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RE: Glacial Energy, Viridian Energy and the Platinum Partners Retail Energy Fraud

Commissioners:

As a group, I bring to your attention Platinum Partners' effort to conceal their history in retail energy markets and their control of both Glacial Energy and Viridian Energy.

As part of my ongoing investigation of Glacial, I have discovered undisclosed affiliations to Platinum Partners in New York and to Viridian Energy. Publicly available documents clearly demonstrate that Platinum has substantial ownership interests in and control of both Glacial and Viridian. Glacial CEO Gary Mole and Viridian CEO Michael Fallquist both failed to disclose their involvements with the collapses at Franklin Power and Commerce Energy, respectively. Moreover, Platinum Partners through shell companies hid the fact that they control both entities and reap the majority of the financial rewards from them. Glacial and Viridian are controlled by the same two directors – David Levy and Isaac Barber employees of Platinum entities. The owners of Platinum Partners – Murray Huberfeld and Meir Nordlicht, have a history of serious regulatory and criminal sanctions and convictions that have never been disclosed in PUC filings. Had any of this information been disclosed on their applications it is extremely unlikely Glacial and/or Viridian would have received its license in many of your jurisdictions. The PUC of Texas said as much in its January 2012 Notice of Violation to Glacial.

As I have stated before, I realize that the scope and audacity of Platinum's fraud makes a reading of the facts incredible. However, the fact that their collective campaign of misinformation is so wide spread is what makes the actions of Glacial, Viridian and Platinum so egregious. Because they operate in so many states is why I address all of you in one letter. Glacial, Viridian and Platinum know that the elaborate and incredible nature of the fraud enables them to hide this information from you in plain site.

Glacial, Viridian, Platinum, and the numerous shell companies they employ represent an ongoing risk to customers in all the deregulated power and gas markets in the USA. The operators of these companies Mole, Fallquist, Nordlicht and especially Huberfeld will continue to perpetrate these kinds frauds in your markets until they are forcibly stopped. And even then as they have in the past, in all likelihood they will simply create another

shell company to disguise their ownership in another start up or take control of another company.

I recognize that many of you are just being made aware of the scope and magnitude of this fraud. I have attached several documents as supporting evidence. In particular I have attached a memo entitled: 2012 Retail Energy Fraud v12.pdf.

With this information I am confident that you will be able to launch an investigation, which ultimately will result in Glacial's and Viridian revocation in many if not all of the states they operate in. I would also hope, that so far as you are able, that your commissions will bar Messrs. Mole, Fallquist, Levy, Barber, Nordlicht and Huberfeld from every participating directly or indirectly in the control or ownership of another retail energy provider in any of your jurisdictions.

Please contact me immediately if you need additional information or clarifications.

Respectfully,

Michael Petras

Cc: Curtis Smolar, esq. and Andrew Jee, esq.
- Randy Klaus, PUCT via email
- Christopher Rhodes, PUCO via mail
- Charles Stockhausen, PUCO via email
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- Robert Cain, Maryland DPS
- Pejman Moshfegh, CPUC via email
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Glacial Energy, Viridian Energy & Platinum Partners
Retail Energy Fraud

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Overview

Platinum Partners and its controlled affiliate Centurion Credit Management ("Platinum"), their principals, their business fronts and their portfolio businesses (collectively, "the Platinum Entities") have been perpetrating fraud upon regulators, consumers, tax authorities and shareholders in deregulated energy markets since 2005. The fraud is ongoing and continues as of March 2012. Service providers directly involved in the fraud include now-defunct service provider Commerce Energy and currently operating services providers Glacial Energy ("Glacial") and Viridian Energy ("Viridian") (the Texas Public Utilities Commission has recently recommended the revocation of Glacial's license, and Glacial has filed a lawsuit arguing that the Commission does not have the authority to do so). Currently operating service providers Just Energy and Ambit Energy have also benefited indirectly through transactions with Platinum Entities. In order to perpetrate their fraud, the Platinum Entities have employed an increasingly elaborate series of business fronts, including AP Finance, Photon, Hasbro Management and Regional Energy Holdings LLC. Centurion and Platinum have a long history of operating and controlling for fraudulent purposes both publicly traded and privately held companies in several business sectors, including Retail Energy. It is possible that Glacial and Viridian are not the only service providers directly involved in the fraud[1].

Platinum and Centurion History

Centurion was established in 2005 by Murray Huberfeld and from the beginning had a tight association with Platinum: sharing the same address, investing in the same deals, and sharing common employees.

Huberfeld personally had on at least four occasions be sanctioned by regulatory agencies or plead guilty to criminal charges, including a 1992 guilty plea in Federal court in Brooklyn, New York, in which Huberfeld and his business partner plead guilty to possession of false identification with the intent to defraud. Huberfeld and his partner had imposters take the Series 7 securities brokers' examination in their stead. Each was sentenced to minimum of one year's

[1] There is evidence that clearly demonstrates Platinum and Centurion's involvement in other Retail Energy businesses. However, the exact nature of their involvement and the status of those businesses is not clear to author at this time.

probation and fined $50,000[2]. Huberfeld's crimes, sanctions and other dubious activities are detailed in a 2000 Barron's article, a third-party reproduction of which is attached. One of Huberfeld's SEC sanctions was for selling unregistered securities in a Congolese diamond and gold mine. Huberfeld was sanctioned million of dollars by the FDIC for using a shell company to hide his ownership in a NJ Bank. His partner Charles Kushner went to jail for 30 months as part of a plea agreement.

From the time of its formation, Centurion maintained offices at 152 West 57th Street 54th Floor, NY, NY.

Two principals of the company are David Levy and Isaac Barber. Levy and Barber hold numerous directorships of Platinum investments, *including directorships in both Glacial and Viridian*.

On January 1, 2011, Platinum Partners Hedge Fund began managing Centurion[3]. Platinum Partners is controlled by Meir "Mark" Nordlicht. Nordlicht and Huberfeld are long-time business associates and Nordlicht and Platinum have a track record similar to that of Huberfeld and Centurion, including Nordlicht's chairmanship of Optionable, a publicly traded company that collapsed after it was discovered the CEO Kevin Cassidy, a life long personal friend of Nordlicht, was a two-time convicted felon. Cassidy is currently awaiting sentencing for his role in the Optionable fraud and litigation regarding Optionable involving Nordlicht and his role is on-going today.

Most recently, both Centurion and Platinum have been accused of knowingly participating in and facilitating the Rothstein ponzi scheme. Centurion and Platinum's involvement is described in a 2012 Barron's article[4], a copy of which is attached.

Platinum's Retail Energy Fraud

Platinum Entities Overview

The fraud perpetrated by the Platinum Entities is extensive. The most important business fronts and portfolio businesses employed in the Platinum Entities' retail energy fraud are:

Commerce Energy

Founded:	1997
Business Address:	California
Key Officer(s):	Michael Fallquist, COO (now CEO of Viridian)
Directors:	Michael Fallquist
Shares Held By:	Public

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[2] "Let's Make a Deal: Who are the real winners when ailing U.S. companies merge with Israeli tech start-ups?", Barron's, June 26th, 2000.

[3] "Platinum Partners to run Centurion ABL strategy", Hedge Funds Review, January 4th, 2011.

[4] "How Hedge Funds Got Hooked in a Ponzi Scheme", Barron's, February 25th, 2012

AP Finance

Founded:	2007
Business Address:	152 West 57th St 54th Floor, NY, NY 10019
Key Officer(s):	David Levy, Managing Director
Directors:	David Levy and Isaac Barber
Shares Held By:	Photon and Hasbro Management (business fronts for Platinum having the same address as Platinum)

Glacial Energy

Founded:	2005
Business Address:	American Virgin Islands
Key Officer(s):	Gary Mole
Directors:	Gary Mole, David Levy, Isaac Barber
Shares Held By:	Photon and Hasbro Management, Marbridge Energy Fund (business fronts for Platinum having the same address as Platinum)

Viridian Energy

Founded:	February 2009 (within weeks of Commerce Energy's demise)
Business Address:	Founded at 152 West 57th St 54th Floor, NY, NY 10019
Key Officer(s):	Michael Fallquist
Directors:	Michael Fallquist, David Levy, Isaac Barber
Shares Held By:	Regional Energy Holdings LLC (business fronts for Platinum having the same address as Platinum)

Detailed Description of the Fraud

Platinum acquires actual or effective control over retail energy service providers through loan agreements with the service providers[5]. As they acquire that control, they go to great lengths to disguise that (a) they have either actual or effective control of the business and (b) it is in fact Platinum and not one of their business fronts that controls the business.

The ongoing frauds being perpetrated today by Platinum -- through its principals David Levy and Isaac Barber and their numerous business fronts including Photon, Hasbro Management and Regional Energy Holdings LLC -- vary from jurisdiction to jurisdiction. However, the frauds can be separated into four general classes:

(a) Fraud Against Regulatory Agencies
(b) Fraud Against Tax Authorities
(c) Fraud Against Consumers

[5] Platinum engages in predatory lending practices in many business sectors. The retail energy sector has presented them with a unique opportunity because of the unique economics of the retail energy business. Specifically, the collateral requirements of regulatory authorities, ISOs and wholesale suppliers are capital burdens on new market entrants that are found in few other markets. In addition, few other markets provide the opportunity for new markets entrants to generate tens or hundreds of millions of dollars in cash flow in a matter of months from beginning market operations. The combination of those two factors makes new retail energy service providers, their markets and their customers particularly attractive to – and vulnerable to – "hard-money lenders" like Platinum.

(d) Fraud Against Shareholders & Creditors

In this context "fraud" is used to describe statutory fraud, perjury or other criminal acts in one or more deregulated energy markets. The fraud against regulatory agencies is perpetrated in order to allow the Platinum Entities to operate in retail energy markets. The latter three frauds are perpetrated in order to make money for the Platinum Entities. The frauds described below are meant as representative examples. The Platinum Entities have committed and are presently committing dozens if not hundreds of other frauds, many in the retail energy markets, many more in other markets.

Fraud Against Regulatory Agencies

In order to perpetrate their frauds, the Platinum Entities must lie to regulators, who would never allow Platinum Entities to operate in their markets if they knew the truth.

In the Commission Staff's Recommendation for Revocation, the Texas PUC Staff found that Glacial lied in its initial application to the Texas PUC. Specifically:

> "Glacial's initial REP application had material omissions regarding the pending complaint proceedings against Franklin[6] and Mr. Mole's ownership interest and experience with Franklin in violation of P.U.C. SUBST. R. 25.107(j)(1) and former P.U.C. SUBST. R. 25.107(g)(9)(A) and 25.107(g)(9)(B). The fact that Franklin had experienced a mass transition of its customers to POLR in 2005 and had pending complaints before the Commission, which ultimately led to the revocation of Franklin's REP certificate, are material events that would have likely resulted in the rejection of Glacial's REP application"[7]

That omission appears to exist in every PUC application filed by Glacial nationwide. In each and ever one of its applications, Glacial also misrepresented its true capital structure.[8]

More recently, in numerous applications to PUCs nationwide, Viridian has failed disclose that:

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[6] Gary Mole was the majority shareholder and Chairman of Franklin Power Corporation, the owner of Franklin Power Company. Gary Mole at Franklin, like David Levy at Commerce Energy, *intentionally caused* the failure of a service provider and the subsequent mass transition of its customers in order to benefit a clandestine affiliate.

[7] NOTICE OF VIOLATION OF PURA § 39.352, FORMER P.U.C. SUBST. R. § 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), and CURRENT P.U.C. SUBST. R. 25.474, 25.475, 25.479, 25.480 AND 25.483, RELATED TO CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE BY GLACIAL ENERGY OF TEXAS, INC., Docket No. 40090 (January 9th, 2012)

[8] Glacial's initial funding was arranged by one Donald Bernard and supplied by one Peter Koeck. Mr. Bernard is a disbarred Texas attorney who is the subject of, in the aggregate, approximately 20 state regulatory and SEC sanctions and default judgments. Mr. Koeck is an Austrian national who was deported from the United States after Federal drug and weapons charges were filed against him. In consideration for the funding, Mr. Koeck received 35% of the common shares of Glacial at its inception and Mr. Bernard received 15% of the common shares of Glacial at its inception. Mr. Bernard has testified under oath as to that capital structure in a deposition in an unrelated case. Mr. Bernard, his wife and his son have received hundreds of thousands of dollars in consulting payments from Glacial.

(a) Its CEO and Director Michael Fallquist was the Chief Operating Officer and a Director of Commerce Energy, a failed service provider that experienced a mass transition event;

(b) It is an affiliate of Glacial, a service provider subject to a revocation recommendation in Texas;

(c) Directors David Levy and Isaac Barber are also Directors of Glacial Energy;

(d) Directors David Levy and Isaac Barber were also Directors of AP Finance, the business front that received the financial benefit from the failure of Commerce Energy;

It is also worth noting, that Mr. Fallquist offices with David Levy and Isaac Barber at 152 West 57th St and formed Viridian (using this same address) just weeks after the failure of Commerce Energy.

Fraud Against Tax Authorities

Glacial Energy is the subject of an ongoing investigation by the Treasury Department related to its transfer of at least $13.5 million dollars to blood-diamond mining operations in the Congo.[9] Discoverable evidence in a federal lawsuit[10] provides incontrovertible proof that Glacial transferred the proceeds of its customer payments from the United States to the Congo for the express purpose of establishing GEMICO (Glacial Energy Mining Company), a company that for approximately the past five years has mined conflict diamonds in the war-torn Kivu province of the Congo[11]. In doing so, Glacial characterized its "investment" as "business expenses," thereby avoiding paying income tax on the entire $13.5 million sent abroad.

Fraud Against Consumers

In a sworn deposition given in an unrelated case, Glacial's former Chief Operating Officer, Amy Gasca, described the process by which Glacial systematically overcharges its customers. According to Gasca, customer billing amounts, contractually tied to certain energy indices, routinely would be manipulated to meet revenue objectives specified by Mole[12]. Gasca indicated

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[9] It should be noted that another Centurion portfolio company owns a mineral mine in Tanzania less than 100 miles away from the Glacial-affiliated mine in the Congo. While diamonds mined in the Congo are considered blood diamonds, diamonds mined in Tanzania are not. A common method of circumventing restrictions on Congolese diamonds is to smuggle them into Tanzania and export them from there. It is also worth noting that the business of one of the companies for which Huberfeld was sanctioned by the SEC for unlawfully promoting was mineral extraction in the Congo.

