked to Larry. So it is very
21 possible that I never did talk to him about this, it is
22 possible that I did, I don't know.
23 There is times, there are many, many times that
24 I say that I am going to talk to Larry and I never get
25 around to talking to Larry about it.

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<p>1 Q Okay. And Larry is Larry Eiben --</p> <p>2 A Yes, sir.</p> <p>3 Q -- just to be clear.</p> <p>4 Why don't we take a break.</p> <p>5 (3:10 p.m. -- recess -- 3:26 p.m.)</p> <p>6 MR. TABACKMAN: We are back on the record. Mr.</p> <p>7 Owens.</p> <p>8 BY MR. OWENS:</p> <p>9 Q Greg, were you involved -- well, first off, do</p> <p>10 you remember when Powhatan was created?</p> <p>11 A I could give you an approximate time.</p> <p>12 Q May 2010 sound approximately right?</p> <p>13 A No, no, I want to say it was created in,</p> <p>14 probably created in 2009 sometime, may not have done any</p> <p>15 trading. From looking back at these e-mails I think our</p> <p>16 first glimpse of what Alan was doing was in Huntrise Energy</p> <p>17 Fund, and then we were going to start a new fund with him.</p> <p>18 So we might have started it and put some money in it in</p> <p>19 2009 and never did any new trading until May, but I think</p> <p>20 that is maybe accurate about when we first, I mean we might</p> <p>21 have started a year earlier, but we didn't really start</p> <p>22 trading until about that time.</p> <p>23 Q As CFO I assume you were involved in drawing up</p> <p>24 the paper work to create a new fund?</p> <p>25 A No, I mean I am CFO of TFS Capital. I was just</p>	<p>1 Q At any time did anyone, Kevin Gates, Rich Gates,</p> <p>2 Larry Eiben or anyone else, any of the other investors,</p> <p>3 whether under Huntrise or when, after Powhatan had been</p> <p>4 formed and funded, did anyone express concern to you of any</p> <p>5 possibility that any of this TLC money would have to be</p> <p>6 refunded?</p> <p>7 A What is the TLC?</p> <p>8 Q I am sorry, the Transmission Loss Credits?</p> <p>9 A Oh, okay. While the trading was going on, no.</p> <p>10 I think after I guess FERC's initial inquiry was, I think</p> <p>11 we were told to, any profits be ready, kind of keep liquid,</p> <p>12 but it was almost the same thing we had already kept liquid</p> <p>13 because as I mentioned earlier when we had that forced</p> <p>14 withdrawal, we might lose some money so it was basically</p> <p>15 keep that money liquid, but it wasn't like hey, we are</p> <p>16 going to have to repay this, but just keep this money</p> <p>17 liquid.</p> <p>18 Q Did you have any -- did you put, prior to the</p> <p>19 FERC inquiry did you put any money into a liability fund or</p> <p>20 a contingency fund --</p> <p>21 A No.</p> <p>22 Q -- and after the FERC inquiry and this --</p> <p>23 A No. I am assuming you meant me personally.</p> <p>24 Q Well, you, who was managing the finances of</p> <p>25 Powhatan?</p>
Page 51	Page 53
<p>1 an investor in Powhatan.</p> <p>2 Q Do you know why they decided to create a</p> <p>3 separate fund and to cease funding their trades with Chen</p> <p>4 through Huntrise?</p> <p>5 A I do not know the full reasoning behind it.</p> <p>6 Q But to the best of your recollection?</p> <p>7 A To the best of my recollection I do not know why</p> <p>8 we closed Huntrise Energy Fund to start Powhatan Energy</p> <p>9 Fund, if that was the case. I can understand why, like</p> <p>10 each individual energy trader would be in its own company,</p> <p>11 I can understand that, that goes back to my days as a CPA,</p> <p>12 in liability, I can understand, you know. We sell trucking</p> <p>13 companies to, like each truck should be its own LLC, but</p> <p>14 that it may or may not work out that way.</p> <p>15 So I never had any issues or thoughts of saying</p> <p>16 why are we doing this, because that just seems like a</p> <p>17 natural thing to do, from an investment standpoint for each</p> <p>18 trader. Why it switched from Huntrise Energy Fund to</p> <p>19 Powhatan, I don't know.</p> <p>20 Q When it switched to Powhatan did the Fund of</p> <p>21 Funds stop funding Powhatan -- strike that.</p> <p>22 To best of your knowledge did the Fund of Funds</p> <p>23 ever fund the Powhatan fund?</p> <p>24 A No, it did not. It was all individuals</p> <p>25 investors into Powhatan.</p>	<p>1 A Well, we were -- investors, like I oversaw like</p> <p>2 the values and valuations. So you would say that I had a</p> <p>3 little bit in that, but for how much money was needed, like</p> <p>4 to capitalize and continue investing, I think Kevin was</p> <p>5 more on to that aspect.</p> <p>6 Q So Kevin was managing the books of Powhatan?</p> <p>7 A No, I was managing the books, Kevin was managing</p> <p>8 probably how much money we needed to like on the books,</p> <p>9 with PJM, how much money that we needed kind of with them</p> <p>10 and the collateralized account as well.</p> <p>11 Q Okay.</p> <p>12 BY MR. TABACKMAN:</p> <p>13 Q Did you set up the books for Powhatan?</p> <p>14 A Yes, I mean I didn't set up the company itself</p> <p>15 or the legal documents, I didn't do anything like. Like</p> <p>16 from the initial subscriptions of the investors, I would be</p> <p>17 in charge of that.</p> <p>18 Q So the accounts, the accounting books?</p> <p>19 A Yes, full accounting I was in charge.</p> <p>20 Q Okay. You said I believe that you understood</p> <p>21 why each energy trader would be in its own company, have I</p> <p>22 understood --</p> <p>23 A Yes.</p> <p>24 Q -- I tried to repeat what you said right.</p> <p>25 A Yes.</p>

