

1

Ivy Gibson

From: Jon Wellinghoff
Sent: Monday, March 12, 2012 4:34 PM
To: Norman Bay
Cc: James Pederson; Larry Gasteiger
Subject: Re: Energy Alert: FERC Orders Record \$245 Million Enforcement Settlement

This is good. Thank you Norman. [REDACTED]

Jon

Sent from my iPad



On Mar 12, 2012, at 4:29 PM, "Norman Bay" <Norman.Bay@ferc.gov> wrote:

Jon,

This is how one law firm is advising its clients. [REDACTED]

Best,
NB

From: Leonard, Street and Deinard [<mailto:rsvp@leonardnews.com>]
Sent: Monday, March 12, 2012 3:52 PM
To: David Applebaum
Subject: Energy Alert: FERC Orders Record \$245 Million Enforcement Settlement

	ALERT	
	ENERGY	March 12, 2012

HIGHLIGHTS

FERC reached a record \$245 million enforcement settlement with Constellation Energy Commodities Group.

Enforcement action resolves allegations that CEG violated FERC's anti-market

FERC Orders Record \$245 Million Enforcement Settlement; Important Lessons Will Help Companies Avoid FERC Enforcement Action



By [Robert C. Fallon](#)

On March 9, 2012, FERC announced that it had reached a record \$245 million enforcement settlement with Constellation Energy Commodities Group. The enforcement settlement resolves allegations that CEG violated FERC's anti-market manipulation rules by entering into a series of virtual and physical transactions in order to bolster its position

manipulation rules and offers four key lessons for the industry:

1. Don't play one market against another economically.
2. Senior management will be held accountable.
3. Tell the truth when questioned.
4. Market manipulation will be uncovered.

USEFUL LINKS

Energy

Federal Energy
Regulatory
Commission

in the Contracts for Differences market.

FERC alleged that CEG entered into those transactions for the purpose of moving the price in the Day-Ahead market, primarily in New York. The transactions themselves were unprofitable, but the combination of the unprofitable transactions with Contracts for Differences that settled off the Day-Ahead price produced a profitable combination, albeit one that FERC found violated the agency's anti-market manipulation rules. The trades in question occurred in 2007 and 2008. Applying its Penalty Guidelines, FERC and CEG reached a \$245 million settlement to settle all claims. The settlement includes a \$135 million civil penalty and requires that CEG disgorge \$110 million in unjust profits.

Lessons Learned for Other Companies

This record enforcement action presents several lessons for other companies that will help them avoid FERC enforcement penalties.

1. Do not enter into transactions that do not make economic sense in that market with the purpose of seeking to benefit an economic position in other markets. FERC, courts and other federal agencies have long recognized that trading to artificially lower or increase prices in one market in order to derive a financial benefit in the same or different market is a form of market manipulation. Market participants must bid consistent with supply/demand fundamentals.
2. Senior management has an obligation to proactively (1) monitor for market manipulation and (2) pursue concerns once brought to their attention. CEG did not monitor profit and loss concentrations in virtual transactions, review and document the purpose of those transactions and had no system in place to monitor trader communication for irregularities or illegalities. Moreover, when CEG's Risk Management Group brought its concerns to upper management, those concerns were not properly addressed.
3. Tell the full truth when transactions are challenged. CEG told the NYISO market monitor that the virtual transactions were independent of their CFD positions and entered into based on market fundamentals, assertions belied by the facts subsequently uncovered.
4. Market manipulation will be uncovered. Allegations of market manipulation come to FERC's attention in a variety of ways. The investigation of CEG began when FERC Enforcement was contacted anonymously by parties who questioned whether CEG was manipulating

prices.

Some of the funds collected from CEG's penalty will be used by FERC to assist the recently formed Division of Analytics and Surveillance and to that end the six independent system operators will each receive \$1 million to purchase computer hardware and software to improve their surveillance and analytic capabilities.

CONTACT US

For a copy of the CEG settlement or to discuss how this could impact your company or business, contact Bob Fallon or your usual Leonard, Street and Deinard contact.



Bob Fallon
202.346.6910
fallonr@leonard.com

Go [here](#) to leave this mailing list or to modify your email profile.