[10] Michael V. Petras v. Gary Mole, et al, Civil Action No. 3:11-CV-1402-N, United States District Court, Northern District of Texas, Dallas Division.

[11] Mr. Bernard served as GEMICO's Chairman, and Mr. Bernard's son served as a Director of GEMICO.

[12] Gasca's deposition testimony included: "He [Mole] wanted to attain a certain margin and he had the sole responsibility or sole decision-making on whatever the margin was. You know, a lot of times it was to make sure that he had enough cash flow or to make sure that we had enough money coming in so he basically manipulated that every month depending on what he wanted to do."

that Mole was an active participant in that process *every month* during Gasca's two and half years at Glacial.

Additionally, the Texas PUC, in its investigation of Glacial, has found that "Glacial violated rules regarding customer pricing disclosure and overbilled its customers".[13]

Fraud Against Shareholders & Creditors

The Platinum Entities and their affiliates have defrauded shareholders in dozens of private and publicly traded companies, often through "pump-and-dump" schemes they initiate through lending agreements[14]. That activity has occurred and continues to occur in the Platinum Entities' retail energy businesses as well.

The demise of Commerce Energy is a prime example of that process. Platinum Entity AP Finance entered into multiple lending agreements with Commerce Energy in the summer of 2008. Commerce's stock price dropped by over 90% in the days following the issuance of shares to AP Finance as AP Finance intentionally flooded the market with Commerce shares. With its stock crippled and unable to obtain additional financing, Commerce Energy closed it doors. AP Finance subsequently oversaw the distribution of approximately $3 million to creditors and shareholders while it collected tens of millions of dollars from the sale of Commerce's assets to Ambit and Just Energy.

A second example is the formation of Glacial itself. Glacial's formation and entry into the market was only possible through the fraudulent transfer of assets from Glacial's predecessor in interest, Franklin Power Corporation. Moreover, in order to accelerate the formation of Glacial, Mole, as Franklin's Chairman and majority shareholder, took affirmative steps to cause the failure of Franklin Power and the mass transition of its customers. Franklin's failure benefited Glacial in several ways, and Mole incorporated Glacial approximately one month *before* Franklin's mass transition event.[15]

The formation of Glacial, the engineered failure of Commerce Energy and the subsequent fraudulent transfer of assets are both historical frauds against shareholders and creditors. Most instructively, however, all of the Platinum Entities – David Levy, Isaac Barber, Photon and

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[13] NOTICE OF VIOLATION OF PURA § 39.352, FORMER P.U.C. SUBST. R. § 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), and CURRENT P.U.C. SUBST. R. 25.474, 25.475, 25.479, 25.480 AND 25.483, RELATED TO CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE BY GLACIAL ENERGY OF TEXAS, INC., Docket No. 40090 (January 9th, 2012)

[14] For publicly traded companies, the Platinum Entities generally enter into lending agreements that are secured by all of the assets of the business and provide them with common stock warrants or convertible preferred shares of a company. When a struggling publicly traded company announces a new lending agreement, its stock often rises. Using inside information, the Platinum Entities then determine the ideal time to exercise their warrants or convert their preferred shares and sell the underlying common shares, thereby taking advantage of the stock price increase they artificially created. The resulting stock sales inevitably drive the company's share price down dramatically. If the drop in prices causes the company to go out of business, the Platinum entities transfer the remaining assets of the business to other affiliates, thereby benefiting from the failure that they directly cause to the detriment of other shareholders and creditors.

[15] Petras v. Mole

Hasbro Management, Marbridge Energy Fund, Michael Fallquist, Viridian, Gary Mole and Glacial – are, as of March 12, 2012 actively engaged in an effort to once again utilize Platinum's clandestine control of retail energy businesses to deceive regulatory agencies and defraud creditors. Specifically, once it became apparent that Glacial was likely to come under investigation for its conduct in Texas and other jurisdictions, Levy and Barber caused Viridian to expand its application process to states in which Glacial operated and Viridian did not. As we now know, Levy, Barber and Fallquist also caused Viridian to lie on each of its applications. The purpose of those applications was to position Viridian to receive Glacial's customers in the event Glacial's certificate was revoked in any market or a judgment was rendered against Glacial or any of its subsidiaries. With the revocation recommendation issued in Texas, the Platinum Entities have in fact set that plan in motion.

In early March of 2012, Viridian was made aware that its affiliation with the Platinum Entities was known in the market. Just two business days later, *Glacial's* attorneys contacted other interested parties expressing concern that Glacial's ability to move its Texas customers to Viridian had been compromised. For emphasis, a notification to *Viridian* precipitated almost immediate communication from *Glacial's* attorneys. That otherwise highly improbable series of events speaks for itself. In cases of fraud, it is not often that regulatory and enforcement agencies have the opportunity to prevent the fraud as it is occurring. The Platinum Entities present one such opportunity.

Conclusion

Nearly all of the information contained herein can be found in publicly available documents, with the balance being found in discoverable evidence in the *Petras v. Mole* litigation. Obviously, publicly available documents and an inherently limited discovery process do not provide a complete picture. Even with that limitation, there is no doubt that the Platinum Entities, after years of enjoying fraudulently gained profits from many energy markets across the country, continue to perpetrate their frauds on agencies, tax authorities, consumers, shareholders and creditors today. Were David Levy, Isaac Barber, Gary Mole, Michael Fallquist and the true owners of Glacial and Viridian at 152 West 57th Street ever subject to subpoena, the full extent of their elaborate fraud could begin to be understood. It is likely that the information presented herein is only the tip of iceberg, and that the testimony of any one of those individuals would serve as a Rosetta Stone for a scheme that has touched every major deregulated energy market in the nation for many, many years.

HEDGE FUNDS REVIEW

04 Jan 2011

Platinum Partners to run Centurion ABL strategy

Author: Kris Devasabai

Platinum Partners, the multi-strategy hedge fund run by Mark Nordlicht and Uri Landesman, is expanding into asset based lending with the addition of Centurion Credit Group Master Fund.
The fund was previously managed by Centurion Credit Group, the New York-based investment company founded in late 2005 by Murray Huberfeld.

Centurion originates loans to a range of businesses that cannot access capital elsewhere. It is also involved in a number of related strategies, including litigation financing.The fund has returned over 15% annually since inception with only one down month and has $240 million in assets.

Platinum Partners assumed responsibility for the management of the Centurion fund on January 1, 2011. Nordlicht, Platinum's founder and chief investment officer (CIO), has overall responsibility for investment decisions and becomes the managing member of the general partner of the Centurion fund.

Huberfeld will continue to work with Platinum, focusing on raising capital for its family of funds and structuring products for investors. Huberfeld worked with Nordlicht prior to establishing Centurion in 2005. Platinum Partners currently runs the Platinum Partners Value Arbitrage (PPVA) Fund, a multi-strategy vehicle investing in long/short equity, energy arbitrage and convertible ABL among other strategies. It also manages the Platinum Partners Liquid Opportunity (PPLO) Fund which invests in the most liquid sub-strategies of PPVA.

Nordlicht will continue to serve as CIO of PPVA and PPLO. Landesman, Platinum's president, becomes the sole managing member of the general partner of these funds, overseeing risk management and operations. Platinum Partners manages around $515 million in PPVA and has $30 million in PPLO. The addition of the Centurion Credit Group Master Fund to its platform brings Platinum's total assets under management to around $780 million.

The decision to offer the Centurion Credit Group Master Fund as part of Platinum's family of funds reflects investor interest in ABL as a standalone strategy, according to Landesman. "We have a number of high net worth and family investors in PPVA that have told us they are interested in asset-based lending as a strategy and the Centurion fund in particular. They are also in the market to make one-off loans or a series of loans to companies in need of capital which the team at Centurion is able to structure," said Landesman. Platinum Partners has experience running direct lending strategies. One of the sub-strategies within PPVA is asset-based convertible debt, whereby Platinum provides capital for emerging healthcare and technology companies with potentially lucrative intellectual property rights.While similar, the Centurion Credit Group Master Fund will provide loans primarily to hard collateral business.

BARRON'S

Let's Make a Deal: Who are the real winners when ailing U.S. companies merge with Israeli tech start-ups?

By Bill Alpert and Jacqueline Doherty
26 June 2000

How does a tiny company on the verge of being delisted from Nasdaq suddenly boast a market capitalization of almost $1 billion? A group of U.S. investors and Israeli companies have discovered a cookie-cutter formula for such financial success, and they've used it three times. Involved in each deal are David Bodner and Murray Huberfeld, investors with checkered pasts. Also figuring in each transaction, directly or indirectly, are David Rubner, the former head of ECI Telecom, one of Israel's largest telecom companies, and Rabbi Irwin Katsof, executive vice president of the Jerusalem Fund of Aish HaTorah, a prominent Jewish charity.

Here's how it works: A struggling publicly traded U.S. company with few shares outstanding issues millions of new shares to acquire a foreign company with little operating history and no reported profits. The U.S. company's shares rise as press releases promote the acquired company's technological prowess. If the technology companies succeed, all will make money. But even if the shares subsequently fall to $2 or $3, company insiders could reap millions because of the huge blocks of cheap shares they own.

Broad Capital, Bodner and Huberfeld's New York City-based investment firm, appears to have been instrumental in these deals, commonly called "reverse mergers" or "reverse acquisitions." (Neither Bodner nor Huberfeld returned our calls for comment, nor were they in when we visited their plush West 57th Street offices last week.) True or not, one thing is certain: Their wives, Naomi Bodner and Laura Huberfeld, own large blocks of stock in the one deal that has progressed far enough to require disclosure of shareholders. Indeed, their holdings of Multimedia KID are worth $7 million each, despite the recent collapse in the value of its shares, to 2 1/16 from a high of 7 7/8 in February.

The three U.S. companies involved in these reverse mergers with Israeli tech firms are Western Power & Equipment, a distributor of heavy equipment, Sensar, known as a maker of measuring devices, and Jenkon International, which once made software for marketing and direct-sales companies. Last year, the shares in all three companies traded as low as 1 1/2. In April, Western Power & Equipment had a $14.9 million market cap. In October 1999, Sensar was valued at $18 million, and in August 1999, Jenkon was worth $9.8 million.

Each has now completed, or is completing, a reverse acquisition. In April, for example, Western Power struck a deal with e-Mobile, which hopes to produce handheld devices to access the Internet. Western's shares rose to a high of $10 on May 1, ballooning its market cap to $553 million. Recent price: 6 11/16.

In October, Sensar struck a deal to merge with Net2Wireless, a company that plans to compress data so that cellular operators can offer high-speed data transmission and access to the Internet on existing phones and other communications devices. Sensar shares rose as high as 89 7/8 in March, giving it a $3.9 billion market cap at the time. Recent price: 22 1/8.

In December, Jenkon completed its reverse acquisition with Multimedia KID, which develops interactive learning software for children and adults, and its shares rose to 4 9/16. They continued to climb to a high of 7 7/8 in February, for a $269 million market cap. Recent price: 2 1/16.

For years, private companies have done reverse acquisitions with public companies, to gain access to the public market. But the method sometimes raises warning flags because it allows the private companies to circumvent the scrutiny linked to an initial public offering.

But Nechemia Davidson, chief executive of Net2Wireless and the founder and chairman of e-Mobile, insists that this isn't the case with any transaction he's involved with. He says the reverse merger will allow the participants to access the public market quickly. "We have a very strong window right now because we have a very strong technology," he says. Being public, he adds, will allow his company to offer employees stock options and thus attract the best people.

Perhaps. But the bona fides of financiers Huberfeld, 39, and Bodner, 43, don't exactly inspire confidence. Two years ago, the Securities and Exchange Commission alleged that the pair had covertly received over 513,000 shares of restricted stock as collateral for a loan to a director of a company called Incomnet. The two immediately sold the shares in the

now-bankrupt long distance reseller for a profit of about $3.7 million, in violation of securities laws, according to the SEC complaint.

Broad Capital also was cited for failing to disclose, as required by law, that it held over 5% of Incomnet's outstanding securities. Broad, Huberfeld and Bodner settled the case without admitting or denying the SEC's allegations and were ordered to disgorge their profits, plus interest, which together totaled $4,649,125. Civil penalties also were imposed: Broad was ordered to pay $50,000; Huberfeld and Bodner, $15,000 each.

As a result, the pair were automatically "statutorily disqualified" from working for a broker licensed by the National Association of Securities Dealers.

Huberfeld and Broad Capital had another brush with the law in 1996, when they were targets of an SEC administrative complaint related to Wye Resources, a heavily promoted Canadian firm that claimed interests in various gold- and diamond-mining properties. "Broad Capital was aware of, and participated in, Wye's promotional efforts in the United States," the SEC alleged. The firm was also charged with buying unregistered shares of Wye at a discount and mischaracterizing the purchase as a loan. Without admitting or denying the commission's findings, Broad Capital and Huberfeld consented to the issuance of an order finding that they violated Section 5 of the Securities Act and they agreed to disgorge $426,790, representing profits made as a result of the transactions in Wye stock plus interest.

And in 1992, Bodner and Huberfeld pled guilty in Federal court in Brooklyn, New York, to possession of false identification with the intent to defraud. The duo got snagged having imposters take the Series 7 securities brokers' examination in their stead. Each was sentenced to a minimum of one year's probation and fined $50,000.

That doesn't seem to have slowed them, however. Consider the Jenkon International deal, which the Jerusalem Fund's Katsof recalls was "made available" to him by Huberfeld and Bodner. A little over a year ago, Jenkon shares were trading at 1 1/2. Then, on August 26, the reverse acquisition with Multimedia KID was announced. A Jenkon press release issued at the time noted that Multimedia KID was "awarded the prestigious Computer Software Award from the Office of the Prime Minister of Israel for the category of Special Innovation and Invention in Education."

As part of the deal, Jenkon issued 840,000 common shares to Multimedia KID shareholders, along with preferred stock that converts into an additional 24 million Jenkon shares. If the preferred stock were converted, Multimedia KID shareholders would own 83% of Jenkon. The deal later included a $4.5 million private placement of notes that convert into 4.5 million Jenkon shares.

According to SEC filings, former ECI Telecom chief David Rubner consented to become non-executive chairman of the newly combined company at the conclusion of the deal. Rubner, who stepped down from his post at ECI in February, had been with that Nasdaq-traded company since 1970 and was named chief executive in 1991. During his tenure as CEO, he is credited with expanding ECI's revenues from $74 million to $1.2 billion.

