

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	CRIMINAL NO. 16-30021
)	Violations:
v.)	18 U.S.C. § 371 (Conspiracy)
)	42 U.S.C. § 7413(c) (Clean Air Act)
BERKSHIRE POWER COMPANY, LLC,)	16 U.S.C. § 825o (Federal Power Act)
and POWER PLANT MANAGEMENT)	
SERVICES, LLC,)	
Defendants.)	

INFORMATION

The United States Attorney charges that:

General Allegations

At all times relevant to this Information:

1. Defendant BERKSHIRE POWER COMPANY, LLC (“BPC”) was a Massachusetts limited liability company that owned the Berkshire Power Plant (also referred to as “the Plant”), which was a natural gas-fired power plant located in Agawam, Massachusetts.
2. Defendant POWER PLANT MANAGEMENT SERVICES, LLC (“PPMS”) was a Texas limited liability company that was created in order to provide power plant management services.
3. From in or about and between January 2009 and March 2011, BPC engaged PPMS to manage the Berkshire Power Plant, including to oversee day-to-day Plant operations and maintenance services provided by others at the Plant and to act as the owner’s representative for the Plant. A PPMS employee served as the Plant General Manager (the “PPMS Plant General Manager”) and as BPC’s representative at the Plant.

Overview of the Conspiracies and of the Schemes to Defraud

4. From in or about and between January 2009 and March 2011, PPMS and BPC caused the staff at the Berkshire Power Plant to tamper with the Plant's air pollution monitoring system to conceal the fact that the Plant was emitting air pollutants in excess of permitted levels.

5. PPMS and BPC caused this tampering to avoid lost revenues that would have resulted from reducing power production to stay within the Plant's air pollution emissions limits, or by taking the Plant out of service to implement needed repairs of the Plant's pollution control and other equipment.

6. PPMS also made and caused the staff at the Berkshire Power Plant to make false statements to the Independent System Operator for New England ("ISO"), the non-profit entity that administers New England's power grid, about the Plant's availability to produce power. PPMS did this to maximize the Plant's revenues and to minimize repair expenditures. As a result, the Plant suffered significant damage to its environmental controls as well as other functions.

The Clean Air Act and Applicable Regulations

7. The Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 et seq., is the federal air pollution control statute. Among other things, the CAA regulates power plant emissions and requires emissions monitoring and data maintenance and reporting. Title V of the 1990 amendments to the CAA created an operating permits program, known as the Title V program, requiring certain facilities, such as the Berkshire Power Plant, to obtain an operating permit containing emissions limits, monitoring, data maintenance and reporting requirements.

8. The Berkshire Power Plant operated pursuant to a Title V permit. The PPMS Plant General Manager was identified to the United States Environmental Protection Agency and the Massachusetts Department of Environmental Protection as the Plant's "designated

representative” and “responsible official” for purposes of CAA and Title V permit compliance and reporting.

9. The Berkshire Power Plant’s Title V permit and applicable laws and regulations required that the Plant use a Continuous Emissions Monitoring System (“CEMS”) to monitor and report to the state and federal governments the Plant’s emissions of certain pollutant gases, including nitrogen oxides, carbon monoxide and ammonia (the “pollutants”), as well as the levels of oxygen diluting the pollutants in the testing process. Among the reports the Plant was required to file with the Massachusetts Department of Environmental Protection and the United States Environmental Protection Agency were quarterly electronic data reports (“EDRs”).

10. The Title V permit and applicable laws and regulations required that the Plant calibrate the CEMS on a daily basis when the Plant was operating. To perform this calibration, the CEMS read the value of gas from sample bottles having a known concentration (the “known value”) of each type of pollutant and diluting oxygen (“comparison samples”). The calibration was to check that the CEMS readings matched the known value of the samples within the applicable tolerance levels.

11. The applicable laws, regulations and plant quality control program provided that adjustments to the Plant’s CEMS calibration could be made only in order to set its readings closer to the known value of the comparison samples. Adjustments of the CEMS monitors away from the known values of the comparison samples were not permitted.