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In Re: Investigation of PJM Up-Tos Congestion Transactions - May 8, 2012

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<p>1 Q Were there other traders besides Alan Chen in 2 the Huntrise Energy Fund? 3 A I don't think so. I think that the trader that 4 I mentioned, Ken Parkhill might have been, but I don't 5 think he was. I think he had his own separate account. 6 Actually, no, he did have his own separate 7 account, Huntrise Fund of Funds, so I believe Alan was the 8 only one in Huntrise Energy Fund. 9 Q So it wasn't, setting up Powhatan wasn't to put 10 Alan into his own separate company as far as you know? 11 A Yes. 12 Q That was already done? 13 A Yes, that is correct. 14 Q But you don't recall any conversation as to why 15 we are going to stop having Fund of Funds no longer and 16 have Powhatan come into place instead of Huntrise Energy, 17 you don't recall any conversations about that? 18 A No, I mean as I mentioned earlier, there was a 19 time that we wanted to try and have ever one equalized in 20 Fund of Funds of investment. Then we kind stopped that 21 practice and that could have been kind of at that time of 22 getting Huntrise Energy Out of Huntrise Fund of Funds. 23 Now why energy was not kept open and Powhatan 24 Energy Fund was opened, I don't know. 25 BY MR. OWENS:</p>	<p>1 started cropping up individual companies that we would be 2 attempting. 3 Q So you were treating Fund of Funds as a kind of 4 seedbed for future investments, it was a testing platform? 5 A Yes, it was a testing platform. As I mentioned, 6 like we started that TFS Hedged Futures Fund, we started 7 testing with our own personal money if this type of trading 8 would work, and so of a few months we felt that it would 9 work, and then we moved to launch the mutual fund. 10 Q Did you invest in Powhatan as individually or 11 did you or did you create a company that invested in -- 12 A I invested individually. 13 Q To your knowledge did everyone else do the same? 14 A Well, yes, everyone individually. Some invested 15 through trusts like estate planning trusts, through 16 revocable trusts, not actually as an individual, but -- 17 that would be basically the same thing as an investor with 18 your own revocable trust, but for estate planning purposes 19 it was through a trust and not as an individual. 20 Q Who invested through a trust? 21 A I would say Kevin, Larry and Rich. 22 Q And do you recall if members of their households 23 invested in the fund separately or at all? 24 A No, I am fairly certain Powhatan was their 25 personal trusts.</p>
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<p>1 Q And the only entity that invested in Huntrise 2 was the Fund of Funds? 3 A Yes. 4 Q So no person invested in it directly, everybody 5 was indirectly invested? 6 A Yes, that is correct. 7 Q As an accountant did that concern you if a 8 liability is created in Huntrise that the Fund of Funds 9 would be liable for that liability? 10 A Not as an accountant. Like an investor, yes. 11 But that happens all the time with investment partnerships, 12 like everyone becomes liable at that point in time, and 13 that may have been a big reason why we started to get those 14 out there. There is no need, like Fund of Funds had a 15 different investment that had nothing to do with energy, 16 there was no need for the liability, and vice versa. There 17 was no need for the energy to get the liability of one of 18 the other investments, to fold that on, so that was I get 19 part of the reason of closing that down as the Fund of 20 Funds. 21 And as I mentioned, Fund of Funds is a, was kind 22 of like of us trying different strategies, and we were 23 trying to find out like energy trading was something that 24 we might be able to do, and then as we started fully 25 dissipating from investments from Fund of Funds, then we</p>	<p>1 BY MR. TABACKMAN: 2 Q Would there be discussions that you became aware 3 of about how, who should be the investor, a family member 4 versus one of the principals in TFS? 5 A No. 6 MR. TABACKMAN: I think we are done. Do you 7 have any questions, Mr. McSwain? 8 MR. McSWAIN: No questions. 9 MR. TABACKMAN: Thank you very much, 10 Mr. Sekelsky, we appreciate your driving up here. 11 We have no further questions. 12 (Whereupon, at 3:39 p.m., the deposition was 13 concluded.) 14 15 16 17 18 19 20 21 22 23 24 25</p>