Rubner also serves as chairman of Net2Wireless and, if the reverse acquisition with Sensar is completed, he's slated to chair that combined entity, as well.

Rubner says he was introduced to Huberfeld and Bodner through a friend, whose name he declines to reveal. He says he was unaware of the duo's history with the SEC. "As far as shareholders are concerned, we cannot check their history," he told Barron's.

Jenkon completed the reverse acquisition and the $4.5 million private placement in December, and the Jenkon software business was sold to executives in the predecessor firm. Shares of Multimedia KID hit a high of 7 7/8 February 14.

Press releases about the deal fail to reveal much about the business or its finances. But according to SEC filings, for the six months ending June 30, 1999, about 44% of Multimedia KID's $747,743 in revenues came from Romania, 33.6% from the U.S. and 19.8% from Israel; and 97.7% of the company's sales during that period came from just three unidentified customers. A more recent SEC filing shows that the company had a loss before discontinued operations of $5.75 million and "generated only limited revenues from the sale of products, services and marketing rights" in the nine months ended March 31, 2000.

Earlier this month, Multimedia KID filed with the SEC to register 13,283,239 shares for sale. The shares result from the conversion of the preferred stock and the private placement. The registration, which isn't yet effective, makes for interesting reading. Listed as the largest shareholder is Zehava Rubner, David's wife, who owns 6,818,606 shares, a 19.9%

stake, valued at $14.1 million by today's market. Of her total holdings, 2,650,000 shares will be registered.

Also on the shareholder list are Naomi Bodner and Laura Huberfeld, who each own 3,409,302 shares, with a combined value of $14.1 million. Each will register 1,325,000 shares.

Another name on the shareholder list is Robert DePalo, who owns 829,848 shares, all of which will be registered. DePalo is chairman of Equilink, a New York City investment firm, which was an adviser on the Multimedia KID deal. Says he: "By all predictions, the company should be profitable by the fourth quarter of this year, based on information given to me by the CFO."

The highest profile name on the shareholder list, however, belongs to Irwin Katsof, 45, who is shown as owning 200,000 shares, half of which will be registered for sale. Rabbi Katsof says some of those shares are owned by the Jerusalem Fund, which he heads, and says the charity is also invested in the Net2Wireless and e-Mobile deals.

Katsof prominently displays photos of himself with the likes of comedian Jerry Seinfeld, former British Prime Minister Margaret Thatcher, boxer Muhammed **Ali** and talk-show host Larry King in his midtown Manhattan office, across the street from the Broad Capital offices. Indeed, Katsof is the co-author, with King, of the popular book Powerful Prayers, which details the prayers of the rich and powerful.

Katsof says that Bodner and Huberfeld "are among the top philanthropists in the Jewish world." He adds: "David and Murray are known as upstanding individuals. They're friends. I trust their judgment."

The second deal, between Sensar and Net2Wireless, was announced on October 7, 1999. Sensar, formerly known as Larson-Davis, had been involved in the design, development, manufacturing and marketing of analytical scientific instruments. Six months earlier, Sensar had executed a 1-for-5 reverse split and its board of directors resigned. Taking over as chief executive was Howard Landa, a partner at Sensar's outside law firm. Sensar then began selling off its various operations and looking for other acquisitions or investments. During the September 1999 quarter it had no sales from continuing operations, but held cash and cash equivalents of $3.17 million.

Then came the announcement that Sensar would buy all the outstanding shares of ITES, now known as Net2Wireless. As part of the deal, Sensar would issue 17 million shares (adjusted for a subsequent split) to ITES stockholders. Another million shares would be given to unnamed parties who helped structure the deal.

"Net2Wireless was introduced to us by Broad Capital," says Sensar's Landa. Broad, he says, had invested in Sensar's predecessor and had approached him with a number of Israeli reverse-acquisition candidates. Landa says he liked the technology offered by Net2Wireless and met with Net2Wireless CEO Nechemia Davidson and Broad Capital in New York City. "My first attraction to the company was [David] Rubner because of his experience with ECI Telecom," says Landa.

Upon closing, Net2Wireless' officers, including Davidson, will take control of Sensar. Davidson, who told **Barron's** he worked for Israel's Ministry of Defense from 1987 into the mid-1990s and was involved with communications, data compression and encryption, says. "I searched for capital, and I met David Rubner, who was head of ECI." He adds that Rubner knew the U.S. investors and introduced him to Sensar. Davidson insists he knows nothing about Huberfeld's and Bodner's past run-ins with the SEC. "They're not active shareholders," he says. "It's David Rubner who's important."

Net2Wireless is developing a technology to compress data and transmit it wirelessly. Its hope is that cellular phone companies will buy its equipment to transmit video and the Internet over today's existing second generation, or 2G, devices. Most analysts don't expect wireless systems to be able to offer such services until 3G equipment is deployed, sometime in the next two to three years.

Sensar's shares started moving north after it announced that ITES had entered into a development agreement with Partner Communications, the Israeli affiliate of Orange, the British wireless operator. Net2Wireless will test, at its own expense, its streaming multimedia platform on Partner's system. In return, Partner received an option to purchase 7% of the company's outstanding stock at an exercise price of $5.5 million. At today's price, those shares would be worth about $67 million.

"It is in the first stages of testing, but we have not been disappointed," says Dan Eldar, vice president of carrier and international relations at Partner. One Partner unit is currently helping 12 startup companies to develop technology. And on Thursday PelePhone Communications, an Israeli cellular carrier, said it had installed Net2Wireless' technology and would begin pilot testing.

In late March, Net2Wireless completed a $29 million private placement of preferred stock, which is convertible into 1,041,140 Sensar's shares. At that point, Sensar decided to exercise its option to acquire Net2Wireless and slightly increased the shares involved. Sensar will issue 18,295,060 shares and options for 14,766,649 shares in addition to the splitadjusted one million shares used to pay an introduction fee. When all is said and done, the combined company will have just over 43 million shares outstanding on a diluted basis. Net2Wireless investors will own 65% of the new company. Those investors, along with Partner, have options to boost their ownership to 77%.

Shareholders were slated to consider the merger on June 16, but the company hasn't released any news to that effect. The combined entity will be dubbed Net2Wireless, and Davidson will take over.

Net2Wireless lost $493,178 between April and December 31, 1999, according to its most recent SEC filing. Yet at Sensar's current share price, the merged entity would boast a market value of $953 million. Is it worth it? "It's worth much more than that," effuses Davidson. "Content is the future." David Rubner sounds equally confident. "Net2Wireless is a company that's worth a lot of money," he explains. "It will revolutionize the cellular industry."

The most recently announced deal we found with a Bodner/Huberfeld connection involves Western Power & Equipment, a struggling heavy-equipment distributor. Results for the quarter ended April 30 show revenues of $35.3 million, down 13% and a loss of $947,000, or 29 cents per share, compared with the prior year's loss of two cents.

At the company's annual meeting in February, two of Western's incumbent directors resigned and two new directors were elected. Two months later, on April 18, Western announced plans to merge with e-Mobile, a startup developing a small, expensive wireless device, like a Palm organizer, that enables users to retrieve and display voice and data. On that day, Western's three million shares closed at 4 1/2.

Western Chief Executive Dean McLain explains that the company didn't have the money to expand its existing business, so it started looking for ways to merge, do a buyout or sell the company's shell. He adds that Robert M. Rubin, a Western director and the company's largest shareholder, knew the folks at Equilink, which was trying to bring e-Mobile public; Broad Capital, McLain says, is involved in raising $7-$8 million in a private placement, which is part of the deal.

McLain says he's never met with anyone from e-Mobile and Rubin has met only with Nechimiah Davidson. "We're relying on our board and Equilink to keep us updated," said McLain. **Barron's** was unable to reach Rubin for comment.

Davidson, for his part, says: "I'm not involved with the details [of e-Mobile]. I'm very busy with Net2Wireless."

He suggests speaking with Eytan Ramon. Ramon, in turn, told **Barron's** he was still on the job at Motorola, where he says he has worked for 17 years. He assured us, however, that two people now labor full time at eMobile, identifying market needs and working on the technology. "We think we have a big thing on our hands," he maintains. On Thursday, the company announced that Ramon had been named chief executive of e-Mobile.

On such hopes now rest a potential market cap of $380 million, based on the current price and the 52 million new shares that Western will issue to purchase e-
Mobile, plus the three million shares now outstanding. (Western's management and directors will buy Western's heavy equipment business for $4.7 million.)

So far, Western hasn't disclosed any financial information about e-Mobile in press releases or in the SEC filings. Nor has it submitted the letter of intent for the reverse acquisition to the SEC. So, the investors in e-Mobile haven't been publicly disclosed yet. That said, Katsof observes that the Jerusalem Fund is in the deal. And Rubner tells **Barron's** that he, his wife or his children are invested in all three of these transactions.
Nice work, if you can get it.

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Urge To Merge
A year ago, the three companies at right had nothing in common but struggling stock prices. Then along came a trio of suitors, in the form of Israeli high-tech startups. Investors who bought in on the merger news likely got burned. But because of the large number of new shares that have been or will be issued, insiders will make out even
if shares in the merged companies trade at $2 or $3.
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U.S. Company: Western Power & Equip
Heavy equipment distributor Israeli Company: eMobile
Developing wireless handheld devices Pre-Deal Shares Outstanding: 3.30 million Post-Deal Shares Outstanding: 55.30 million
Stock Price Pre-Deal: 4 1/2
Market Value Pre-Deal: $14.9 million
Recent Stock Price: 6 11/16
Recent Market Value*: $380.2 million
U.S. Company: Sensar
Manufacturer of measuring equipment Israeli Company: Net2Wireless
Technology for high-speed wireless Internet access Pre-Deal Shares Outstanding: 5.99 million Post-Deal Shares Outstanding: 43.1 million
Stock Price Pre-Deal: 3
Market Value Pre-Deal: $18.0 million Recent Stock Price: 22 1/8
Recent Market Value*: $952.7 million

U.S. Company: Jenkon International Software for marketing and direct sales
Israeli Company: Multimedia K.I.D. Interactive learning centers
Pre-Deal Shares Outstanding: 5.4 million Post-Deal Shares Outstanding: 34.2 million Stock Price Pre-Deal: 1 13/16
Market Value Pre-Deal: $9.8 million
Recent Stock Price: 2 1/16
Recent Market Value*: $70.6 million *Based on fully dilutedpost-deal shares

BARRON'S

Money Machine By Bill **Alpert** 767 words
30 October 2000 Barron's

When it comes to cultivating religious charities, and drawing them into stock deals involving tiny companies, Murray A. Huberfeld and David B. Bodner seem to be without peer. "Mssrs. Huberfeld and Bodner are among the top philanthropists in the Jewish world," says Rabbi Irwin G. Katsof, executive vice president of the Jerusalem Fund of **Aish** HaTorah in New York City. "There are organizations waiting in line to see them."

Bodner and Huberfeld run Broad Capital, one of the leading outfits for funneling investments into small publicly-traded companies with scant operating histories ("Let's Make a Deal," **Barron's,** June 26). With green marble floors and lush cherry paneling, their offices high above Carnegie Hall project an image of
prosperity and propriety. But appearances can be deceptive. In fact, this pair, both former stockbrokers at Datek Securities, got booted from the brokerage industry after their 1990 arrest for sending imposters to take the broker's license exam on their behalf. In 1992, each pleaded guilty to a misdemeanor charge.

Broad Capital is not a brokerage firm, but rather does its investment banking business on the unregulated fringes of the securities industry. And Bodner and Huberfeld's regulatory history doesn't suggest loving kindness. In 1996, Huberfeld settled administrative charges with the Securities and Exchange Commission, without admitting or denying guilt, that he had fraudulently promoted a mining stock. Then, in 1998, the pair disgorged $4.6 million to settle SEC charges, again without admitting or denying guilt, that they'd gotten shares of another stock illegally from a company director.

Among the investors in stocks promoted by Broad Capital in the past six years are some three dozen religious charities, accounting for 18 million shares valued at $66 million when they were registered with the SEC for sale to the public. One charity that's been enriched by these deals is the Jerusalem Fund of **Aish** HaTorah, a religious education charity that has been popular with showbiz celebrities, including Larry King and Kirk Douglas. Rabbi Katsof says his organization lacks the resources to hire professional money managers, so it relies instead on a board member to review its investments. But when it comes to investing in small stock deals, Bodner and Huberfeld seem to call the shots.

"We trust David Bodner and Murray Huberfeld," he said when asked how the charity came to invest in Multimedia KID, a Broad Capital deal. He added that he knew nothing of the duo's past problems with regulators. Questioned about another Broad stock called Sensar, he said, "Mssrs. Huberfeld and Bodner gave us the opportunity to invest in this company. . . . Their deals have worked, as far as I know."

He should know. As it turns out, Rabbi Katsof has personally invested in at least seven Broad Capital stocks, several of which stocks turn up in the coffers of the Jerusalem Fund as well. In two Broad Capital stocks, Emerging Vision and Jenkon International, Katsof personally held shares worth more than $1.2 million at the time they were registered for sale to the public. Indeed, he received $630,000 worth of those shares as a finder's fee for helping to put Multimedia KID, an Israeli company, in touch with Jenkon International, the U.S. shell company it subsequently merged into. Through such a merger, a company can become publicly traded without disclosing as much about itself as it would have to if it chose the more typical route, an initial public offering.

After our interview with Rabbi Katsof, he did not respond to e-mails, faxes and other messages asking about his personal investments in stocks promoted by Broad Capital. Bodner and Huberfeld, through their attorney, reject any suggestion of impropriety.

Large pieces of Bodner and Huberfeld deals also turn up in the hands of obscure non-profit entities, like the Ezer M'Zion Organization and the Ace Foundation. Ezer M'Zion is an Israeli charity with its New York location in David Bodner's home. The Ace Foundation is a private philanthropic foundation with the Brooklyn address -- and initials -- of Aaron Elbogen and his wife Chaya. As it happens, Elbogen was the Datek Securities principal who prosecutors claimed set up the exam scam that got Bodner and Huberfeld in trouble. The charges against Elbogen were later dropped. He did not respond to requests for comment.

Datek Securities, it should be noted, is the former parent of Datek Online Holdings, the well-known online broker. Two years ago the two firms split, allowing Datek Online to shed the parent company's lengthy disciplinary record.