ISO, the ISO Tariff and the Reliability Must-Run Agreement

12. ISO manages the wholesale electric power market in New England. ISO directs and controls the grid pursuant to the ISO New England Inc. Transmission, Markets, and Services Tariff (the “ISO Tariff”) which establishes electricity market participation requirements and rules

and details the rights and responsibilities of ISO and market participants. ISO and the ISO Tariff are both subject to regulation by the Federal Energy Regulatory Commission under the Federal Power Act, 16 U.S.C. § 791 et seq. ISO is also responsible for ensuring the sufficiency of the wholesale power supply in New England.

13. The Berkshire Power Plant generated revenues by selling power to market participants and by being paid by ISO to be available on short notice to provide power to the New England power grid. This arrangement was designed to assist ISO in avoiding blackouts and power shortages.

14. From July 2005 until June 2010, the Plant operated under a “Reliability Must-Run” Agreement with ISO, which provided that the Plant would receive (1) a payment for being available to generate power for the New England grid when requested, and (2) payments for power produced and sold in the market when the Plant was actually asked to produce power for the grid. Pursuant to the Reliability Must-Run Agreement, the payments for availability alone could be up to \$26 million per year, or approximately \$2,740 per hour, but these payments were reduced by payments for actual power generation.

15. After June 2010, the Plant operated under a different system of monthly payments for availability that required the Plant to be available and to accurately report its availability to provide power for the New England grid.

16. The Plant was required to comply with the ISO Tariff, which included ISO’s Operating Procedures.

17. The Reliability-Must-Run Agreement and the ISO Tariff required the Plant to maintain availability to provide electricity except in specific circumstances, including planned maintenance outages and a “force majeure” event, i.e. an unforeseen breakdown or emergency.

The Plant was supposed to schedule all maintenance and repairs that it could predict in advance with the approval of ISO so as to minimize any risk to the overall power grid and production capacity.

18. ISO Operating Procedure No. 5 (OP-5) defines a Forced Outage (“FO”) as “any outage or inability, in whole or in part, of a Generator [such as the Berkshire Power Plant] . . . to provide Claimed Capability . . . that has not been approved by ISO.”

19. ISO Operating Procedures provide that “[a]n FO requires the notification of the ISO Control Room Generation Desk. . . . These notifications should be made as soon as practicable.”

20. ISO Operating Procedures also provide that “[i]f the [Plant] is forced out of service due to personnel or equipment risk, the ISO Control Room Generation Desk and Forecaster must be notified as soon as practicable.”

21. If the Plant was not available to run during a “Shortage Event” (a specific market event declared by the ISO based on exigent circumstances), it could be penalized by ISO.

Objectives of the Clean Air Act Conspiracy

22. A principal object of the Clean Air Act conspiracy was to make money by avoiding the costs of repairs and associated lost revenue from taking the Berkshire Power Plant off-line to perform such repairs, including repairs to the Plant’s pollution control equipment. Another object of the Clean Air Act conspiracy was to avoid any sanction or review from reporting that the Plant was not operating within its required pollution limits.

Manner and Means of the Clean Air Act Conspiracy

23. From in or about January 2009, staff at the Berkshire Power Plant regularly adjusted the CEMS oxygen monitor, at the direction of the PPMS Plant General Manager, so that its readings were approximately 0.5 percentage points below the known values of oxygen.

24. In or about early 2009, staff at the Plant, acting at the direction of the PPMS Plant General Manager, also tampered with the calibration of the CEMS monitor by regularly lowering the nitrogen oxide monitor by about 0.5 parts per million below the known value for that pollutant.

25. At the direction of the PPMS Plant General Manager, staff at the Plant continued to tamper with the readings of the CEMS oxygen and nitrogen oxide monitors through March 2011.