This Alert was intended for David A. Applebaum Esq. at david.applebaum@ferc.gov. If you received this message as a forward, and would like to subscribe to our electronic communications, please click [here](#).

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From: [Jon Wellinghoff](#)
 To: [James Pederson](#)
 Subject: Re: NERC's Hiring of Charles Berardesco
 Date: Friday, May 11, 2012 11:19:04 AM

2

Thanks.

Sent from my iPhone

On May 11, 2012, at 10:01 AM, "James Pederson" <James.Pederson@ferc.gov> wrote:

[REDACTED]

[REDACTED]

From: Jon Wellinghoff
Sent: Thu 5/10/2012 8:16 PM
To: James Pederson
Subject: Fwd: NERC's Hiring of Charles Berardesco

Who is this person?

Sent from my iPhone

Begin forwarded message:

From: Eric Morris <ericsmorris@hotmail.com>
Date: May 10, 2012 5:03:05 PM EDT
To: <jon.wellinghoff@ferc.gov>, <cheryl.lafleur@ferc.gov>, <philip.moeller@ferc.gov>, <john.norris@ferc.gov>, <michael.bardee@ferc.gov>, <joseph.mcclelland@ferc.gov>, <norman.bay@ferc.gov>, <kimberly.bose@ferc.gov>, <david.cook@nerc.net>, <gerry.cauley@nerc.net>, <john.moot@skadden.com>, <gerald.richman@skadden.com>, <sally.richardson@skadden.com>, <omacbride@schiffhardin.com>
Subject: RE: NERC's Hiring of Charles Berardesco

Instead of lining the pockets of Skadden Arps lawyers concerning FA11-21, maybe both organizations need to conduct a joint peer reviewable study of whether reliability has been demonstrably improved by the rules emanating after these "high end" dinners are consumed. Of course, I am sure

NERC (and then me through my electric bill) will end "eating" the cost of paying Skadden to read this email as well. Quite delicious.

Seriously, are you two really going to "litigate" an audit? Now it makes sense why NERC hired someone as GC who may have no love for FERC. As it turns out, Messrs. Moot and Richman are part of the same profitable revolving door between regulator and industry.

From: ericsmorris@hotmail.com
To: jon.wellinghoff@ferc.gov; cheryl.lafleur@ferc.gov;
philip.moeller@ferc.gov; john.norris@ferc.gov;
michael.bardee@ferc.gov; joseph.mcclelland@ferc.gov;
norman.bay@ferc.gov; kimberly.bose@ferc.gov;
david.cook@nerc.net; gerry.cauley@nerc.net
Subject: NERC's Hiring of Charles Berardesco
Date: Wed, 25 Apr 2012 09:54:03 -0700

Dear Ladies and Gentlemen:

Isn't it a bit disconcerting to you that just over a month after Charles Berardesco signed the largest fine in FERC history on behalf of his former employer he is hired as the general counsel for your lead regulatory partner? I know nothing about this person (maybe he was a whistleblower or very cooperative in the investigation and told his former boss not to speak out publicly about the settlement the way he did) but on the face of it this seems very odd.

<http://www.nerc.com/fileUploads/File/News/Berardesco23APR12.pdf>

<http://ferc.gov/enforcement/civil-penalties/actions/138FERC61168.pdf>

<http://www.reuters.com/article/2012/03/15/us-utilities-constellation-ferc-idUSBRE82B1E120120315>

I am becoming more baffled by the actions/inactions of your junior partners in reliability. That sounds as far-fetched as say your former chairperson taking a job with the previously most-fined entity you regulate.

I guess I must interpret that holding senior managers of "all companies" accountable for monitoring compliance includes ensuring they receive a compliance job at one of your primary regulators soon thereafter.