FEATURE | SATURDAY, FEBRUARY 25, 2012

How Hedge Funds Got Hooked in a Ponzi Scheme

By BILL ALPERT

Ponzi schemer Scott Rothstein lured supposedly smart money out of New York hedge funds. Why did they continue doing business with him?

Scott Rothstein was a special kind of Ponzi schemer.

Unlike Bernie Madoff or Allen Stanford, who mostly hurt individual investors, the 49-year-old Rothstein sucked in a billion dollars from sophisticated investors —including New York hedge funds that employed the well-known detective firm Kroll and an onsite inspector at Rothstein's Fort Lauderdale law firm, from which he sold discounted legal settlements with annualized returns as high as 437%. Sadly, the settlements didn't exist.

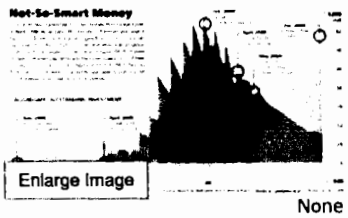
Two years after Rothstein's scam collapsed, the civil plaintiffs are just getting warmed up. The first jury trial to follow the mess awarded $67 million in January to a group of investors who sued TD Bank, claiming that its employees assisted Rothstein's scam. The U.S. unit of Toronto-Dominion Bank will appeal, but remains a deep-pocketed target for Rothstein victims. The Canadian parent recently set aside a litigation reserve of $255 million. On Thursday, it offered $170 million to settle claims with another group of Rothstein victims. The bank declined to comment on any aspect of this story.

The other deep pockets in the Rothstein lawsuits are the New York hedge funds. Sharing offices on the 54th floor of a tower above Carnegie Hall, the funds—Platinum Partners Value Arbitrage Fund, Centurion Structured Growth and Level 3 Capital Fund—advanced about $440 million to Rothstein, starting in early 2008, and got all but $19 million back before the lawyer fled in a private jet to Morocco in October 2009. After returning, Rothstein pled guilty to racketeering, fraud and money laundering.

Sentenced to 50 years and the forfeiture of $1.2 billion, he began cooperating with federal prosecutors and the trustee in his law firm's bankruptcy. In a December 2011 deposition, Rothstein said he had compromised some hedge-fund employees with cash, strip-club outings and escort services. He also claimed that, to get their money out, the hedge funds helped him attract new investors, after they suspected fraud and realized that Rothstein would need fresh money. The bankruptcy trustee is seeking $423 million from the three hedge funds and another $20 million directly from their principals.

The hedge funds say they were unsuspecting victims of Rothstein and didn't recommend him to others after he missed scheduled payments. In court filings and in statements to *Barron's*, they say they invested in good faith on the strength of due-diligence visits with Rothstein, TD bankers and lawyers—who, they claim, falsely told the funds that Rothstein had the settlement money. "What was unique about Rothstein," said Platinum's boss Mark Nordlicht in an e-mail to *Barron's*, "was his ability to enlist so many others to assist him in his deceptions."

ROTHSTEIN'S DECEPTIONS consisted of offering investments that were too good to be true. He told investors they could have a piece of confidential settlements that plaintiffs were willing to trade for sharply discounted lump sums. The settlement funds were safely escrowed in trust accounts. Rothstein instead used the cash to enjoy a rock-star lifestyle.



As the nearby chart shows, Rothstein's scheme had netted about $25 million by April 2008 when he started to tap into the New York hedge funds. The first was Centurion, a secured-lending fund that Murray Huberfeld launched in 2005 after a career that can fairly be described as picaresque. With longtime partner David Bodner, he got booted from the brokerage industry following their 1990 arrests for sending imposters to take their broker-license exams. They disgorged $4.6 million in 1998 to settle a fraud case brought by the Securities and Exchange Commission, without admitting guilt. Still, Huberfeld had his fans. By 2008, Centurion had a couple of hundred million under management and a high ranking among fixed-income hedge funds in the Barclay Managed Funds Report. For its part, Platinum Partners Value Arbitrage Fund ranked No. 56 on *Barron's* annual hedge-fund performance survey for 2010 and No. 16 for 2009. It reported a three-year compound annual return of 14.58% through 2010.

Centurion didn't lend directly to Rothstein but to a feeder fund called Banyon established by a Florida entrepreneur named George Levin. Banyon used Centurion's money to purchase what it thought were settlements from Rothstein. Huberfeld insisted that the settlement funds go into trust accounts at a bank of his choosing, Commerce Bank, which later became part of TD Bank. Platinum and a related fund, Level 3, joined shortly thereafter.

The hedge funds did their due diligence jointly. Although the Kroll investigators didn't notice that Levin's Banyon manager, Frank Preve, had a felony conviction for bank fraud, they did warn that Rothstein didn't seem to have access to hundreds of millions of dollars worth of settlements. (A subsequent Platinum negligence complaint against Kroll was thrown out by a judge.) The hedge funds hired Michael Szafranski, a Miami accountant who knew an executive at Platinum, to verify Rothstein's paperwork and bank accounts. Centurion portfolio manager Jack Simony came to Florida to inspect the TD Bank accounts, while Centurion counsel Brian Jedwab met with four lawyers who said their firms were financing settlements through Rothstein. The hedge-fund employees say they were convinced.

But in Rothstein's December deposition, he said he'd bribed the four lawyers to say they supplied him with settlements. He also claimed he paid a $50,000 bribe to TD Bank's regional vice president at the time, Frank Spinosa, to falsify bank records and persuade Szafranski, Simony and others that Rothstein had hundreds of millions locked up in accounts for the benefit of investors. Spinosa hasn't been charged by prosecutors, and his attorney, Samuel J. Rabin, says the

former banker never lied or took a bribe.

The hedge funds' verifier, Szafranski, "wasn't very inquisitive," said Rothstein at deposition. Szafranski met a purported TD banker called "Ricardo Mejia" who was actually Steve Caputi, the manager of Rothstein's nightclub Café Iguana. Rothstein testified that, strangely, Szafranski later socialized with Caputi—as Caputi—at the cafe and at a strip club called Solid Gold. Szafranski's attorney didn't respond to inquiries. Rothstein claimed in his deposition that he'd also paid prostitutes to service Centurion's Simony and a Platinum employee named Ari Glass—allegations that both Glass and Simony deny.

In court, the hedge funds have steadfastly said they were fooled by Rothstein until he missed payments in April 2009. An accounting analysis filed by the Rothstein bankruptcy trustee in his case against the funds–the basis for our chart–shows that the hedge funds' aggregate outstanding investment with Rothstein peaked at $183 million before that, on Jan. 2, 2009. Their net investment then declined as more money was paid out. By the time the scheme collapsed, they had a net investment of just $19 million. As their money left, a net $179 million came into Rothstein's scheme from investors like Florida billionaire Doug Von Allmen and money manager A.J. Discala.

In two separate proceedings that seek $20 million from Huberfeld, Bodner, Nordlicht and their wives, the Rothstein bankruptcy trustee alleges that the hedge-fund principals cut side deals with Rothstein. In January 2009, when the funds were already reducing their investments, the principals supplied $11 million through an entity owned by their wives called Regent Capital Partners, on which Rothstein promised to return $22 million over six months.

"When you're running a Ponzi of this magnitude," Rothstein testified, "you want to reward the people that are taking care of you and helping you sustain the Ponzi scheme."

In an e-mail, Nordlicht says the Regent deals with Rothstein were a way to use their own money to test the potential for a fund that would directly invest with Rothstein.

E-mail: editors@barrons.com

Form 8-K for COMMERCE ENERGY GROUP, INC.

12-Dec-2008

Entry into a Material Definitive Agreement, Termination of a Material

Item 1.01. Entry into a Material Definitive Agreement

As Commerce Energy Group, Inc. (the "Company") has previously disclosed in its filings with the Securities and Exchange Commission ("SEC"): (i) the Company entered into a Note and Warrant Purchase Agreement dated as of August 21, 2008 (as amended, the "Purchase Agreement") with AP Finance, LLC, a Delaware limited liability company ("AP Finance"), whereby AP Finance agreed to purchase one or more secured promissory notes from the Company and Commerce Energy, Inc., a California corporation and wholly owned subsidiary of the Company ("Commerce");
(ii) pursuant to the terms and conditions of the Purchase Agreement, on August 21, 2008 and August 22, 2008, the Company and Commerce issued to AP Finance two Senior Secured Convertible Promissory Notes in the principal amounts of $20,931,579 and $2,225,410.98, respectively (the "Notes"); (iii) pursuant to the terms of the Security Agreement dated August 21, 2008 among the Company, Commerce and AP Finance (the "Security Agreement"), the Company's and Commerce's obligations under the Purchase Agreement and the Notes are secured by substantially all of the assets of the Company and Commerce, including, but not limited to, all of the Company's shares of stock in Commerce; (iv) AP Finance's security interest in substantially all of the assets of the Company and Commerce is subordinated to the senior security interest the Company and Commerce granted in favor of Wachovia Capital Finance Corporation (Western) ("Wachovia") pursuant to the Loan and Security Agreement dated as of June 8, 2006 among the Company, Commerce and Wachovia (as amended, the "Credit Facility"); (v) on October 27, 2008, the Company and Commerce issued to AP Finance a Discretionary Line of Credit Demand Note (the "Demand Note") in the principal amount of $6.0 million pursuant to the Purchase Agreement; and (vi) the Notes, the Credit Facility and the Demand Note all mature on December 22, 2008 (if, in the case of the Demand Note, not demanded sooner).

On December 11, 2008, AP Finance and Commerce Gas and Electric Corp., a Delaware corporation and wholly owned subsidiary of Universal Energy Group Ltd. ("CG&E"), notified the Company in writing that: (i) AP Finance had sold its interest in the Notes to CG&E; (ii) Wachovia had assigned all of its and the other lenders' interests under the Credit Facility to AP Finance and CG&E; and (iii) AP Finance and CG&E made a demand under the Demand Note and notified us that a default exists under the Purchase Agreement and the Security Agreement, for which as a result an event of default exists under the Purchase Agreement, the Notes, the Demand Note and the Credit Facility,

making all of the Company's and Commerce's obligations under the Purchase Agreement, the Notes, the Demand Note, the Security Agreement and the Credit Facility (the "Secured Debt") immediately due and payable.

On December 11, 2008, AP Finance and CG&E proposed, under Section 9-620 of the . . .

Item 1.02 Termination of a Material Definitive Agreement

The Information set forth under Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 1.02.

Under the terms of the Acceptance Agreement, all of the Company's obligations under the Purchase Agreement, the Notes, the Demand Note, the Security Agreement, the Credit Facility, and the warrants previously issued to AP Finance terminated on December 11, 2008.

Additionally, on December 11, 2008, Jesup & Lamont Incorporated ("Jesup"), Bill Corbett ("Corbett") and the Lee E. Mikles Revocable Trust ("Mikles") agreed to the cancellation of warrants exercisable for an aggregate of 875,000 shares of the Company's common stock issued by the Company to Jesup, Corbett and Mikles for services rendered in connection with the sale of the Notes.

Effective December 11, 2008, the Board of Directors of the Company authorized the redemption of all of the outstanding Rights under the Company's Shareholders Rights Agreement datad July 1, 2004 (the "Rights Plan") at a redemption price of $0.001 per right. The result of this redemption is to effectively terminate the Rights Plan. In connection with the contemplated dissolution of the Company, the Company's board of directors also terminated the Amended and Restated 2005 Employee Stock Purchase Plan, effective upon the consummation of the Consensual Foreclosure, and the Commonwealth Energy Corporation 1999 Equity Incentive Plan, as amended, and the Amended and Restated Commerce Energy Group, Inc. 2006 Stock Incentive Plan, effective upon the dissolution of the Company.

There are no material relationships, other than with respect to the cancelled warrants, between the Company and its directors, officers (or any associate of any such director or officer) or affiliates, on the one side, and Jesup, Corbett and Mikles and their respective affiliates, on the other side.

Item 2.01. Completion of Acquisition or Disposition of Assets

The Information set forth under Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 2.01.

On December 11, 2008, in connection with the completion of the Consensual Foreclosure described in Item 1.01 of this Current Report on Form 8-K and pursuant to the terms and conditions of the Acceptance Agreement, the Company accepted the foreclosure of all its interest in the common stock in Commerce, and certain other securities, and agreed to the agreements of AP Finance and CG&E contained in the Acceptance Agreement, including the satisfaction of the Company's liabilities and obligations with respect to the Secured Debt under Section 9-620 of the UCC as in effect in the State of New York.

As a result of the consummation of the Consensual Foreclosure, the Company has ceased all operations and the Company intends to call and hold a special meeting of its shareholders at which the Company's shareholders will be asked to consider and approve the dissolution of the Company.

There are no material relationships, other than with respect to the Acceptance Agreement, the Secured Debt and the cancelled warrants, between the Company and its directors, officers (or any associate of any such director or officer) or affiliates, on the one side, and AP Finance or CG&E and their respective directors, officers (or any associate of any such directors or officers) or affiliates, on the other side.

The foregoing description of the Acceptance Agreement is qualified in its entirety by the full text of the Acceptance Agreement, a copy of which is filed as Exhibit 99.1 to this Current Report on Form 8-K.

Item 2.04 Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement

(a) The Information set forth under Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 2.04.

On December 11, 2008, AP Finance and CG&E made a demand under the Demand Note and notified us that a default exists under the Purchase Agreement and the Security Agreement, for which as a result an event of default exists under the Purchase Agreement, the Notes, the Demand Note and the Credit Facility, making all of the Company's and Commerce's obligations under the Purchase Agreement, the Notes, the Demand Note, the Security Agreement and the Credit Facility (the "Secured Debt") immediately due and payable in the aggregate amount of $28,743,144.

On December 11, 2008, AP Finance and CG&E proposed, under Section 9-620 of the UCC as in effect in the State of New York, to accept all shares of stock in Commerce and certain other securities held by the Company in satisfaction of the Company's liabilities and obligations with respect to the Secured Debt pursuant to the terms and conditions of the Acceptance Agreement (the "Consensual Foreclosure").