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From: Kevin Gates [Kevin@TFSCapital.com]
Sent: Thursday, December 10, 2009 05:11:21 PM
To: Greg Sekelsky
Cc: Rich Gates; Eric Newman; Larry Eiben; Chao Chen
Subject: Fwd: Transmission Losses Credit (TLC) Refund Summary

Greg,

And, here's information on future refunds that Alan expects that HEF will receive for the other months. In summary, he anticipates that we'll get a little over \$400,000 sometime in the next 4 months for monies that were previously charged, but shouldn't have been.

Kevin

----- Forwarded message -----

From: Alan Chen <alan.chen@heepfund.com>
Date: Thu, Dec 10, 2009 at 4:01 PM
Subject: RE: Transmission Losses Credit (TLC) Refund Summary
To: Kevin Gates <Kevin@tfscapital.com>

Hi Kevin,

1. I talked to PJM settlement department and was told that the deadline for the refund is 4/30/2010 (PJM filed with FERC). "However, how a full historic month rerun bumps up against time and resource constraints relative to normal intra-month processing, will ultimately control the prior time frames which are actually able to be processed for inclusion on a given monthly invoice."

2. It is very difficult to give good estimates. But overall I think HUNT2 might get close to \$422,500.00 for the remaining months:

- 1) 5/1/08: \$11,000.00
- 2) 10/1/08: \$30,000.00
- 3) 11/1/08: \$67,000.00
- 4) 12/1/08: \$46,000.00
- 5) 1/1/09: \$186,000.00
- 6) 2/1/09: \$80,000.00
- 7) 3/1/09 (3/1/09 & 3/2/09): \$2,500.00

3. The fight to get the TLC back for UTC traders has been going on for quite a while. At present I have not heard anything could lead to any other major adjustments. I'll update you if I hear anything.

Thanks,
Alan Chen

-----Original Message-----

From: Kevin Gates [mailto:Kevin@TFSCapital.com]
Sent: Thursday, December 10, 2009 2:26 PM
To: alan.chen@heepfund.com
Subject: Re: Transmission Losses Credit (TLC) Refund Summary

Thanks for summarizing, Alan. I think that I now understand, and there's no need to talk.

But, I do have some questions for you:

1. When do you expect that we'll receive the other month's refunds?
2. Can you estimate how big they'll be? I know that you've said that they'd be smaller, but can you provide a more precise estimate?
3. Besides being reimbursed for transmission losses, do you foresee any other significant adjustments (either positive refunds, or monies owed) for prior months in 2010?

Reason why I ask is that this makes our administration of HEF a little difficult. HEF is owned by 6 individuals, and it has monthly liquidity. So, we've been adding / removing money from the fund each month, so that the fund's ownership was slightly different this month than it was last. And, last year, it was a good bit different than it is this month. So, this makes Greg's job of allocating gains a little difficult.

Thanks.
kevin

On Thu, Dec 10, 2009 at 11:16 AM, Alan Chen <alan.chen@heepfund.com> wrote:

Hi Kevin,

Attached please find the TLC refund summary report. We are still waiting the refunds for following months:

- 1) 12/1/07 (HEEPF Only, starting from 12/3/07)
- 2) 1/1/08 (HEEPF Only)
- 3) 2/1/08 (HEEPF Only)
- 4) 3/1/08 (HEEPF Only)
- 5) 4/1/08 (HEEPF Only)
- 6) 5/1/08 (Both HEEPF and HUNT2, but the refunds might go to TFS Capital account and I might need the number from you guys)
- 7) 10/1/08 (Both HEEPF and HUNT2)
- 8) 11/1/08 (Both HEEPF and HUNT2)
- 9) 12/1/08 (Both HEEPF and HUNT2)
- 10) 1/1/09 (Both HEEPF and HUNT2)
- 11) 2/1/09 (Both HEEPF and HUNT2)
- 12) 3/1/09 (Both HEEPF and HUNT2, but only for two days: 3/1/09 and 3/2/09)

I do think we are going to see lower refunds for the remaining months because the transmission losses rates (\$/Mwh) were lower.