Sincerely,

Eric S. Morris

From: [Jon Wellinghoff](mailto:Jon.Wellinghoff@ferc.gov)
To: [James Pederson](mailto:James.Pederson@ferc.gov)
Subject: Fwd: NERC's Hiring of Charles Berardesco
Date: Thursday, May 10, 2012 8:16:49 PM

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Sent from my iPhone

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To: jon.wellinghoff@ferc.gov; cheryl.lafleur@ferc.gov; philip.moeller@ferc.gov; john.norris@ferc.gov; michael.bardee@ferc.gov; joseph.mcclelland@ferc.gov; norman.bay@ferc.gov; kimberly.bose@ferc.gov; david.cook@nerc.net; gerry.cauley@nerc.net
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3

Ivy Gibson

From: Jon Wellinghoff
Sent: Monday, May 14, 2012 5:29 PM
To: Norman Bay
Subject: Re: CCG States' Fund matter in the news (NY)

Thanks Norman.

Sent from my iPhone

On May 14, 2012, at 4:41 PM, "Norman Bay" <Norman.Bay@ferc.gov> wrote:

FYI: AARP, Consumers Union, and NYPIRG advocate that NY's share of the Constellation settlement be used for weatherization and energy assistance programs, rebates for energy efficient appliances, and funding for a consumer advocate.

From: [REDACTED]
Sent: Monday, May 14, 2012 3:11 PM
To: Norman Bay; Larry Gasteiger; Larry Parkinson; David Applebaum; Lee Ann Watson; [REDACTED]
Cc: [REDACTED]
Subject: CCG States' Fund matter in the news (NY)

<http://www.poststarnews.com/lifestyle/x1310212658/AARP-Consumers-Union-and-NYPIRG-Urge-Agencies-Requesting-Energy-Settlement-Funds-to-Include-Relief-for-Consumers>

[REDACTED]

*Federal Energy Regulatory Commission
Office of Enforcement
Division of Investigations
888 First Street, NE
Room 51-57
Washington, DC 20426*

[REDACTED]
(202)208-0057 (fax)

B2
4

Norman Bay

From: [REDACTED]
Sent: Friday, March 09, 2012 6:27 PM
To: Norman Bay; Larry Gasteiger; Larry Parkinson; Lee Ann Watson; David Applebaum; [REDACTED]
Subject: Press Guidance on Constellation Energy Commodities Group.doc
Attachments: Press Guidance on Constellation Energy Commodities Group.doc

Please see the attached draft of press guidance on the CCG settlement order. This is a work in progress, so all comments, additions, suggestions, re-writes are welcome and encouraged.



Press Guidance
on Constellatio...

Congrats everyone and have a good weekend.

[REDACTED]
[REDACTED]
Federal Energy Regulatory Commission
Office of Enforcement
Division of Analytics and Surveillance



Interest Bearing Account

Norman Bay <Norman.Bay@ferc.gov>

Mon, Mar 12, 2012 at 1:59 PM

To: Anton Porter <Anton.Porter@ferc.gov>

Cc: Larry Gasteiger <Larry.Gasteiger@ferc.gov>, Lee Ann Watson <LeeAnn.Watson@ferc.gov>, Larry Parkinson <Larry.Parkinson@ferc.gov>

Anton, now that Constellation has been settled, we will need to tell Exelon where to wire the disgorgement funds. Have you been able to set up an interest bearing account? How quickly can this be done? It would be quite helpful to have such an account going forward.

Best,

NB

Anton Porter <Anton.Porter@ferc.gov>

Mon, Mar 12, 2012 at 2:56 PM

To: Norman Bay <Norman.Bay@ferc.gov>

Cc: Larry Gasteiger <Larry.Gasteiger@ferc.gov>, Lee Ann Watson <LeeAnn.Watson@ferc.gov>, Larry Parkinson <Larry.Parkinson@ferc.gov>

Classification: Controlled Unclassified Information

Norman,

I am still working through Treasury and OMB to get such an account established. I have a meeting scheduled tomorrow with Treasury officials and will have a better sense of timing following this discussion, Treasury typically takes about 30-45 days to establish new accounts. However, we still have full use of the existing non-interest bearing account. I realize this is not optimal but wanted to remind you of this capability. I have attached remittance instructions for this account for your reference.