The Company had the right not to consent to, and thereby delay, the Consensual Foreclosure. The Company recognized, however, that this delay would likely not prevent a foreclosure. To induce the Company to accept the Consensual Foreclosure, AP Finance and CG&E agreed to allow Commerce to pay a dividend to the Company in the aggregate amount of $3.1 million. The Company's board of directors determined that, as a result of the proposed Consensual Foreclosure and the dividend to be paid to the Company by Commerce, the Company would be able to make a distribution to its shareholders in the amount of $2,614,780, after providing for all known or reasonably foreseeable obligations of the Company.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing

(d) In connection with the Consensual Foreclosure, the Company's board of directors determined to initiate the withdrawal of the Company's shares from the NYSE Alternext US, previously known as the American Stock Exchange (the "Exchange"). The Company is in the process of submitting a letter to the Exchange requesting the withdrawal of its shares of common stock from the Exchange. The Company also intends to file a Form 25 with the Securities and Exchange Commission regarding its withdrawal from the Exchange. The Company has ceased all operations and intends to call and hold a special meeting to seek stockholder approval to dissolve the Company. The Company also will not be in compliance with Section 1003 (a)(i) and Section 1003 (c)(i) of the Exchange's continued listing standards.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

(b) On December 11, 2008, Gregory L. Craig resigned as Chief Executive Officer and as a director of the Company and a director of Commerce. Mr. Craig's resignation as a director of the Company and as a director of Commerce was effective upon the consummation of the Consensual Foreclosure. Mr. Craig's resignation as Chief Executive Officer of the Company shall become effective immediately following the filing of the Company's Quarterly Report on Form 10-Q for the quarterly period ended October 31, 2008 with the SEC.

Also on December 11, 2008: Michael J. Fallquist resigned as Chief Operating Officer of the Company and as a director of Commerce; John H. Bomgardner, II resigned as Senior Vice President and General Counsel of the

Company; and David Yi resigned as Chief Risk Officer of the Company. The resignations of Messrs. Fallquist, Bomgardner and Yi were effective upon the consummation of the Consensual Foreclosure. Following the effectiveness of Mr. Craig's resignation, Mr. Mitchell, as Chief Financial Officer and Secretary of the Company, will be the sole remaining officer of the Company. So long as Mr. Mitchell is employed by Commerce, Mr. Mitchell shall not receive separate compensation for his services as Chief Financial Officer and Secretary of the Company. If Mr. Mitchell is no longer employed by Commerce, however, Mr. Mitchell shall receive from the Company cash compensation equal to $275 per hour for hours actually worked in connection with his role as the Company's Chief Financial Officer and Secretary.

In addition, on December 11, 2008, Charles E. Bayless, Gary J. Hessenauer, Mark S. Juergensen, Dennis R. Leibel and Robert C. Perkins resigned as directors of the Company, effective upon the consummation of the Consensual Foreclosure. Mr. Juergensen also resigned as a director of Commerce effective upon the consummation of the Consensual Foreclosure. Rohn E. Crabtree, an independent Class I director of the Company remains the sole director of the Company, the sole member of the Audit Committee and was named Chairman of the Board. It is the intention of Mr. Crabtree to serve through the winding up stage of the Company. The Company's board of directors determined that Mr. Crabtree shall receive a cash retainer of $8,000 per quarter for his continued service as a director, a member of the Audit Committee and Chairman of the Board, which cash retainer shall be in lieu of any and all other compensation (cash or otherwise) to which Mr. Crabtree would have been entitled under the Company's compensation policies applicable to non-employee directors.

(e) On December 11, 2008, the Company entered into amendments (collectively, the "Employment Agreement Amendments") to the following employment agreements between the Company and its executive officers after being approved by the Compensation Committee of the Company's Board of Directors (collectively, the "Employment Agreements"): the employment agreement dated as of February 20, 2008 between the Company and Gregory L. Craig; the employment agreement dated as of March 10, 2008 between the Company and Michael J. Fallquist; the employment letter agreement dated as of July 10, 2008 between the Company and C. Douglas

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Mitchell; and the employment letter agreement dated as of July 18, 2008 between the Company and John H. Bomgardner, II.

Among other things, the Employment Agreement Amendments, which became effective immediately prior to the consummation of the Consensual Foreclosure described in Item 1.01 of this Current Report on Form 8-K: (i) assign the Employment Agreements and all liabilities and obligations of the Company thereunder, including but not limited to liabilities relating to severance, to Commerce;
(ii) fix the term of employment with Commerce for the respective executives at one month following the consummation of the Consensual Foreclosure;
(iii) provide for severance in an amount equal to eight months of salary continuation and eight months reimbursement of insurance premiums relating to continued health coverage; and (iv) except in the case of Mr. Mitchell, whose 66,667 remaining shares of unvested restricted stock vested in full upon the consummation of the Consensual Foreclosure, terminate any further vesting of . . .

Item 7.01 Regulation FD Disclosure

On December 11, 2008, the Company issued a press release announcing that the Consensual Foreclosure was completed, describing the other transactions related thereto, disclosing the declaration of a cash dividend and the redemption of the rights issued pursuant to the Rights Agreement and also disclosing other actions disclosed in this Current Report on Form 8-K. A copy of the press release dated December 11, 2008 is being furnished as Exhibit 99.7 to this Current Report on Form 8-K.

Item 8.01. Other Events

On December 11, 2008, the Company's board of directors declared a dividend of $0.084 per share on shares of the

Company's common stock payable to holders of record as of the close of business on December 11, 2008. Additionally, on December 11, 2008, the Company took action to redeem all outstanding rights under the Rights Agreement dated as of July 1, 2004 between the Company and Computershare Trust Company, as rights agent. The Company has delivered the aggregate amount of the distribution to its payment agent with irrevocable instructions to make distributions to the Company's shareholders as soon as practical. The distribution is expected to be made to shareholders during the week of December 15, 2008.

Item 9.01. Financial Statements and Exhibits

(b) Pro Forma Financial Information

The pro forma financial information related to the disposition described in Item 2.01 above is included for the fiscal year ended July 31, 2008, and furnished with this Current Report on Form 8-K on pages F-1 through F-3 herein. The information being furnished pursuant to this Item 9.01(b) and set forth on pages F-1 through F-3 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such filing.

(d) Exhibits

Exhibit No.	Description
99.1	Acceptance Agreement dated as of December 11, 2008 among Commerce Energy Group, Inc., AP Finance, LLC and Commerce Gas and Electric Corp.
99.2	Assumption Letter dated as of December 11, 2008 between Commerce Energy Group, Inc. and Commerce Energy, Inc.
99.3	Amendment to Employment Agreement dated December 11, 2008 between Commerce Energy Group, Inc. and Gregory L. Craig.
99.4	Amendment to Employment Agreement dated December 11, 2008 between Commerce Energy Group, Inc. and Michael J. Fallquist.
99.5	Amendment to Employment Letter Agreement dated December 11, 2008 between Commerce Energy, Inc. and C. Douglas Mitchell.
99.6	Amendment to Employment Letter Agreement dated December 11, 2008 between Commerce Energy, Inc. and John H. Bomgardner.
99.7	Press Release of Commerce Energy Group, Inc. dated December 11, 2008

The Securities and Exchange Commission has not necessarily reviewed the information in this filing and has not determined if it is accurate and complete.
The reader should not assume that the information is accurate and complete.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM D

Notice of Exempt Offering of Securities

OMB APPROVAL	
OMB Number:	3235-0076
Expires:	June 30, 2012
Estimated average burden hours per response:	4.00

1. Issuer's Identity

CIK (Filer ID Number): 0001462539
Previous Names: [X] None
Name of Issuer: Regional Energy Holdings, Inc.
Jurisdiction of Incorporation/Organization: NV
Year of Incorporation/Organization:
[ ] Over Five Years Ago
[X] Within Last Five Years (Specify Year) 2009
[ ] Yet to Be Formed

Entity Type:
[X] Corporation
[ ] Limited Partnership
[ ] Limited Liability Company
[ ] General Partnership
[ ] Business Trust
[ ] Other (Specify)

2. Principal Place of Business and Contact Information

Name of Issuer: Regional Energy Holdings, Inc.
Street Address 1: 152 West 57th Street
Street Address 2:
City: New York
State/Province/Country: NY
ZIP/PostalCode: 10019
Phone Number of Issuer: 212-581-0500

3. Related Persons

Last Name: Fallquist
First Name: Michael
Middle Name:
Street Address 1: 152 West 57th Street
Street Address 2: 54th Floor
City: New York
State/Province/Country: NY
ZIP/PostalCode: 10019
Relationship: [X] Executive Officer [ ] Director [ ] Promoter
Clarification of Response (if Necessary):

Last Name: Levy
First Name: David
Middle Name:
Street Address 1: 152 West 57th Street
Street Address 2: 54th Floor
City: New York
State/Province/Country: NY
ZIP/PostalCode: 10019
Relationship: [ ] Executive Officer [X] Director [ ] Promoter
Clarification of Response (if Necessary):

Last Name: Barber
First Name: Isaac
Middle Name:
Street Address 1: 152 West 57th Street
Street Address 2: 54th Floor
City: New York
State/Province/Country: NY
ZIP/PostalCode: 10019
Relationship: [ ] Executive Officer [X] Director [ ] Promoter
Clarification of Response (if Necessary):

4. Industry Group

[ ] Agriculture
Banking & Financial Services
[ ] Commercial Banking
[ ] Insurance
[ ] Investing
[ ] Investment Banking
Health Care
[ ] Biotechnology
[ ] Health Insurance
[ ] Hospitals & Physicians
[ ] Pharmaceuticals
[ ] Retailing
[ ] Restaurants
Technology
[ ] Computers
[ ] Telecommunications

[ ] Pooled Investment Fund
Is the issuer registered as an investment company under the Investment Company Act of 1940?
[ ] Yes [ ] No
[ ] Other Banking & Financial Services
[ ] Business Services
Energy
[ ] Coal Mining
[ ] Electric Utilities
[ ] Energy Conservation
[ ] Environmental Services
[ ] Oil & Gas
[X] Other Energy
[ ] Other Health Care
[ ] Manufacturing
Real Estate
[ ] Commercial
[ ] Construction
[ ] REITS & Finance
[ ] Residential
[ ] Other Real Estate
[ ] Other Technology
Travel
[ ] Airlines & Airports
[ ] Lodging & Conventions
[ ] Tourism & Travel Services
[ ] Other Travel
[ ] Other

5. Issuer Size

Revenue Range	OR	Aggregate Net Asset Value Range
[X] No Revenues		[ ] No Aggregate Net Asset Value
[ ] $1 - $1,000,000		[ ] $1 - $5,000,000
[ ] $1,000,001 - $5,000,000		[ ] $5,000,001 - $25,000,000
[ ] $5,000,001 - $25,000,000		[ ] $25,000,001 - $50,000,000
[ ] $25,000,001 - $100,000,000		[ ] $50,000,001 - $100,000,000
[ ] Over $100,000,000		[ ] Over $100,000,000
[ ] Decline to Disclose		[ ] Decline to Disclose
[ ] Not Applicable		[ ] Not Applicable

6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

[ ] Rule 504(b)(1) (not (i), (ii) or (iii))
[ ] Rule 504 (b)(1)(i)
[ ] Rule 504 (b)(1)(ii)
[ ] Rule 504 (b)(1)(iii)
[ ] Rule 505
[X] Rule 506
[ ] Securities Act Section 4(6)
[ ] Investment Company Act Section 3(c)
[ ] Section 3(c)(1) [ ] Section 3(c)(9)
[ ] Section 3(c)(2) [ ] Section 3(c)(10)
[ ] Section 3(c)(3) [ ] Section 3(c)(11)
[ ] Section 3(c)(4) [ ] Section 3(c)(12)
[ ] Section 3(c)(5) [ ] Section 3(c)(13)
[ ] Section 3(c)(6) [ ] Section 3(c)(14)
[ ] Section 3(c)(7)

7. Type of Filing

[X] New Notice Date of First Sale 2009-03-26 [ ] First Sale Yet to Occur
[ ] Amendment

8. Duration of Offering

Does the Issuer intend this offering to last more than one year? [ ] Yes [X] No

9. Type(s) of Securities Offered (select all that apply)

[X] Equity
[ ] Debt
[ ] Option, Warrant or Other Right to Acquire Another Security
[ ] Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security
[ ] Pooled Investment Fund Interests
[ ] Tenant-in-Common Securities
[ ] Mineral Property Securities
[ ] Other (describe)

10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer? [ ] Yes [X] No

Clarification of Response (if Necessary):

11. Minimum Investment

Minimum investment accepted from any outside investor $50,000 USD

12. Sales Compensation

Recipient | Recipient CRD Number [X] None

(Associated) Broker or Dealer [X] None | (Associated) Broker or Dealer CRD Number [X] None

Street Address 1 | Street Address 2

City | State/Province/Country | ZIP/Postal Code

State(s) of Solicitation (select all that apply) Check "All States" or check individual States: [ ] All States | [ ] Foreign/non-US

13. Offering and Sales Amounts

Total Offering Amount $1,000,800 USD or [ ] Indefinite

Total Amount Sold $900,800 USD

Total Remaining to be Sold $100,000 USD or [ ] Indefinite

Clarification of Response (if Necessary):

14. Investors

[ ] Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors, and enter the number of such non-accredited investors who already have invested in the offering.

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering: 14

15. Sales Commissions & Finder's Fees Expenses

Provide separately the amounts of sales commissions and finders fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions $0 USD [ ] Estimate

Finders' Fees $0 USD [ ] Estimate

Clarification of Response (if Necessary):

16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

$100,500 USD [X] Estimate

Clarification of Response (if Necessary):

Signature and Submission

Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

Terms of Submission

In submitting this notice, each issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, in the accordance with applicable law, the information furnished to offerees.*
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administretive proceeding, or arbitration brought against it in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that, if the issuer is claiming a Rule 505 exemption, the issuer is not disqualified from relying on Rule 505 for one of the reasons stated in Rule 505(b)(2)(iii).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as

the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Regional Energy Holdings, Inc.	/s/ Michael Fallquist	Michael Fallquist	President	2009-04-22

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.

* This undertaking does not affect any limits Section 102(a) of the National Securities Markets Improvement Act of 1996 ("NSMIA") [Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996)] imposes on the ability of States to require information. As a result, if the securities that are the subject of this Form D are "covered securities" for purposes of NSMIA, whether in all instances or due to the nature of the offering that is the subject of this Form D, States cannot routinely require offering materials under this undertaking or otherwise and can require offering materials only to the extent NSMIA permits them to do so under NSMIA's preservation of their anti-fraud authority.

