

## Hedge fund takes aim at FERC nominee Bay

By DARIUS DIXON (/REPORTERS/?ID=6) | 4/10/14 5:20 PM EDT

Two brothers that run a Pennsylvania-based hedge fund have officially declared war on President Barack Obama's latest pick to lead FERC.

The brothers, who are Democrats, argue that Norman Bay, in his current position as the chief of FERC's enforcement office, picked the fight with them.

Powhatan Energy Fund LLC, run by Kevin Gates and his twin brother, Rich, has been under investigation by Bay's enforcement operation since 2010 for alleged manipulation in the PJM market, which includes several Midwestern and Mid-Atlantic states.

The brothers have disputed FERC's preliminary finding that a trader working with the firm made \$4.7 million in profit through manipulative activities. And last month, they made the unusual move of disclosing the investigation to the public, and soliciting comments from former FERC, SEC and CFTC officials who back their position.

The website they launched to defend themselves, [ferclitigation.com](http://ferclitigation.com) (<http://ferclitigation.com>), contains video and written statements that contend that Alan Chen, a trader who worked with Powhatan, had done nothing illegal.

"To be clear, this isn't a fight we started," Kevin Gates said in an email to POLITICO Thursday. "But, given this is the situation we are in, we felt a civic and moral responsibility to expose FERC Office of Enforcement's practices which are unfair and un-American."

All final enforcement decisions have to be voted on by the FERC leadership, but if the agency doesn't reverse the preliminary findings of the enforcement office, Powhatan seems prepared to fight the agency over the long term.

"We won't be bullied into a settlement," Gates said.

FERC said it can neither confirm nor deny the existence of any investigation.

The Gates's had initially launched their counteroffensive without expressly pointing out that their efforts to undermine Bay's nomination, which the Senate Energy and Natural Resources Committee is still reviewing.

But now the brothers have also been pressing their case with Senate staffers on both sides of aisle in recent weeks, although it's unclear whether their case will come up during Bay's nomination hearing.

Their effort has targeted Bay's biggest strength: sniffing out bad behavior in energy markets.

Bay, whose views on energy policy are largely a (<https://www.politicopro.com/story/financialservices/?id=30390>)mystery (<https://www.politicopro.com/story/financialservices/?id=30390>), has extracted hundreds of millions of dollars (<https://www.politicopro.com/energy/whiteboard/?wbid=25259>) in civil penalties and other settlements from Wall Street firms like JPMorgan and Deutsche Bank for energy market manipulation. Barclays Plc, which is facing a \$435 million civil fine as well as other penalties from FERC, is challenging the agency's decision in

court.

When Bay was nominated earlier this year, Sen. Sherrod Brown (D-Ohio), a senior member of the Banking Committee, said he hoped (<https://www.politicopro.com/financialservices/whiteboard/?wbid=28153>)the appointment would “send a message that rigging markets at the expense of customers and end users will not be tolerated.”

But the Gates brothers aren't exactly Obama bashers: Their political donations are all blue.

Kevin Gates gave \$2,300 to Obama's 2008 campaign and \$2,400 to Pennsylvania Democratic Senate hopeful Rep. Joe Sestak in 2010, according to filings with the Federal Election Commission. He also chipped in \$250 to late-night satirist Stephen Colbert's group Americans for a Better Tomorrow, Tomorrow in 2011.

Similarly, Rich Gates gave Sestak's campaign \$2,000 in 2010 and \$250 to Jim Webb in 2006 for his Senate run in Virginia.

Michael Lewis' new book about Wall Street, “Flash Boys” also cites Rich Gates for calling out a Goldman Sachs trading practice to the Securities and Exchange Commission in 2010 after Gates discovered a new whistleblower provision in the Dodd-Frank financial reform legislation.

Powhatan is also a vehicle for the grievances bubbling up from energy traders who feel they're being strong-armed by FERC's enforcement work, and some have sent the brothers notes of encouragement and offers of financial assistance.

“Powhatan is in a unique situation,” Kevin Gates said in his email. The firm doesn't own power plants or other assets regulated by FERC, so they have little of the fear that may have cowed others in the industry into accepting punishments for alleged bad behavior.

“We are outsiders to the power industry and aren't beholden to FERC; our livelihood is not dependent upon FERC-regulated assets, and they have no leverage over us. But, we are well-capitalized and have the facts and law on our side,” he added.