Overt Acts in Furtherance of Clean Air Act Conspiracy

26. In furtherance of the Clean Air Act conspiracy and to effect the objects thereof, PPMS, BPC and staff at the Plant committed and caused to be committed the following overt acts:

2009 CEMS Audit

27. On or about July 21, 2009, in anticipation of the Relative Accuracy Test Audit (“RATA”) -- the annual independent audit of the Plant’s pollution monitoring equipment required by the Title V Permit and applicable federal regulations -- the Operations and Maintenance (“O&M”) Manager at the Plant instructed the Instrument and Control Technician (the “I&C Technician”) to re-adjust the CEMS monitors back to the known values in order to hide from the auditors the prior tampering with the CEMS. The RATA was subsequently performed on the now properly-calibrated CEMS by an outside testing company under the supervision of representatives of the Massachusetts Department of Environmental Protection and showed that the Plant’s CEMS monitors were measuring within the required standards.

28. The Berkshire Power Plant reported the results of the RATA test to the Massachusetts Department of Environmental Protection and the United States Environmental Protection Agency.

29. Shortly after the RATA was performed, the O&M Manager instructed the I&C Technician to once again tamper with the calibration of the CEMS monitors by readjusting the monitors to reflect readings below the known values.

Additional Tampering with the CEMS

30. By in or about the spring of 2010, the Berkshire Power Plant was experiencing increasing problems with its Heat Recovery Steam Generator (“HRSG”) and pollution control catalyts. Because of this, the CEMS data was showing that the Plant was, on occasion, close to or violating its hourly emission limits for nitrogen oxide, even with the oxygen and nitrogen oxide monitors adjusted below the known values of the comparison samples. In or about May 2010, in at least one instance, the staff at the Plant reduced the amount of power the Plant was producing for sale because they were unable to operate the Plant at higher production levels without the CEMS reporting readings indicating a violation of the Plant’s emissions limits, even with the monitors adjusted below the known values of the comparison samples.

31. Rather than making the necessary repairs to the pollution control equipment or running the Plant at reduced power levels, the PPMS Plant General Manager and the O&M Manager instructed staff at the Plant to further tamper with the CEMS monitors by lowering the readings of the oxygen monitor by an additional .2 percentage points below the known values for oxygen.

32. At various times in or about and between mid-2010 and March 14, 2011, at the direction of the PPMS Plant General Manager, staff at the Plant removed adjustments beyond 0.5

from the CEMS monitors during the daily calibration test, in order to pass the test without warnings. The staff then reintroduced the adjustments at the end of the calibration process if they perceived the alterations were needed for the Plant to run without violating hourly emissions limits or triggering warnings or reportable events.

2010 CEMS Audit

33. In or about the summer of 2010, the Plant's I&C Technician once again adjusted the CEMS monitors to remove adjustments that had been made away from the known values of the comparison samples, just before representatives of the Massachusetts Department of Environmental Protection and an independent testing company arrived to conduct the annual RATA test.

34. After the testers left, the I&C Technician again was instructed to and did tamper with the CEMS monitors by readjusting the oxygen and nitrogen oxide monitors away from the known values of the comparison samples.

Additional Tampering with the CEMS Late-2010 Forward

35. By later in 2010, the repeated adjustments of the CEMS monitors were not sufficient to allow the Plant to run at full power while remaining within emissions limits, and problems with the Plant's HRSG and pollution control catalysts were getting worse. Rather than performing the necessary repairs, however, the PPMS Plant General Manager and the O&M Manager instructed the staff at the Plant to tamper with the CEMS readings by making additional adjustments to the CEMS at the end of the daily calibration process, and at various times while the Plant was running, to try to avoid registering an increase in the hourly pollutant emissions that would trigger an alarm or cause the Plant to have to report that it was releasing pollutants beyond its permit limits.

Background of the Federal Power Act Conspiracy

36. By January 2009, the PPMS Plant General Manager and the O&M Manager were aware that the Plant had serious maintenance problems that impaired the ability of the Plant to perform and maintain continuous availability. By early 2009, the PPMS Plant General Manager was also aware that there were cracks in a boiler pipe.