Public Utility Commission of Texas

Memorandum

To: Brian Lloyd
Executive Director

From: Randy Klaus, CPA RK
Enforcement Analyst
Oversight and Enforcement Division

Date: January 5, 2012

Re: **Report on Violations** by Glacial Energy of Texas, Inc. of PURA § 39.352 and former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), and current P.U.C. SUBST. R. 25.107(g)(1)(D), 25.475(g)(2) and 25.480(d), and Recommendation to Assess Administrative Penalties and Other Related Relief

I. NOTICE OF VIOLATION SUMMARY

The Oversight and Enforcement Division (O&E) has determined that Glacial Energy of Texas, Inc. (Glacial) has violated Public Utility Regulatory Act[1] (PURA) § 39.352 and prior P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), as those rules existed in 2006,[2] as well as current P.U.C. SUBST. R. 25.107(g)(1)(D), 25.475(g)(2) and 25.480(d). Glacial initially violated certain rules by providing false or misleading information to the Public Utility Commission of Texas (Commission) when it applied for a retail electric provider (REP) certification in 2006. Glacial subsequently violated other Commission rules by failing to maintain compliance with the Commission's newly adopted ownership and experience requirements for principals of a REP that experienced a mass transition of its customers to the provider of last resort (POLR). And finally, Glacial violated rules regarding customer pricing disclosures and overbilled its customers. The violations alleged herein are Class A and B violations. *See* P.U.C. SUBST. R. 25.8(b).

[1] Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (PURA) (Vernon 2007 & Supp. 2010) (PURA).
[2] The current versions of these rules can be found at P.U.C. SUBST. R. 25.107(g)(2)(A) and P.U.C. SUBST. R. 25.107(g)(2)(B).

O&E recommends that:

(1) The Commission issue an order finding Glacial in violation of PURA § 39.352, former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), as well as current P.U.C. SUBST . R. 25.107(g)(1)(D); 25.475(g)(2) and 25.480(d).

(2) The Commission impose an administrative penalty of $199,000 on Glacial;

(3) The Commission issue an order requiring Glacial to refund customers for all overbillings, including interest at the rate set by the Commission; and

(4) Such other and further relief as warranted by law.

II. STATEMENT OF FACTS

A. Applicable Law

Since its adoption in 1999, PURA § 39.352 has established the criteria for obtaining a certificate to provide retail electric service in Texas. REP certificates are issued to applicants who demonstrate the requisite managerial, technical and financial resources and abilities to provide continuous and reliable electric service.[3] Applicants are required to comply with all applicable customer protection provisions, disclosure requirements, and marketing guidelines established by the Commission and PURA.[4]

To implement the requirements of § 39.352, the Commission adopted former P.U.C. SUBST. R. 25.107(g)(9)(A)[5] and 25.107(g)(9)(B)[6] which required REP applicants to disclose their prior experience or that of its principals or employees, and any complaint history, disciplinary record and compliance record. In addition, current P.U.C. SUBST. R. 25.107(g)(1)(D) prohibits a principal of a REP that experienced a mass transition of its customers to POLR from using their experience to satisfy the 15 year experience requirement, and from owning more than ten percent of a REP, or directly or indirectly controlling a REP.

B. Material Omissions in Glacial's Initial REP Application

Glacial's initial application for REP certification, filed on January 27, 2006, failed to disclose Gary Mole's ownership interest and experience with Franklin Power Company (Franklin), (formerly Energy West Resources, Ltd, d/b/a Franklin Power Company). Glacial's responses to requests for information indicate that Mr. Mole was a majority shareholder of Franklin. Failure to disclose Mr. Mole's ownership interest and experience in Franklin was a material omission from Glacial's 2006 REP application and tantamount to providing false and

[3] PURA § 39.352(b)(1) and (2).
[4] PURA § 39.352(c).
[5] Substantive Rule in effect as of January 27, 2006, the date Glacial filed its REP application.
[6] Id.

misleading information to the Commission. Because Glacial failed to divulge Mr. Mole's prior experience with Franklin, including the mass transition of its customers to POLR in 2005, the Commission's decision to grant certification to Glacial was made on incomplete and inaccurate information.

Additionally, the application failed to disclose pending complaints against Franklin by TXU Electric Delivery Company and Centerpoint Energy Houston to revoke Franklin's REP certificate for failure to satisfy its financial obligations. These complaints, consolidated in Docket No. 31166 on July 13, 2005, were pending approximately eight months prior to the filing of Glacial's initial application for REP certification. On February 28, 2006, a hearing on the merits was held regarding these complaints, and the Commission subsequently revoked Franklin's REP certificate by Order dated July 17, 2006. While these complaints were pending final decision by the Commission, Glacial's REP certificate, No. 10123, was approved administratively in Docket No. 32342 on March 6, 2006.[7]

Because Glacial failed to disclose the pending complaint proceedings against Franklin in its initial application and failed to disclose Mr. Mole's ownership interest and experience with Franklin, Glacial provided false and misleading information to the Commission pursuant to P.U.C. SUBST. R. 25.107(j)(1) by omitting critical information required by former P.U.C. SUBST. R. 25.107(g)(9)(A) and 25.107(g)(9)(B). The fact that Franklin had experienced a mass transition of its customers to POLR in 2005 and had pending complaints before the Commission, which ultimately led to the revocation of Franklin's REP certificate, are material events that would have likely resulted in the rejection of the Glacial REP application.

C. Other Violations

Four years later, beginning on May 21, 2010 – the effective date of current P.U.C. SUBST. R. 25.107(g)(1)(D) – new experience and ownership requirements, as well as financial requirements for the protection of customer deposits went into effect for all REPs. To date, Glacial has failed to comply with and remain in compliance with the 10 percent ownership restriction for principals that have experienced a POLR event.[8]

In addition, Glacial has failed comply with P.U.C. SUBST. R. 25.475(g)(2) which requires REPs to disclose pricing information on their Electricity Facts Label (EFL). Glacial's EFLs do not show the price(s) that it charges its customers. And finally, customers' bills show that Glacial has overbilled its customers, contrary to P.U.C. SUBST. R. 25.480(d), by assessing sales tax on electricity associated with residential usage. Tax Code § 151.317 automatically exempts the residential use of electricity from state sales tax.

[7] Docket No. 32342 – *Application of Glacial Energy of Texas, Inc., for Retail Electric Provider (REP) Certification*, Notice of Approval (March 6, 2006).

[8] To date, Gary Mole continues to be the majority shareholder of Glacial Energy Holdings, which owns Glacial Energy of Texas, Inc., a wholly-owned subsidiary of Glacial Energy Holdings, in violation of the 10 percent ownership cap.

III. RELIEF SOUGHT

O&E requests that the Commission issue a notice of violation against Glacial with regard to its violation of PURA § 39.352, former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B), 25.107(j)(1), and current P.U.C. SUBST. R. 25.107(g)(1)(D); 25.475(g)(2) and 25.480(d). The following relief is recommended:

1) Issue an order finding Glacial in violation of PURA § 39.352, former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B), and 25.107(j)(1), and current P.U.C. SUBST. R. 25.107(g)(1)(D); 25.475(g)(2) and 25.480(d);

2) Issue an order imposing an administrative penalty of $199,000 on Glacial for its violation of PURA § 39.352, former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B), and 25.107(j)(1), and current P.U.C. SUBST. R. 25.107(g)(1)(D); 25.475(g)(2) and 25.480(d)

3) The Commission issue an order requiring Glacial to refund customers for all overbillings, including interest at the rate set by the Commission; and

4) Such other and further relief as warranted by law.

IV. ADMINISTRATIVE PENALTIES

Glacial obtained its REP certificate through misleading information to the Commission by omitting material prior experience information on its initial application. Moreover, Glacial is in violation of the Commission's current experience requirements and ownership restrictions which became effective on May 21, 2010. Glacial is also in violation of certain customer protection rules and has overbilled its customers.

PURA § 15.023 provides that a penalty for a violation of PURA, Commission rule or order may be imposed in an amount not to exceed $25,000 for each violation and a separate violation is accrued for each day a violation continues or occurs.[9]

Staff considers most of these violations to be Class A violations pursuant to P.U.C. SUBST. R. 25.8(b) because such violations resulted in:

1) Fraudulent, unfair, misleading, deceptive, or anticompetitive business practices; and

2) A violation that creates economic harm to a person or persons, or property in excess of $5,000, or creates an economic benefit to the violator in excess of $5,000.

[9] *See* Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 15.023 (Vernon 2007 & Supp. 2010) (PURA) (increasing the maximum penalty from $5,000 to $25,000 for the most egregious violations); *see also* P.U.C. SUBST. R. 26.9(b)(3)(B)(vi) (establishing a maximum penalty of $25,000, effective October 17, 2006, for violations related to fraudulent, unfair, misleading, deceptive, or anticompetitive business practices and which result in an economic harm or gain to a person or persons in excess of $5,000).

Penalty Determination

Commission Staff recommends an administrative penalty of $199,000[10] based upon the following analysis:

1. Seriousness of the violation

PURA and the aforementioned rules are intended to protect the market and customers from the REPs and their principals who have demonstrated through their actions that they lack the managerial, technical and financial resources and abilities to provide continuous and reliable electric service. Providing false and misleading information to the Commission to obtain authorization to provide retail electric service and failing to comply with experience ownership requirements, customer protection rules and overbilling customers are very serious matters with significant financial implications to retail customers, transmission and distribution utilities (wires companies) and power generators. The Commission established standards to promote healthy competition and deter unscrupulous operators from entering and remaining in the market. Allowing principals who have been involved with a defunct REP, which experienced a mass transition of customers to POLR due to a failure to meet their financial obligations, to reenter and remain in the electric market places market participants and customers at risk for future disruptions in service due to mismanagement.

2. Economic harm to property or environment caused by the violation

The overbilling by Glacial has caused economic harm to its customers. And, the potential exists for additional economic harm given Mr. Mole's previous involvement with a REP that experienced a POLR transition due to default on its prior financial obligations.

[10]

P.U.C. SUBST. R.	Description	Penalty Amount
25.107(g)(1)(D)	Ownership Cap	$119,000
25.480(d)	Overbilling	25,000
25.107(g)(9)(A)	Experience Disclosure	25,000
25.107(g)(9)(B)	Complaint Disclosure	25,000
25.475(g)(2)	EFL Pricing Information	5,000
TOTAL		$199,000

Unlike the other violations, the violation of P.U.C. SUBST. R. 25.107(g)(1)(D) regarding the ownership cap is continuing in nature and continues to run. At a proposed penalty rate of $200 per day and the number of days that Glacial has been out of compliance, beginning on May 21, 2010 (the effective date of the rule) through January 5, 2012, or 595 days, the proposed penalty for this violation is currently $119,000 ($200 * 595 days = $119,000).

3. History of previous violation

Glacial has a previous violation on record with the Commission relating to its failure to purchase renewable energy credits pursuant to P.U.C. SUBST. R. 25.173 in 2007, Docket No. 35990.

4. Amount necessary to deter future violations

An administrative penalty is necessary in order to deter future violations and to set an example for other REPs applicants, especially since Glacial's primary principal, Gary Mole, was a principal of a REP that experienced a mass transition of its customers to POLR due to a failure to meet its financial obligations.

O&E recommends a penalty of $199,000 for the aforementioned violations.

5. Efforts to correct the violation

Glacial has indicated that it has made refunds of the sales taxes erroneously assessed and collected on residential usage of electricity. Otherwise, there are no indications that Glacial has taken any efforts to correct the remaining, aforementioned violations.

6. Other factors that justice may require

The Staff is unaware of any other factors to take into consideration at this time.

V. CONCLUSION

Glacial's failure to comply with PURA § 39.352, former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B), and 25.107(j)(1), and current P.U.C. SUBST. R. 25.107(g)(1)(D); 25.475(g)(2) and 25.480(d) has serious, existing and potential implications to its customers and market participants alike. O&E recommends that the Commission issue an order to impose an administrative penalty of $199,000 against Glacial for its violation of PURA § 39.352, former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B), and 25.107(j)(1), and current P.U.C. SUBST. R. 25.107(g)(1)(D); 25.475(g)(2) and 25.480(d), order refunds for overbillings and order such other and further relief as warranted by law.

PUC DOCKET NO. 40090

NOTICE OF VIOLATION OF PURA 39.352, FORMER P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B) and 25.107(j)(1), and CURRENT P.U.C. SUBST. R. 25.474, 25.475, 25.479, 25.480 AND 25.483, RELATED TO CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE BY GLACIAL ENERGY OF TEXAS, INC.	§	**PUBLIC UTILITY COMMISSION OF TEXAS**

COMMISSION STAFF'S PETITION FOR REVOCATION

COMES now, the Staff (Staff) of the Public Utility Commission of Texas (Commission), in the public interest, and files Staff's Petition for Revocation of retail electric provider ("REP") certification against Glacial Energy of Texas, Inc. ("Glacial"). In support, Staff offers the following:

I. Introduction

Glacial filed its original application for REP certification on January 27, 2006.[1] In its original application, Glacial failed to disclose the ownership interest of Gary Mole (Glacial's authorized representative) in Franklin Power Company (Franklin), or the pending complaints against Franklin at that time by TXU Electric Delivery Company and CenterPoint Energy Houston to revoke Franklin's REP certificate for failure to satisfy financial obligations.[2] On February 28, 2006, a hearing on the merits was held regarding these complaints and the Commission subsequently revoked Franklin's REP certificate on July 17, 2006.[3] While these complaints were pending final decision by the Commission, Glacial's REP certificate, No. 10123, was approved administratively in Docket No. 32342 on March 6, 2006.[4]

[1] *Application of Glacial Energy of Texas, Inc., for Retail Electric Provider (REP) Certification*, Docket No. 32342 (January 27, 2006).
[2] *See Id; See also Complaint of TXU Energy Delivery Company and CenterPoint Houston Energy, LLC, to Revoke Retail Electric Service Provider Certificate No. 10068 of Energy West Resources, LTD*, Docket No. 31166 (May 27, 2005).
[3] *Complaint of TXU Energy Delivery Company and CenterPoint Houston Energy, LLC, to Revoke Retail Electric Service Provider Certificate No. 10068 of Energy West Resources, LTD*, Final Order, Docket No. 31166 (July 17, 2006).
[4] Notice of Approval, Docket No. 32342 (March 6, 2006).

