

LSE Capital Management LLC

Suzanne Tilleman
Dean, College of Business and Search Committee Chair
Gallagher Business Building
32 Campus Drive
Missoula, Montana 59812
Electronic Mail: suzanne.tilleman@business.umt.edu

SENT VIA ELECTRONIC MAIL

April 19, 2022

Dear Dean Tilleman,

LSE Capital Management LLC (“LSE”) is a small business that understands the University of Montana is considering three candidates to be the dean of the Blewett School of Law. LSE assumes you are interested in opinions on the candidates so you can make an informed hiring decision. While LSE won’t offer feedback on two of the candidates, it has thoughts about Mr. Norman Bay it will share.

LSE’s opinion of Mr. Bay, contained herein, is based on litigation with the Federal Energy Regulatory Commission (“FERC”) for business activity that took place in 2010. Mr. Bay’s Office of Enforcement initiated this multi-decade long relationship when it accused Powhatan Energy Fund LLC (“Powhatan”) of market manipulation. LSE was the managing member of Powhatan.

Powhatan worked closely with Mr. Bay and the individuals he led for an extended period of time. Based on these interactions, the LSE does not believe Mr. Bay should lead your prestigious law school.

As background, the market manipulation allegations made no sense to Powhatan, so it created a website at www.ferclitigation.com to provide transparency on the matter. Among other things, the site includes the opinions of twelve experts who have evaluated FERC’s allegations and deemed them to be misguided. These opinions are summarized in a concise video on the website’s homepage which LSE encourages you to watch. As a result of Powhatan’s response, it received extensive nationwide publicity, including an Op Ed titled **“Reining in Prosecutorial Misconduct”** which was published in the Wall Street Journal.¹ This author of the piece is an Associate Dean and Executive Director of the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School.

Much of the publicity Powhatan received is accessible on the site. LSE encourages you to review it. LSE expects much more publicity may be forthcoming and expects that the site will be updated accordingly.

As the Director of the Office of Enforcement at FERC from 2009-2014, Mr. Bay was involved in the initial pursuit of Powhatan. He also oversaw and was intimately involved in the investigation. Before www.ferclitigation.com went public in 2014, one of Powhatan’s experts met with Mr. Bay in an attempt to have a meaningful dialogue. According to the contemporaneous notes, Mr. Bay and his team were “clearly not interested in what [the expert] had to say”, ignored Powhatan’s pleas for a discussion, and terminated the meeting very quickly. In response to a follow up email, Mr. Bay

¹ <https://www.wsj.com/articles/reining-in-prosecutorial-misconduct-1467673202>

memorialized his opinion when he said “*There appears to be a fundamental disconnect between the way you view the facts and the way we view the facts.*”² Indeed, according to RTO Insider, his last act in this role before becoming FERC Commissioner was to charge Powhatan with market manipulation.³

While Mr. Bay oversaw the Office of Enforcement, LSE believes FERC did not provide Powhatan exculpatory information which FERC had in its possession⁴, obstructed FOIA requests⁵, and utilized extra-statutory processes to allow the Commission to use the media as an unfair tool to achieve its goals.⁶

LSE does not believe the meritless allegations levied against Powhatan are unique. LSE believes other victims of Mr. Bay’s and the Office of Enforcement’s legal tactics include, but are not limited to:

- ETRACOM settled with FERC for market manipulation but then created a website describing its ordeal with FERC’s Office of Enforcement.⁷ According to the public information, it opposed Enforcement’s “*brazen misinterpretation and manipulation of the record; absurd theories which rest on reverse engineering of conclusions to produce a ‘fraud by hindsight;’ reliance on circumstantial inferences unhinged from the facts; ignoring of significant exculpatory evidence, and inappropriate ‘sandbagging’ in reply to ETRACOM filings.*” According to the site, it hopes that the “*removal of ex-Chairman Norman Bay from his chairmanship...opens the way for its drastic reform by the current Commission at FERC, without waiting for further dismantling actions by courts.*”
- Constellation’s settlement with the FERC for market manipulation included merger language which gave the appearance of a quid pro quo arrangement. This caught the attention of many people in the industry and on Capitol Hill. Indeed, two US Senators expressed concern whether this language represented a conflict of interest.⁸ For his part, Mr. Bay touted this settlement as an example of FERC being an effective and energetic agency.
- In the Greenhat Energy matter, a widow of a trader described herself in a gut-wrenching FERC filing as being in an “*abusive relationship.*”⁹ Her accused abuser is Thomas Olson, a FERC attorney who worked under Mr. Bay in the Office of Enforcement.
- Oceanside Power LLC, a firm that executed similar trades to Powhatan’s trades, settled with FERC. Powhatan believes Oceanside did not have the resources to fight back against the outlandish and absurd legal theories.

Many of these settlements caught the attention of the energy industry. In 2013, Professor William Hogan, Harvard’s Kennedy School of Government professor of Global Energy Policy, said that FERC Enforcement’s application of the law was “*extremely dangerous*” and could “*unravel the entire power market.*” The following year, a former general counsel of the Commission co-authored a piece in the Energy Law Journal describing FERC’s enforcement practices as being “*lopsided and unfair.*”¹⁰

We understand the University seeks a dynamic and visionary academic who understands the unique role the Blewett School of Law plays within the fabric of the national landscape. To fulfill this charge, LSE believes the search committee may consider that our country seems to have a dearth of trusted leaders across the business, political, and legal elite. When looking for a candidate who may address this deficiency, we encourage the search committee to remember the simple

² Page 7 of <http://ferclitigation.com/wp-content/uploads/Joint-Motion-for-Recusal1.pdf>

³ <https://www.rtoinsider.com/articles/23673-ferc-staff-accuses-powhatan-as-bay-moves-up-update>

⁴ <https://dealbreaker.com/2015/02/hedge-fund-managers-want-to-add-potentially-exculpatory-conversation-to-their-defense>

⁵ http://foiaproject.org/case_detail/?title=on&style=foia&case_id=24644

⁶ <https://www.naturalgasintel.com/former-ferc-attorneys-urge-commission-to-drop-notice-of-alleged-violations-policy/>

⁷ <http://www.etracomvferc.com/>

⁸ <http://ferclitigation.com/wp-content/uploads/09-12-14-Collins-Barrasso-to-DOE-IG-with-attachments.pdf>

⁹ <http://ferclitigation.com/wp-content/uploads/Luan-Troxel-10-08-21.pdf>

¹⁰ <https://www.gibsondunn.com/wp-content/uploads/documents/publications/FERCEnforcementProcess.pdf>

advice President Thomas Jefferson gave to his young nephew around the founding of our great country, which was to “follow trust, justice, and plain dealing.”

Although LSE wishes Mr. Bay happiness and good fortune, it believes Mr. Bay should not be involved in any way in the teaching of law to anyone. This is especially true for impressionable young students who also deserve to respect the import of truth, justice, and plain-dealing.

LSE offers the University of Montana with these limited opinions to help with the hiring process. LSE encourages the University to do its own research, listen to all members of the community, and come up with its independent conclusions.

LSE wishes you its best wishes in this process. Thank you for your time.

Sincerely,



Richard Gates
Vice President

cc: Charity Atteberry
Christina Barsky Ali Bovingdon
Martin Burke
Robert Carlson
Chance Carter
Craig Cowie
The Honorable Jessica Fehr
Elaine Gagliardi
Tara Jensen
Anthony Johnstone
Sam Panarella
Kekek Stark