37. At some point in 2009 or 2010, the PPMS Plant General Manager was also aware that the environmental air pollution control catalysts at the Plant were obstructed and that one of those catalysts had separated from its mounting, thereby allowing pollutants to escape the filter rather than pass through it.

38. The PPMS Plant General Manager refused to schedule necessary repairs to fix the broken air pollution control catalyst and refused to report the Plant as unavailable while undergoing certain repairs.

Objectives of the Federal Power Act Conspiracy

39. A principal object of the Federal Power Act conspiracy was to make money by minimizing the time the Plant was reported as unavailable to run.

Manner and Means of the Federal Power Act Conspiracy

40. At various times from in or about and between January 2009 and March 2011, the PPMS Plant General Manager caused false statements to be made to ISO by telephone communications in interstate commerce regarding the availability of the Plant to produce power, the status of repairs, and the reasons for the Plant's availability or unavailability. In each instance, the PPMS Plant General Manager failed to make an accurate and timely report of the unavailability of the Plant.

41. Shortly after a new Plant manager arrived at the Plant in early 2009, the PPMS

Plant General Manager instructed the new Plant manager that the way the Plant performed repairs was by telling ISO “a little white lie” about whether the Plant was available to produce electricity to the power grid.

42. In order to perform repairs quickly, the PPMS Plant General Manager and the O&M Manager at the Plant at times did not fully implement, and directed others to omit, Lock-Out Tag-Out procedures required in order to protect employees and others from injury from the boiler equipment, high power fans and other dangerous machines at the Plant. A Lock-Out Tag-Out procedure is supposed to ensure that equipment is powered off, and unable to start, before employees attempt to repair the equipment.

43. In or about March 2009, the new Plant manager, who worked for a contractor hired to perform day-to-day operations and maintenance at the Plant, objected to the practice of falsely reporting the Plant as available to produce power when, in fact, repairs were underway that actually rendered the Plant unavailable. The new Plant manager told the PPMS Plant General Manager that it was illegal to make false statements to ISO about the Plant’s availability and that he would not participate in such a practice. The new Plant manager also instructed other employees of the contractor not to participate in the practice. The PPMS Plant General Manager secretly countermanded the instructions of the new Plant manager and instructed Plant staff to continue to carry out repairs while reporting the Plant as available to produce power to ISO.

44. The new Plant manager kept notes of his interactions with the PPMS Plant General Manager and these notes were sent to PPMS’s Owner and General Manager. Among other things, the notes alerted the PPMS Owner and General Manager as follows:

Mar 23 [2009]: We have some significant maintenance coming up and I ask [the PPMS Plant General Manager] how we should declare the unit unavailable. [The PPMS Plant General Manager] informs me that we don't and if ISO dispatches us while we are unavailable, then we tell a "white lie" that we are having trouble starting the unit. He asks me if I'm okay with this scenario. The scenario that [the PPMS Plant General Manager] described didn't seem legal to me, but I wanted more information before I confronted him. This puts us in a liable situation because [the PPMS Plant General Manager] handles the dispatch of the unit but we are responsible for ISO communication. . . .

[March 26, 2009:] Told [the PPMS Plant General Manager] I was not comfortable with how he doesn't want to declare the unit unavailable for jobs that make the unit unavailable. He said he wasn't sure it's my responsibility. I said I don't want [contractor] employees misrepresenting the condition of the plant. I don't want them doing anything illegal. I said if we [contractor] are noticed doing something illegally then I would be held responsible, so it impacts me and the [contractor]. He talked about how we need to manage risk wisely, how he speaks with ISO, so nothing would happen to us. He also talked about how he has never had FERC/ISO come in because he has never done anything stupid. I closed the conversation restating my position that I do not want any [contractor] employees doing anything illegal and that if we can't get the unit back together and up to min load within 3 hours then we declare unavailable or we don't do the work. [The PPMS Plant General Manager] said we will manage this on a case by case basis and he won't declare the unit unavailable so we won't do that work. He also was unhappy I talked to [] (an outside Market specialist) for clarification. He said this is how things start. I said if we aren't doing anything illegal then we have nothing to worry about. He said he's never done anything illegal.