On January 6, 2012, Staff filed its Notice of Violation (NOV) in this docket pursuant to P.U.C. Proc. R. 22.26, thereby notifying Glacial that the Oversight and Enforcement Division (O&E) of the Public Utility Commission of Texas (Commission) is recommending assessment of administrative penalties against Glacial for failure to comply with Public Utility Regulatory Act (PURA)[5] §39.352, former P.U.C. SUBST. R. 25.107(g)(9)(A), 25.107(g)(9)(B), 25.107(j)(1), and current P.U.C. SUBST. R. 25.474, 25.475, 35.479, 25.480 and 25.483, related to Customer Protection Rules for Retail Electric Service. The violations alleged are Class A and B violations.

II. Staff's Petition for Revocation

Staff now petitions to revoke Glacial's REP certificate, no 10123, pursuant to PURA §§ 14.051, 17.051, 39.151(j), 39.352 and 39.356(a).

Staff petitions for revocation of Glacial's REP certification for the following reasons:[6] (1) Glacial's initial REP application had material omissions regarding the pending complaint proceedings against Franklin and Mr. Mole's ownership interest and experience with Franklin in violation of P.U.C. SUBST. R. 25.107(j)(1) and former P.U.C. SUBST. R. 25.107(g)(9)(A) and 25.107(g)(9)(B). The fact that Franklin had experienced a mass transition of its customers to POLR in 2005 and had pending complaints before the Commission, which ultimately led to the revocation of Franklin's REP certificate, are material events that would have likely resulted in the rejection of Glacial's REP application; and, (2) Glacial has failed to comply with and maintain compliance with the 10% ownership restriction for principals that have experienced a POLR event pursuant to current P.U.C. SUBST. R. 25.107(g)(1)(D).

WHEREFORE, PREMISES CONSIDERED, Staff petitions for revocation of Glacial's REP certificate, no 10123, pursuant to PURA §§ 14.051, 17.051, 39.151(j), 39.352 and 39.356(a).

[5] Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2010)(PURA).
[6] *See also Notice of Violation of PURA §39.352, former P.U.C. Subst. R. 25.107(g)(9)(B) and 25.107(j)(1), and current P.U.C. Subst. R. 25.474, 25.475, 25.479, 25.480 and 25.484, Related to Customer Protection Rules for Retail Electric Service by Glacial Energy of Texas, Inc.*, Docket No. 40090 (January 6, 2012).

DATE: January 9, 2012

Respectfully Submitted,

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500

Susan M. Stith
Attorney-Oversight and Enforcement Division
State Bar No. 24014269
(512) 936-7307
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

PUC DOCKET NO. 40090

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 9th day of January, 2012 in accordance with P.U.C. Procedural Rule 22.74.

Susan M. Stith

PATTON BOGGS LLP
ATTORNEYS AT LAW

2550 M Street NW
Washington DC 20037
(202) 457-6000

Facsimile (202) 457-6315

June 1, 2011

VIA FEDEX

Brennan Foley
Attorney, Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

RE: Investigation of Compliance with PURA § 39.352, Certification of Retail Electric Providers and P.U.C. SUBST. R. 25.107, Related to Certification of Retail Electric Providers
Investigation # 2011050001

Dear Mr. Foley:

Attached please find the Response of Glacial Energy of Texas, Inc. to Commission Staff's First Request For Admissions in the above-referenced investigation. Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,

Suedeen G. Kelly
George D. (Chip) Cannon, Jr.
Meredith M. Jolivert
Patton Boggs LLP
2550 M Street NW
Washington, DC 20037
Tel: (202) 457-6000

Counsel for Glacial Energy of Texas, Inc.

Enclosures

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO QUESTION NOS. RK-1 THROUGH RK-16

RK-1: Admit or deny that Gary Mole was the Chief Executive Officer of Glacial Energy Texas, Inc. as of January 27, 2006.

Response to RK-1:

Admit.

Prepared By: Gary Mole
Date: June 1, 2011

RK-2: Admit or deny that Gary Mole had any direct or indirect pecuniary interests as an owner, shareholder, principal, officer, director and/or employee in Glacial Energy Holdings, LLC as of January 27, 2006. Specify the type of pecuniary interest and provide details regarding same.

Response to RK-2:

Admit. As of January 27, 2006, Gary Mole was the sole shareholder and Chief Executive Officer of Glacial Energy Holdings.

Prepared By: Gary Mole
Date: June 1, 2011

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO
COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO
QUESTION NOS. RK-1 THROUGH RK-16

RK-3: Admit or deny that Gary Mole had any direct or indirect pecuniary interests as an owner, shareholder, principal, officer, director and/or employee in Energy West Resources, LTD as of January 27, 2006. Specify the type of pecuniary interest and provide details regarding same.

Response to RK-3:

Admit. Upon information and belief, Energy West Resources, Ltd. formally changed its name to Franklin Power Company before Touchdown Properties, LLC acquired 600,000 shares of common stock in Franklin Power Company. On October 31, 2003, Energy West Resources, Ltd. filed an application with the Secretary of State pursuant to the Texas Revised Limited Partnership Act to formally change its name to Franklin Power Company. Thereafter, on November 25, 2003, Touchdown Properties, LLC acquired 600,000 shares of common stock in Franklin Power Company. Mr. Mole was the sole owner of Touchdown Properties, LLC at the time of the stock acquisition; however, because the stock acquisition occurred after the company's name change, Gary Mole has never had any interest as principal, officer, director or employee of Energy West Resources, Ltd.

Prepared By: Gary Mole
Date: June 1, 2011

RK-4: Admit or deny that Gary Mole had any direct or indirect pecuniary interests as an owner, shareholder, principal, officer, director and/or employee in Touchdown Properties, LLC as of January 27, 2006. Specify the type of pecuniary interest and provide details regarding same.

Response to RK-4:

Admit. As of January 27, 2006, Gary Mole was the sole member of Touchdown Properties, LLC.

Prepared By: Gary Mole
Date: June 1, 2011

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO
COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO
QUESTION NOS. RK-1 THROUGH RK-16

RK-5: Admit or deny that Gary Mole had any direct or indirect pecuniary interests as an owner, shareholder, principal, officer, director and/or employee in Franklin Power Company as of January 27, 2006. Specify the type of pecuniary interest and provide details regarding same.

Response to RK-5:

Admit. On November 25, 2003, Touchdown Properties, LLC acquired 600,000 shares of common stock in Franklin Power Company. Mr. Mole was the sole owner of Touchdown Properties, LLC at the time of the stock acquisition.

Prepared By: Gary Mole
Date: June 1, 2011

RK-6: Admit or deny that Gary Mole had any direct or indirect pecuniary interests as an owner, shareholder, principal, officer, director and/or employee in Energy West Resources, LTD on and prior to April 18, 2005. Specify the type of pecuniary interest and provide details regarding same.

Response to RK-6:

Admit. See response to RK-3.

Prepared By: Gary Mole
Date: June 1, 2011

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO
COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO
QUESTION NOS. RK-1 THROUGH RK-16

RK-7: Admit or deny that Gary Mole had any direct or indirect pecuniary interests as an owner, shareholder, principal, officer, director and/or employee in Touchdown Properties, LLC on and prior to April 18, 2005. Specify the type of pecuniary interest and provide details regarding same.

Response to RK-7:

Admit. On and prior to April 18, 2005, Gary Mole was the sole member of Touchdown Properties, LLC.

Prepared By: Gary Mole
Date: June 1, 2011

RK-8: Admit or deny that Gary Mole had any direct or indirect pecuniary interests as an owner, shareholder, principal, officer, director and/or employee in Franklin Power Company on and prior to April 18, 2005. Specify the type of pecuniary interest and provide details regarding same.

Response to RK-8:

Admit. See response to RK-5.

Prepared By: Gary Mole
Date: June 1, 2011

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO
COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO
QUESTION NOS. RK-1 THROUGH RK-16

RK-9: Admit or deny that Franklin Power Company acquired ownership interest in Energy West Resources, LTD, circa 2003. Specify the type of ownership interest and provide details regarding same.

Response to RK-9:

Both Gary Mole and Glacial Energy Holdings are without sufficient information to form an opinion as to the truth of this Request.

Prepared By: Gary Mole
Date: June 1, 2011

RK-10: Admit or deny that Gary Mole has had any business relationship with Roger McAulay. Provide a description of any relationship with Roger McAulay.

Response to RK-10:

Admit. Touchdown Properties LLC, a company owned by Gary Mole, was a shareholder of Franklin Power Company, an entity for which Roger McAulay was an officer.

Prepared By: Gary Mole
Date: June 1, 2011

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO
COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO
QUESTION NOS. RK-1 THROUGH RK-16

RK-11: Admit or deny that Gary Mole has had any business relationship with Michael Petras. Provide a description of any relationship with Michael Petras.

Response to RK-11:

Admit. Touchdown Properties LLC, a company owned by Gary Mole, was a shareholder of Franklin Power Company, an entity for which Michael Petras was an officer.

Prepared By: Gary Mole
Date: June 1, 2011

RK-12: Admit or deny that Gary Mole has had any business relationship with Cathi Echols. Provide a description of any relationship with Cathi Echols.

Response to RK-12:

Admit. Touchdown Properties LLC, a company owned by Gary Mole, was a shareholder of Franklin Power Company, an entity for which Cathi Echols was an officer.

Prepared By: Gary Mole
Date: June 1, 2011

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO
COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO
QUESTION NOS. RK-1 THROUGH RK-16

RK-13: Admit or deny that Touchdown Properties, LLC acquired an ownership interest in Franklin Power Company through a restricted stock purchase agreement (600,000 common stock shares), circa 2003. Specify the type of ownership interest and provide details regarding same.

Response to RK-13:

Admit. Touchdown Properties, LLC acquired an ownership interest in Franklin Power Company when it purchased 600,000 shares of common stock on November 25, 2003.

Prepared By: Gary Mole
Date: June 1, 2011

RK-14: Admit or deny that the attached stock certificate copy is a true and correct copy of the original stock certificate that certifies that Touchdown Properties, LLC is the record holder of 600,000 shares of common stock of Franklin Power Company.

Response to RK-14:

Admit.

Prepared By: Gary Mole
Date: June 1, 2011

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO
COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO
QUESTION NOS. RK-1 THROUGH RK-16

RK-15: Admit or deny that the attached signature page is a true and correct copy of the original signature page regarding the restricted stock purchase agreement between Franklin Power Company and Touchdown Properties, LLC.

Response to RK-15:

Admit.

Prepared By: Gary Mole
Date: June 1, 2011

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO QUESTION NOS. RK-1 THROUGH RK-16

RK-16: Admit or deny that the signature of Gary Mole on the attached signature page of the restricted stock purchase agreement between Franklin Power Company and Touchdown Properties, LLC is the signature of the same Gary Mole whose signature appears on the attached affidavit filed with the application form for retail electric provider certification with the Public Utility Commission of Texas, Docket No. 32342.

Response to RK-16:

Admit.

Prepared By: Gary Mole
Date: June 1, 2011

5171063

PUBLIC UTILITY COMMISSION OF TEXAS
RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO QUESTION NOS. RK-1 THROUGH RK-16
Investigation # 2011050001

AFFIDAVIT

GARY MOLE being duly sworn, states the following under oath: that he is Chief Executive Office of Glacial Energy of Texas, Inc., that he prepared the Affidavit submitted in the above-captioned proceeding, and that the statements contained therein are true and correct to the best of his knowledge and belief.

Gary Mole

SUBSCRIBED AND SWORN TO BEFORE ME, this 1st day of June 2011.

Notary Public

Printed Name: _____

My Commission Expires: _____

NOTARY PUBLIC
Name: Jade N. Pratt
My Commission Exp.: February 7, 2012
NP Commission # NP-008-08
St. Thomas/St. John District

5172706

PATTON BOGGS LLP
ATTORNEYS AT LAW

2550 M Street NW
Washington DC 20037
(202) 457-6000

Facsimile (202) 457-6315

August 1, 2011

VIA FEDEX AND EMAIL

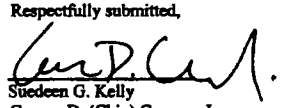
Brennan Foley
Attorney, Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

RE: Investigation of Compliance with PURA § 39.352, Certification of Retail Electric Providers and P.U.C. SUBST. R. 25.107, Related to Certification of Retail Electric Providers, Investigation # 2011050001

Dear Mr. Foley:

Attached please find the Response of Glacial Energy of Texas, Inc. to Commission Staff's Second Request For Admissions in the above-referenced investigation. We respectfully request that the Shareholders' Agreements, attached as Attachment A hereto, be treated as confidential. Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,



Suedeen G. Kelly
George D. (Chip) Cannon, Jr.
Meredith M. Jolivert
Patton Boggs LLP
2550 M Street NW
Washington, DC 20037
Tel: (202) 457-6000

Counsel for Glacial Energy of Texas, Inc.

Enclosures

INVESTIGATION NO. 2011050001

RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO COMMISSION STAFF'S SECOND REQUEST FOR ADMISSIONS TO QUESTION NOS. RK2-1 THROUGH RK2-5

RK2-2: Is Gary Mole currently the sole shareholder of Glacial Energy Holdings? If not, explain in detail all changes in ownership since January 27, 2006 and provide documentation regarding same.

Response to RK2-2: Gary Mole currently holds an 80% interest in Glacial Energy Holdings. Prior to August 2010, Mr. Mole was the sole shareholder of Glacial Energy Holdings. In August 2010, Mr. Mole transferred an 11% interest to Hasbro Management, LLC ("Hasbro") and a 9% interest to Photon Management, LLC ("Photon"). Hasbro and Photon are the mezzanine lenders of Glacial Energy Holdings, and Mr. Mole transferred these interests in connection with a Glacial Energy Holdings debt financing. *See* the Hasbro and Photon Shareholder's Agreements, attached as Attachment A hereto.

Prepared By: Gary Mole
Date: August 1, 2011

PUBLIC UTILITY COMMISSION OF TEXAS
RESPONSE OF GLACIAL ENERGY OF TEXAS, INC. TO
COMMISSION STAFF'S FIRST REQUEST FOR ADMISSIONS TO
QUESTION NOS. RK2-1 THROUGH RK2-5
Investigation # 2011050001

STATE OF U.S. VIRGIN ISLANDS)
COUNTY OF ST. THOMAS / ST. JOHN)

AFFIDAVIT

GARY MOLE being duly sworn, states the following under oath: that he is Chief Executive Office of Glacial Energy of Texas, Inc., that he prepared the Affidavit submitted in the above-captioned proceeding, and that the statements contained therein are true and correct to the best of his knowledge and belief.

