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Energy

Powhatan Energy Fund Fires Back At FERC Over Market Manipulation Charge

A Philadelphia investment firm will continue to resist a settlement offer from the Federal Energy Regulatory Commission regarding market manipulation charges, a company official said.

And as FERC's market enforcement actions come under increasing scrutiny, two Texas congressmen said they are looking at introducing ''reform'' legislation.

Richard Gates, cofounder of the Powhatan Energy Fund LLC, told Bloomberg BNA that the firm plans to take the dispute a step further now that FERC has issued a notice of alleged violations involving trades in the wholesale electricity markets (152 DER A-14, 8/7/14).

''We were disappointed that the enforcement staff elected to issue that notice,'' Gates said in an Aug. 7 interview. ''We plan to fight it vigorously.''

Brady Requests Coming. The hedge fund plans to submit so-called Brady requests to FERC that would require the commission to turn over any documents, communications and information that might exonerate the firm from the market manipulation charges.

Under a landmark Supreme Court case, the prosecution is obligated to provide material, exculpatory evidence to the defense (*Brady v. Maryland,* 373 U.S. 83, 1963).

''This gives us a chance to ask questions,'' Gates said.

''For four years we've never been able to ask questions,'' Gates said. ''Now we can be on the offense. We're excited about that opportunity.''

Gates said FERC has offered to negotiate a settlement, but the small, privately held firm has resisted. ''It's on the table, but we've never really considered it an option,'' Gates said.

The firm has been in business since 1997 and has not conducted any manipulative trading, Gates said.

Revisions Needed, Barton Says. Rep. Joe Barton (R-Texas) said he plans to introduce a ''reform package'' in the next Congress to address complaints that energy market participants are being forced into settlements by FERC.

Congress gave FERC greatly expanded authority over electricity and natural gas markets in the Energy Policy Act of 2005 (Pub. L. 109-58), including the power to impose fines of up to $1 million per violation per day.

''That authority has been used in a way that many people think has not been normal due process,'' Barton said at a July 29 congressional oversight hearing on FERC policies (146 DER A-1, 7/30/14).

Barton said he wants ''to put in a reform package to provide more transparency and more of a balanced playing field'' in response to the investigations and enforcement actions that have occurred in the last four years, referring to the tenure of then-enforcement director Norman Bay.

Bay was sworn in Aug. 4 as a FERC commissioner and is expected to be designated chairman by President Barack Obama in April.

Compliance Office Proposed. At the same hearing, Rep. Gene Green (D-Texas) said he believes FERC should establish a compliance office that would help companies understand market rules and avoid enforcement actions that could lead to fines and penalties.

''I'm concerned we could use some more transparency on enforcement,'' Green told the commissioners.

Bay defended the commission's actions, saying there is a no-action letter process where companies can submit questions to FERC on whether there would be a violation if an entity engages in a certain form of conduct.

Under Bay's leadership, the commission has launched a number of high-profile investigations.

Constellation Energy settled for $245 million. JP Morgan Venture Energy Corp. settled for $410 million. Barclays Bank PLC and four traders are contesting a possible $488 million fine and disgorgement.

Since 2007, FERC has assessed $600 million in civil penalties and $300 million in disgorgement of profits, according to the commission's website.

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