45. PPMS did not take appropriate corrective action in the wake of the new Plant manager's concerns. Instead, PPMS's Owner and General Manager allowed the PPMS Plant General Manager to continue handling ISO issues.

Overt Acts in Furtherance of the Federal Power Act Conspiracy

46. On or about August 14, 2010, the PPMS Plant General Manager caused staff at the Plant to falsely report to ISO that the Plant was available to produce power, and then falsely claimed to ISO that the Plant had just become unavailable 45 minutes after receiving a call from ISO directing the Plant to produce power.

47. On or about September 10, 2010, the PPMS Plant General Manager caused staff at

the Plant to falsely report to ISO that the Plant was available to produce power, and then falsely claimed to ISO that the Plant had become unavailable after receiving a call from ISO directing the Plant to produce power.

48. On or about December 11, 2010, the PPMS Plant General Manager caused staff at the Plant to falsely report to ISO that the Plant was available to produce power, and then falsely claimed to ISO that the Plant had become unavailable after receiving a call from ISO directing the Plant to produce power.

49. On or about February 19, 2011, the PPMS Plant General Manager caused staff at the Plant to falsely report to ISO that the Plant was available to produce power, and then falsely claimed to ISO that the Plant had become unavailable after receiving a call from ISO directing the Plant to produce power.

COUNT ONE

(Conspiracy to Violate the Clean Air Act: 18 U.S.C. § 371)

50. The United States Attorney re-alleges and incorporates by reference paragraphs 1 through 35 of this Information and further charges that:

51. From no later than in or about January 2009, and continuing until in or about March 14, 2011, in the District of Massachusetts and elsewhere, the defendants,

- (1) **BERKSHIRE POWER COMPANY, LLC** and
- (2) **POWER PLANT MANAGEMENT SERVICES, LLC,**

together with others known and unknown to the United States Attorney, conspired to commit offenses against the United States, to wit: to violate the Clean Air Act, Title 42, United States Code, Section 7413(c)(2), by:

- (1) knowingly and willfully falsifying, tampering with and rendering inaccurate a monitoring device and method required to be maintained and followed under the Clean Air Act; and
- (2) knowingly and willfully making materially false statements, representations and certifications in, and omitting material information from, and knowingly altering, concealing and failing to file notices, applications, records, reports, plans and other documents required to be filed and maintained under the Clean Air Act.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH FIVE
(Clean Air Act: Tampering with a Monitoring Device and Method)

52. The United States Attorney re-alleges and incorporates by reference paragraphs 1-35 of this Information and further charges that:

53. On or about the dates set forth below, in the District of Massachusetts and elsewhere, the defendants,

- (1) **BERKSHIRE POWER COMPANY, LLC** and
- (2) **POWER PLANT MANAGEMENT SERVICES, LLC,**

knowingly and willfully caused the falsification, tampering with and rendering inaccurate of a monitoring device and method required to be maintained under the Clean Air Act, to wit, manually adjusting the Continuous Emissions Monitoring System at the Berkshire Power Plant so as to cause it to record and report falsely low readings of oxygen and nitrogen oxides.

COUNT	DATE	CHEMICAL
2	January 15, 2009	Oxygen and Nitrogen Oxides
3	January 26, 2011	Nitrogen Oxides
4	February 24, 2011	Nitrogen Oxides
5	March 3, 2011	Nitrogen Oxides

All in violation of Title 42, United States Code, Section 7413(c)(2)(C) and Title 18, United States Code, Section 2.