Please call me at (936) 447-9108 if you have any questions.

Thanks,
Alan Chen

--

TFS Capital LLC
121 N Walnut St.
Suite 320
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Direct dial: 610.719.8361
Fax: 610.719.8376
www.tfscapital.com

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From: Kevin Gates [Kevin@TFSCapital.com]
Sent: Wednesday, July 14, 2010 01:19:01 PM
To: Greg Sekelsky; Larry Eiben
Subject: Fwd: PJM Weekly Billing Statements (07/01/2010 - 07/07/2010: Credit of \$2,127,379.99)
Attachments: HEEPF_PJM_WeeklyBillingStatement_20100701_20100707.pdf;
POWHEF_PJM_WeeklyBillingStatement_20100701_20100707.pdf

here's the updated weekly invoice from Alan. Really, we're up about 800K MTD. So, the incremental 1.3 is money that they are giving to us now, that they will ask for back when they calculate the end of month statement and send it to us in July

----- Forwarded message -----

From: **Alan Chen** <alan.chen@heepfund.com>
Date: Tue, Jul 13, 2010 at 9:12 AM
Subject: PJM Weekly Billing Statements (07/01/2010 - 07/07/2010: Credit of \$2,127,379.99)
To: Kevin@tfscapital.com

Hi Kevin,

Attached please find the weekly billing statement for HEEPF for the period of 07/01/2010 - 07/07/2010. HEEPF's total weekly PnL: \$106,228.46.

Attached please also find the weekly billing statement for POWHEF. POWHEF's total weekly PnL is \$2,127,379.99. Both the volumes and PnLs are matching pretty well with small mismatches to be socialized at the end of the month.

Please let me know if you have any questions.

Thanks,
Alan Chen

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TFS Capital LLC
121 N Walnut St.
Suite 320
West Chester, PA 19380
Direct dial: 610.719.8361
Fax: 610.719.8376
www.tfscapital.com

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From: Kevin Gates [Kevin@TFSCapital.com]
Sent: Friday, August 06, 2010 03:23:54 PM
To: Rich Gates; Eric Newman; Larry Eiben; Chao Chen; Frederick Mike; Sam Harris; Greg Sekelsky
Subject: power summary.
Attachments: Power_summary_080610.xls

Alan made \$3,053,444.17 last month. We keep 80% of that. The fund started July with about \$5.3 million. So, after fees, it appreciated by about 50% last month. Summary data is attached.

Other noteworthy things:

1. I estimate that Alan is up about \$350K MTD. I expect to do another forced redemption at month-end.
2. There's reason to believe that our days are limited with this fund, as there is pending regulatory changes that may eliminate Alan's trade. This would be a huge disappointment.
3. I'm still talking with a group of other traders who want to work with TFS to also trade electricity for us. Not sure how things will play out with them, but it's POSSIBLE that we'll have another electricity fund up and running before the end of the year.

Kevin

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From: Greg Sekelsky [Greg@TFSCapital.com]
Sent: Friday, September 24, 2010 12:26:00 PM
To: Kevin Gates
Subject: Re: articles on Powhatan's UTC trading.

I'll just talk to Larry on Monday.

Thanks

On 9/24/10, Kevin Gates <Kevin@tfscapital.com> wrote:
> I don't understand your question. Call me if you want to discuss. Or, ask
> Larry - He knows the status of things as well as I do.
>
>
> On Fri, Sep 24, 2010 at 12:16 PM, Greg Sekelsky <Greg@tfscapital.com> wrote:
>
>> What does this mean?
>>
>> On 9/24/10, Kevin Gates <Kevin@tfscapital.com> wrote:
>> > Attached are articles from the industry's journals. Many of them make
>> for
>> > an interesting read.
>> >
>> > Of course, please keep this confidential.
>> >
>> >
>> > --
>> > TFS Capital LLC
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>>
>> Greg Sekelsky, CPA
>> _____
>>
>> TFS Capital LLC

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Greg Sekelsky, CPA

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