<<Payment Instructions - Disgorged Profit Settlements.doc>>

Anton C. Porter

Deputy Chief Financial Officer

Federal Energy Regulatory Commission

888 First St. NE

O: (202) 502-8728

M: (202) 380-8740

F: (202) 219-2873

From: Norman Bay

Sent: Monday, March 12, 2012 1:59 PM

To: Anton Porter

Cc: Larry Gasteiger; Lee Ann Watson; Larry Parkinson
Subject: Interest Bearing Account

Anton, now that Constellation has been settled, we will need to tell Exelon where to wire the disgorgement funds. Have you been able to set up an interest bearing account? How quickly can this be done? It would be quite helpful to have such an account going forward.

Best,

NB

 **Payment Instructions - Disgorged Profit Settlements.doc**
31K

Norman Bay <Norman.Bay@ferc.gov>

Fri, Mar 16, 2012 at 6:21 PM

To: 

Cc: Larry Gasteiger <Larry.Gasteiger@ferc.gov>, Larry Parkinson <Larry.Parkinson@ferc.gov>, Lee Ann Watson <LeeAnn.Watson@ferc.gov>

FYI.

From: Anton Porter
Sent: Monday, March 12, 2012 2:57 PM
To: Norman Bay
Cc: Larry Gasteiger; Lee Ann Watson; Larry Parkinson
Subject: RE: Interest Bearing Account

Classification: Controlled Unclassified Information

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31K


To: Norman Bay <Norman.Bay@ferc.gov>

Fri, Mar 16, 2012 at 6:24 PM

Norman,

Do you have an email w Kathleen's email address and physical address so I can use the information for the letter?


Thank you,





Federal Energy Regulatory Commission
Office of Enforcement
Division of Investigations
888 First Street, NE
Room 51-57
Washington, DC 20426



From: Norman Bay
Sent: Friday, March 16, 2012 6:22 PM
To: 
Cc: Larry Gasteiger; Larry Parkinson; Lee Ann Watson
Subject: FW: Interest Bearing Account

FYI.

From: Anton Porter
Sent: Monday, March 12, 2012 2:57 PM
To: Norman Bay
Cc: Larry Gasteiger; Lee Ann Watson; Larry Parkinson
Subject: RE: Interest Bearing Account

Classification: Controlled Unclassified Information

Norman.

Information withheld pursuant to FOIA Exemptions 5, 6, & 7E ³¹

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Best,

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Norman Bay <Norman.Bay@ferc.gov>

Fri, Mar 16, 2012 at 6:54 PM

To: [REDACTED]

Her email address is Kathleen.Barron@ExelonCorp.com.

Her physical address is their DC office. I don't have it but I assume it can be found on the internet.

Thanks, [REDACTED]. And have a good weekend.

From: [REDACTED]
Sent: Friday, March 16, 2012 6:25 PM
To: Norman Bay
Subject: RE: Interest Bearing Account

Norman,

Do you have an email w Kathleen's email address and physical address so I can use the information

for the letter?

Thank you,

[REDACTED]
[REDACTED]
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Norman Bay <Norman.Bay@ferc.gov>

Fri, Mar 16, 2012 at 6:54 PM

To: [REDACTED]

Make that Kathleen.Barron@exeloncorp.com.

From: [REDACTED]
[REDACTED] 16, 2012 6:25 PM
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Norman,

Do you have an email w Kathleen's email address and physical address so I can use the information for the letter?

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[REDACTED]

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To: Norman Bay <Norman.Bay@ferc.gov>

Fri, Mar 16, 2012 at 6:54 PM

Okay, I'll look around.

Thank you.

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[REDACTED]

From: Norman Bay
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Cc: Larry Gasteiger <Larry.Gasteiger@ferc.gov>, Larry Parkinson <Larry.Parkinson@ferc.gov>, Lee Ann Watson <LeeAnn.Watson@ferc.gov>

[REDACTED]
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Lee Ann Watson <LeeAnn.Watson@ferc.gov>

Fri, Mar 16, 2012 at 7:41 PM

To: [REDACTED], Norman Bay <Norman.Bay@ferc.gov>

Cc: Larry Gasteiger <Larry.Gasteiger@ferc.gov>, Larry Parkinson <Larry.Parkinson@ferc.gov>

Same. Anton directs it from there.