COUNTS SIX AND SEVEN
(Clean Air Act: False Reporting)

54. The United States Attorney re-alleges and incorporates by reference paragraphs 1 through 35 of this Information and further charges that:

55. On or about the dates set forth below, in the District of Massachusetts and elsewhere, the defendants,

- (1) **BERKSHIRE POWER COMPANY, LLC** and
- (2) **POWER PLANT MANAGEMENT SERVICES, LLC,**

knowingly and willfully made materially false statements, representations and certifications in, and omitted material information from electronic data reports (“EDRs”), and knowingly altered, concealed and failed to file notices, applications, records, reports, plans and other documents required to be filed and maintained under the Clean Air Act, to wit: false EDRs.

COUNT	DATE (on or about)	STATEMENT/REPORT
6	10/2010	Third Quarter 2010 EDR
7	1/2011	Fourth Quarter 2010 EDR

All in violation of Title 42, United States Code, Section 7413(c)(2)(A) and Title 18, United States Code, Section 2.

COUNT EIGHT

(Conspiracy to Violate the Federal Power Act: 18 U.S.C. § 371)

56. The United States Attorney re-alleges and incorporates by reference paragraphs 1 through 6 and 36 through 49 of this Information and further charges that:

57. From no later than in or about January 2009, and continuing until in or about March 2011, in the District of Massachusetts and elsewhere, the defendant,

POWER PLANT MANAGEMENT SERVICES, LLC,

together with others known and unknown to the United States Attorney, conspired to commit offenses against the United States, to wit: knowingly and willfully using and employing, directly and indirectly, manipulative and deceptive devices and contrivances in connection with the purchase and sale of electric energy and the purchase and sale of transmission services subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"), to wit: electricity produced by the Berkshire Power Plant, in contravention of Rule 1c.2 of the rules and regulations promulgated by FERC, by:

- (a) using and employing devices, schemes and artifices to defraud;
- (b) making untrue statements of a material fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaging in acts, practices and courses of business which would and did operate as a fraud and deceit in connection with the purchase and sale of electric energy and transmission services, in violation of Title 16, United States Code, Section 824v and Title 18, Code of Federal Regulations, Section 1c.2.

All in violation of Title 18, United States Code, Section 371.

COUNTS NINE THROUGH TWELVE
(16 U.S.C. §§ 824v & 825o – Federal Power Act Fraud)

58. The United States Attorney alleges and incorporates by reference paragraphs 1 through 6 and 36 through 49 of this Information and further charges that:

59. On or about the dates set forth below, in the District of Massachusetts and elsewhere, the defendant,

POWER PLANT MANAGEMENT SERVICES, LLC,

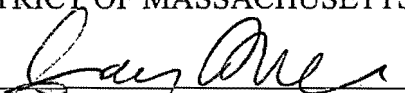
knowingly and willfully used and employed, directly and indirectly, manipulative and deceptive devices and contrivances in connection with the purchase and sale of electric energy and the purchase and sale of transmission services subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”), to wit: electricity produced by the Berkshire Power Plant, in contravention of Rule 1c.2 of the rules and regulations promulgated by FERC, by:

- (a) using and employing devices, schemes and artifices to defraud;
- (b) making untrue statements of a material fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaging in acts, practices and courses of business which would and did operate as a fraud and deceit in connection with the purchase and sale of electric energy and transmission services, in violation of Title 16, United States Code, Section 824v and Title 18, Code of Federal Regulations, Section 1c.2.

COUNT	DATE	FALSE STATEMENTS
9	August 14, 2010	False statement to ISO that Plant was available to produce power
10	September 10, 2010	False statement to ISO that Plant was available to produce power
11	December 11, 2010	False statement to ISO that Plant was available to produce power
12	February 19, 2011	False statement to ISO that Plant was available to produce power

All in violation of Title 16, United States Code, Sections 824v and 825o and Title 18, Code of Federal Regulations Section 1c.2.

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DISTRICT OF MASSACHUSETTS

3/27/, 2016