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FERC's Bay recuses himself from manipulation probe

Washington, 22 October 2014 (Argus) — The US government's probe into whether market participants manipulated the PJM Interconnection's up-to-congestion market will go on without the involvement of Federal Energy Regulatory Commission (FERC) member Norman Bay.

Bay yesterday recused himself from all of FERC's ongoing investigations into alleged manipulation of PJM's up-to-congestion market, including a four-year probe into trading activity by the firm Powhatan Energy Fund. Bay ran FERC's Office of Enforcement throughout that investigation and only recently left that office to become a commissioner.

Bay's action comes about two weeks after Powhatan's attorneys requested the recusal, citing past emails written by Bay that they said showed he had already "pre-judged" whether the trades at issue qualified as manipulative conduct.

Bay in that email said he viewed the facts of the case differently than Powhatan.

FERC enforcement staff have alleged that Powhatan and other firms made "wash trades" in the up-to-congestion market that entailed no real risk but were solely designed to collect millions of dollars in refunds. Up-to congestion trades are bets by market participants on where transmission congestion will occur.

Powhatan has defended its actions, arguing the trades were allowed under market rules at the time and had a legitimate purpose and risks.

Bay in his decision yesterday noted that recusals are typically made when an item comes before the commission's members but said that "under the circumstances" he would provide notice of his recusal in all of the up-to-congestion investigations.

Bay has been expected to recuse himself from some of the investigations he oversaw in the five years he led the commission's enforcement office. During confirmation hearings this summer, Bay said he would recuse himself based on the "individual circumstances" of each case.

Powhatan managing member Kevin Gates told Argus that the language Bay offered during his confirmation hearings was "pretty vague and ambiguous," prompting the request for the recusal. He said Bay's decision to recuse himself from the case was the "right thing for him to do."

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