From: [REDACTED]

Sent: Friday, March 16, 2012 07:23 PM

To: Norman Bay

Cc: Larry Gasteiger; Larry Parkinson; Lee Ann Watson

Subject: RE: Interest Bearing Account

[REDACTED]

[REDACTED]

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[REDACTED]

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interest bearing account. I realize this is not optimal but wanted to remind you of this capability. I have attached remittance instructions for this account for your reference.

<< File: Payment Instructions - Disgorged Profit Settlements.doc >>

Anton C. Porter

Deputy Chief Financial Officer

Federal Energy Regulatory Commission

888 First St. NE

O: (202) 502-8728

M: (202) 380-8740

F: (202) 219-2873

From: Norman Bay
Sent: Monday, March 12, 2012 1:59 PM
To: Anton Porter
Cc: Larry Gasteiger; Lee Ann Watson; Larry Parkinson
Subject: Interest Bearing Account

Anton, now that Constellation has been settled, we will need to tell Exelon where to wire the disgorgement funds. Have you been able to set up an interest bearing account? How quickly can this be done? It would be quite helpful to have such an account going forward.

Best,

NB

Mon, Mar 19, 2012 at 11:17 AM

I found a physical address on our website but I am going to confirm w Kathleen by email.

[REDACTED]
Federal Energy Regulatory Commission
Office of Enforcement
Division of Investigations
888 First Street, NE
Room 51-57
Washington, DC 20426

From: Norman Bay
Sent: Friday, March 16, 2012 6:55 PM
To: [REDACTED]
Subject: RE: Interest Bearing Account

Make that Kathleen.Barron@exeloncorp.com.

Information withheld pursuant to FOIA Exemptions 5, 6, & 7E ³¹

From: [REDACTED]
Sent: Friday, March 16, 2012 6:25 PM
To: Norman Bay
Subject: RE: Interest Bearing Account

Norman,

Do you have an email w Kathleen's email address and physical address so I can use the information for the letter?

Thank you,

[REDACTED]

[REDACTED]

Federal Energy Regulatory Commission
Office of Enforcement
Division of Investigations
888 First Street, NE
Room 51-57
Washington, DC 20426

[REDACTED]

From: Norman Bay
Sent: Friday, March 16, 2012 6:22 PM
To: [REDACTED]
Cc: Larry Gasteiger; Larry Parkinson; Lee Ann Watson
Subject: FW: Interest Bearing Account

FYI.

From: Anton Porter
Sent: Monday, March 12, 2012 2:57 PM
To: Norman Bay
Cc: Larry Gasteiger; Lee Ann Watson; Larry Parkinson
Subject: RE: Interest Bearing Account

Classification: Controlled Unclassified Information

Norman.

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Best,

NB



FERCMAIL

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6

Funds from Constellation Settlement/IN12-7-000

Mon, Mar 19, 2012 at 4:10 PM

To: Doug Foster <Doug.Foster@ferc.gov>

Cc: Anton Porter <Anton.Porter@ferc.gov>, Norman Bay <Norman.Bay@ferc.gov>, Larry Gasteiger <Larry.Gasteiger@ferc.gov>, Larry Parkinson <Larry.Parkinson@ferc.gov>, Lee Ann Watson <LeeAnn.Watson@ferc.gov>, [REDACTED]

Hello Doug,

Per our discussion this morning, I sent the following instructions to Exelon for payment of disgorgement and penalties in this matter:

<<Payment Instructions.doc>>

They will pay \$104,000,000 in disgorgement per the above instructions. Those monies will be placed in a fund, the distributions from which will be administered by one of the Commission's ALJ's.

They will also pay \$135,000,000 in penalties per the above instructions.

I have told them that they can deposit both in one lump sum.

I also told them that they can confirm their payment with Norman Richardson.

For your information, the Docket No. in this case is IN12-7-000.

Thank you again Doug.

Please feel free to call me if you have any questions.

Best,

[REDACTED]

[REDACTED]

Federal Energy Regulatory Commission
Office of Enforcement
Division of Investigations
888 First Street, NE
Room 51-57
Washington, DC 20426

[REDACTED]

[REDACTED]

Payment Instructions.doc
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