Gary Mole

SUBSCRIBED AND SWORN TO BEFORE ME, this 28th day of July 2011.

Notary Public

Printed Name: Marguerite Dumestre Duncan

My Commission Expires: July 15, 2013

NOTARY PUBLIC
Name: Marguerite Dumestre Duncan
My Comm. Exp: July 15, 2013
NP Comm. # NP 037-09
St. Thomas / St. John District

5184137

Confidential

one or more intermediaries, is in control of, is controlled by, or is under common control with, the Shareholder and (ii) any person who is a director, officer, manager or partner of the Shareholder or of any person described in clause (i) above. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any person, means the power, directly or indirectly, to vote more than 50% of the securities having ordinary voting power for the election of directors of such person, or to direct or cause the direction of the management and policies of that person, whether by voting power, contract or otherwise.

(d) The pledge and assignment of Shares to Marbridge Energy Finance Fund, Centurion Credit International and the First National Bank of Texas.

1.3 Transfer Notification. Subject to the restrictions on transfer set forth herein, and prior to any Transfer to a Permitted Transferee in accordance with Section 1.2 above becoming effective (i) the Minority Shareholder shall notify the Corporation in writing prior to any Transfer of any Shares and such notice shall set forth (a) the date and manner of the proposed Transfer, (b) the number of Shares to be Transferred; and (c) the name of the proposed transferee of the Shares and (ii) the proposed transferee shall agree to be bound by the terms of this Agreement as a Minority Shareholder.

1.4 Corporate Acts. The Corporation shall not transfer on its books any certificates for the Shares owned by the Minority Shareholder, nor issue any certificate in lieu of such Shares, nor issue any new shares unless it has been satisfied of compliance with each and every condition hereof affecting such Shares or certificates.

ARTICLE II

Shareholder Rights

2.1 Drag-Along Rights. (a) If, as a result of a Sale Event (as defined below), any shareholder holding a majority of the issued and outstanding shares of the Corporation, proposes to transfer any or all of its or their shares of Common Stock to any person that is not a Permitted Transferee (a "Disposition"), then such shareholder (the "Disposing Shareholder"), may, at least five (5) days prior to the consummation of the Disposition, give written notice (a "Disposition Notice") to the Minority Shareholder describing the terms and conditions of the Disposition in reasonable detail and the Minority Shareholder shall be required, if requested by the Disposing Shareholder, to participate ratably in such Disposition at the same price per share as that offered to the Disposing Shareholder and on other terms consistent with any rights and preferences of the Shares.

(b) If the purchaser, pursuant to a Disposition is purchasing a specified limited number of shares of Common Stock, the Minority Shareholder shall sell, if requested by the Disposing Shareholder, to the purchaser, up to that number of Shares owned by the Minority Shareholder which is in the same proportion to the Minority Shareholder's total ownership of Shares as the number of shares of Common Stock being sold by the Disposing Shareholder is to the Disposing Shareholder's total ownership of Common Stock.

(c) As used herein, "Sale Event" means a sale of a majority of the Corporation's assets, or any merger, consolidation or other transaction of the Corporation with or into another corporation, entity or person, other than a transaction in which the holders (or any

such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Corporation within twenty (20) days after the Offer Notice is given, the Minority Shareholder may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the equity securities issued and held, by the Minority Shareholder bears to the total equity securities of the Corporation then outstanding.

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in (b), the Corporation may, during the ninety (90) day period following the expiration of the periods provided in Section (b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Corporation does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Minority Shareholder.

(d) The provision of this Section 2.4 shall not apply to an issuance of (i) up to 2,321,437 shares of Common Stock, representing 10% of the issued and outstanding shares of Common Stock of the Corporation as of the date hereof, to the Corporation's officers and directors (other than Mole) pursuant to a management incentive plan established by the Corporation for their benefit and approved by the Board, including the affirmative vote of the Photon Directors, (ii) securities issued in a Public Offering; and (iii) the issuance of securities in connection with a bona fide business acquisition by the Corporation of one or more entities, whether by merger, consolidation, purchase of assets, exchange of stock or units, or otherwise.

ARTICLE III

Board of Directors

3.1 Voting Agreement as to Election of Directors.

(a) The Board of Directors of the Corporation (the "Board") shall initially consist of Gary Mole, Mark Finley, David Levy and Isaac Barber. For purposes of this Article III, David Levy and Isaac Barber shall be referred to as the "Photon Directors". Subject to the terms of the certificate of incorporation of the Corporation and applicable law, each member of the Board shall have one (1) vote on each matter to come before the Board, except for Mole who shall have two (2) votes.

(b) For so long as Minority Shareholder or its Permitted Transferees continue to own at least 50% of the Shares subscribed for on the date hereof, Mole and Minority Shareholder agree to vote all of the Shares now owned or hereafter acquired by them (and attend, in person or by proxy, all meetings of shareholders called for the purpose of electing directors), and the Corporation agrees to take all actions (including, but not limited to the nomination of specified persons) to cause and maintain the election of the Photon Directors to the Board.

5.1 Term of Agreement. This Agreement and all restrictions on the Shares created hereby shall commence on the date hereof and shall terminate on the occurrence of any of the following events: (a) a single shareholder becoming the owner of all of the outstanding shares of the Corporation; (b) a Public Offering; (c) the execution of a written instrument by the Corporation and all persons who then own shares of Common Stock, subject to this Agreement or a similar agreement, which terminates the same; or (d) the liquidation and dissolution of the Corporation.

ARTICLE VI

Miscellaneous

6.1 Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Corporation and its successors and assigns, and the Minority Shareholder and its permitted transferees. Except as otherwise expressly provided herein, nothing contained herein shall confer or is intended to confer on any third party or entity which is not a party to this Agreement any rights under this Agreement.

6.2 New Shareholders. To become a party to this Agreement, a shareholder shall execute a joinder agreement substantially in the form of Exhibit B attached hereto (a "Joinder Agreement") which the Corporation shall countersign along with any other documents, instruments and agreements reasonably required by the Corporation. A Joinder Agreement duly executed by such shareholder and countersigned by the Corporation shall be sufficient for all purposes to cause such shareholder to become a party hereto, and it shall not be necessary to obtain the signature of any other shareholders on or in connection with such Joinder Agreement.

6.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. This Agreement cannot be changed or terminated orally. This Agreement may be amended, the parties may take any action herein prohibited or omit to take action herein required to be performed by them, and any breach of or compliance with any covenant, agreement, warranty or representation may be waived, only if the written consent or waiver is obtained from the Corporation.

6.4 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of law.

6.5 Severability. In the event that anyone or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

6.6 Notices. All notices, statements and other communications provided for by this Agreement shall be in writing and shall be deemed to have been given when actually delivered to the party to which notice is given when hand delivered, when received if sent by telecopier or by same day or overnight recognized commercial courier service or when mailed postage paid by registered or certified mail, return receipt requested, addressed to the party to which notice is given at its address on file with the Corporation or at its address set

IN WITNESS WHEREOF, the parties hereto have executed this Shareholders' Agreement as of the day and year first above written.

GLACIAL ENERGY HOLDINGS

By: _____
Name: Gary Mole
Title: Chief Executive Officer

PHOTON MANAGEMENT, LLC

By: _____
Name: _____
Title: _____

By: _____
Gary Mole

one or more intermediaries, is in control of, is controlled by, or is under common control with, the Shareholder and (ii) any person who is a director, officer, manager or partner of the Shareholder or of any person described in clause (i) above. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any person, means the power, directly or indirectly, to vote more than 50% of the securities having ordinary voting power for the election of directors of such person, or to direct or cause the direction of the management and policies of that person, whether by voting power, contract or otherwise.

(d) The pledge and assignment of Shares to Marbridge Energy Finance Fund, Centurion Credit International and the First National Bank of Texas.

1.3 Transfer Notification. Subject to the restrictions on transfer set forth herein, and prior to any Transfer to a Permitted Transferee in accordance with Section 1.2 above becoming effective (i) the Minority Shareholder shall notify the Corporation in writing prior to any Transfer of any Shares and such notice shall set forth (a) the date and manner of the proposed Transfer, (b) the number of Shares to be Transferred; and (c) the name of the proposed transferee of the Shares and (ii) the proposed transferee shall agree to be bound by the terms of this Agreement as a Minority Shareholder.

1.4 Corporate Acts. The Corporation shall not transfer on its books any certificates for the Shares owned by the Minority Shareholder, nor issue any certificate in lieu of such Shares, nor issue any new shares unless it has been satisfied of compliance with each and every condition hereof affecting such Shares or certificates.

ARTICLE II

Shareholder Rights

2.1 Drag-Along Rights. (a) If, as a result of a Sale Event (as defined below), any shareholder holding a majority of the issued and outstanding shares of the Corporation, proposes to transfer any or all of its or their shares of Common Stock to any person that is not a Permitted Transferee (a "Disposition"), then such shareholder (the "Disposing Shareholder"), may, at least five (5) days prior to the consummation of the Disposition, give written notice (a "Disposition Notice") to the Minority Shareholder describing the terms and conditions of the Disposition in reasonable detail and the Minority Shareholder shall be required, if requested by the Disposing Shareholder, to participate ratably in such Disposition at the same price per share as that offered to the Disposing Shareholder and on other terms consistent with any rights and preferences of the Shares.

(b) If the purchaser, pursuant to a Disposition is purchasing a specified limited number of shares of Common Stock, the Minority Shareholder shall sell, if requested by the Disposing Shareholder, to the purchaser, up to that number of Shares owned by the Minority Shareholder which is in the same proportion to the Minority Shareholder's total ownership of Shares as the number of shares of Common Stock being sold by the Disposing Shareholder is to the Disposing Shareholder's total ownership of Common Stock.

(c) As used herein, "Sale Event" means a sale of a majority of the Corporation's assets, or any merger, consolidation or other transaction of the Corporation with or into another corporation, entity or person, other than a transaction in which the holders (or any

such New Securities, (ii) the number of such New Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such New Securities.

(b) By notification to the Corporation within twenty (20) days after the Offer Notice is given, the Minority Shareholder may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such New Securities which equals the proportion that the equity securities issued and held, by the Minority Shareholder bears to the total equity securities of the Corporation then outstanding.

(c) If all New Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in (b), the Corporation may, during the ninety (90) day period following the expiration of the periods provided in Section (b), offer and sell the remaining unsubscribed portion of such New Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree than, those specified in the Offer Notice. If the Corporation does not enter into an agreement for the sale of the New Securities within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such New Securities shall not be offered unless first reoffered to the Minority Shareholder.

(d) The provision of this Section 2.4 shall not apply to an issuance of (i) up to 2,321,437 shares of Common Stock, representing 10% of the issued and outstanding shares of Common Stock of the Corporation as of the date hereof, to the Corporation's officers and directors (other than Mole) pursuant to a management incentive plan established by the Corporation for their benefit and approved by the Board, including the affirmative vote of the Hasbro Directors, (ii) securities issued in a Public Offering; and (iii) the issuance of securities in connection with a bona fide business acquisition by the Corporation of one or more entities, whether by merger, consolidation, purchase of assets, exchange of stock or units, or otherwise.

ARTICLE III

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3.1 Voting Agreement as to Election of Directors.

(a) The Board of Directors of the Corporation (the "Board") shall initially consist of Gary Mole, Mark Finley, David Levy and Isaac Barber. For purposes of this Article III, David Levy and Isaac Barber shall be referred to as the "Hasbro Directors". Subject to the terms of the certificate of incorporation of the Corporation and applicable law, each member of the Board shall have one (1) vote on each matter to come before the Board, except for Mole who shall have two (2) votes.

(b) For so long as Minority Shareholder or its Permitted Transferees continue to own at least 50% of the Shares subscribed for on the date hereof, Mole and Minority Shareholder agree to vote all of the Shares now owned or hereafter acquired by them (and attend, in person or by proxy, all meetings of shareholders called for the purpose of electing directors), and the Corporation agrees to take all actions (including, but not limited to the nomination of specified persons) to cause and maintain the election of the Hasbro Directors to the Board.

5.1 Term of Agreement. This Agreement and all restrictions on the Shares created hereby shall commence on the date hereof and shall terminate on the occurrence of any of the following events: (a) a single shareholder becoming the owner of all of the outstanding shares of the Corporation; (b) a Public Offering; (c) the execution of a written instrument by the Corporation and all persons who then own shares of Common Stock, subject to this Agreement or a similar agreement, which terminates the same; or (d) the liquidation and dissolution of the Corporation.

ARTICLE VI

Miscellaneous

6.1 Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Corporation and its successors and assigns, and the Minority Shareholder and its permitted transferees. Except as otherwise expressly provided herein, nothing contained herein shall confer or is intended to confer on any third party or entity which is not a party to this Agreement any rights under this Agreement.

6.2 New Shareholders. To become a party to this Agreement, a shareholder shall execute a joinder agreement substantially in the form of Exhibit B attached hereto (a "Joinder Agreement") which the Corporation shall countersign along with any other documents, instruments and agreements reasonably required by the Corporation. A Joinder Agreement duly executed by such shareholder and countersigned by the Corporation shall be sufficient for all purposes to cause such shareholder to become a party hereto, and it shall not be necessary to obtain the signature of any other shareholders on or in connection with such Joinder Agreement.

6.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. This Agreement cannot be changed or terminated orally. This Agreement may be amended, the parties may take any action herein prohibited or omit to take action herein required to be performed by them, and any breach of or compliance with any covenant, agreement, warranty or representation may be waived, only if the written consent or waiver is obtained from the Corporation.

6.4 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of law.

6.5 Severability. In the event that anyone or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

6.6 Notices. All notices, statements and other communications provided for by this Agreement shall be in writing and shall be deemed to have been given when actually delivered to the party to which notice is given when hand delivered, when received if sent by telecopier or by same day or overnight recognized commercial courier service or when mailed postage paid by registered or certified mail, return receipt requested, addressed to the party to which notice is given at its address on file with the Corporation or at its address set

IN WITNESS WHEREOF, the parties hereto have executed this Shareholders' Agreement as of the day and year first above written.

GLACIAL ENERGY HOLDINGS

By: _____
Name: Gary Mole
Title: Chief Executive Officer

HASBRO MANAGEMENT, LLC

By: _____
Name: _____
Title: _____

By: _____
Gary Mole

Platinum Partners Holding Structure for Retail Energy Provider