

Disclosure Games™ at Peabody Energy – Multiple Undisclosed SEC Probes, Prairie State Woes



Disclosure Insight™ reports provide commentary and analysis on public company interactions with investors and with the SEC. They are heavily reliant on our expertise with using the Freedom of Information Act.

Peabody Energy Corporation \$BTU

Confirmed, Undisclosed SEC Investigation. Maintained on Watch List, Added to Disclosure Games™ List

Analyst Summary: We think Peabody Energy is playing Disclosure Games™ with investors regarding SEC investigative activity. Last week Peabody Energy [announced the sale of its position in Prairie State Energy](#), an entity which the company claims is at the center of an SEC probe dating back to 2013. Some may be inclined to praise management for its sale of BTU's position in Prairie State. We suggest more information is needed before one takes to the pom-poms. Data recently received from the SEC is in stark contrast to company disclosures regarding related investigative activity.

Analysis and Opinion: Data recently received from the SEC has two disturbing reveals: First, the SEC confirmed enforcement proceedings were on-going as of 30-Nov-2015. We were also told there is/were multiple SEC probes. Repeatedly, and as recently as an 8-K filed in Dec-2015, Peabody's disclosures give the [clear] impression there was only one SEC investigation, it involved Prairie State, and the company has repeatedly said this about its status; that it's, "...not received any related communication from the SEC since August 2013."

The incongruity between these sets of contrasting data now leaves investors in the dark regarding how the sale of the Prairie State asset will impact the company going forward or if there is cause to worry about other SEC risk. Worse, it also brings into question the motives, if not the integrity of management.

We don't know what the multiple probes are/were about, nor do we know why the SEC investigated BTU's Prairie State involvement¹. Company filings only speak to one investigation that pertained to, "...the development of Prairie State".

Updates on SEC activity at Peabody merely repeat in form and substance what's been disclosed earlier without any helpful update. The disclosure related to not hearing anything from the SEC since Aug-2013 is repeated in the following filings: 10-Q filed in May-2014; 10-K filed on 25-Feb-2015; 10-Q's filed on 07-Aug-2015, and 09-Nov-2015; and, an 8-K filed on 14-Dec-2015.

Now it's time to ask: Who does that? That is, who continues to disclose some long-ago SEC investigation well after it supposedly ended? Dear reader, whenever you see a disclosure like this, we recommend you absolutely assume there is some reason company lawyers decided it had to stay ... and stay ... and stay. If this is BTU's version of transparency, we say it fails.

We don't know why the SEC decided to investigate, what was found, or if this had impact on the company's newly announced sale of the asset. The related disclosures give nothing regarding how Prairie State figured – or will figure – into BTU's overall accounting or its potential impact on the income statement or balance sheet.

¹ In a 12-Jun-2013 response to an SEC comment letter, the company stated commercial operations at the Prairie State Energy Campus commenced in 2012. It's worth noting, for reasons unknown, it did not take long after for the SEC to then start an investigation into that entity.

Facts of Interest or Concern: Our work first turned up SEC investigative activity at Peabody in Aug-2012. The company first disclosed a SEC probe in Feb-2013. At that time, the company said it received a subpoena in Jan-2013, but we don't know if that was the first contact with the SEC or if there have been more subpoenas. Subpoenas are only issued in formal probes, but Peabody never directly said its SEC probe is formal. This almost certainly started earlier as an informal investigation which the company waited to disclose. The FOIA response of Aug-2012, cited just above, supports this.

Company disclosures (cited below) give the impression the probe disclosed in Feb-2013 has been a non-event for the company since Aug-2013. This is why, when in Mar-2015, the SEC had previously confirmed that this company was involved in an active and ongoing investigation, we wrote it up as undisclosed at the time. There was no other conclusion to reach as company disclosures clearly suggest the matter has been effectively dead since Aug-2013.

Closer to the present, in a letter dated 23-Sep-2015 we received new information from the SEC suggesting, again, this company was involved in unspecified SEC investigative activity.

In a letter dated 30-Nov-2015, the SEC again confirmed Peabody's involvement in on-going enforcement proceedings. Our position is this remains undisclosed. Again, BTU's disclosures are clear in saying the company, "has not received any related communication from the SEC since August 2013", on the Prairie State matter.

In that same letter of 30-Nov-2015, the SEC said that while its need to block our access to records, "still applies to certain of the requested records, it no longer applied to the other records requested." The related records were remanded to the FOIA Office of the SEC for further processing. (In a footnote to this same sentence, the SEC also said, "At the time the FOIA Office processed your request [08-Sep-2015], there were multiple pending law enforcement proceedings on which [the law enforcement exemption of the FOIA] was asserted to withhold any potential responsive records.")

In a letter of 24-Dec-2015, the FOIA office then informed us there were no records available for release on the remanded matter(s) involving Peabody Energy. No further information was provided in this response.

Here's a summary of the Disclosure Games we found Peabody Energy used and/or continues to use—

1. Delay of greater than 10 days in disclosing an SEC investigation.
2. SEC confirmed active-and-ongoing investigative activity that was undisclosed at the time.
3. SEC investigative disclosures lacked detail on the nature of the probe sufficient to permit independent analysis of the risk it entails.
4. SEC investigative disclosures lacked detail on time of first contact with SEC.
5. A disclosed SEC investigation that was unspecified as to whether informal or formal.
6. Investigation appeared to be formal; company failed to give prominence to this potential.
7. Formal SEC investigative disclosures lacked detail on who received subpoenas.
8. Formal SEC investigative disclosures lacked detail on what information subpoenas sought.
9. Disclosures lacked detail on when the company was informed the probe became formal.
10. Subsequent disclosures on SEC investigative activity fail to provide meaningful updates.

Notable Disclosures: Below are the disclosures we found on a solo SEC investigation of Peabody Energy, first disclosed in Feb-2013.

Initial disclosure: From the 10-Q filed on 25-Feb-2013 – Here the company discloses receipt of a subpoena from the SEC.

In addition, in January 2013, the Securities and Exchange Commission (SEC) staff served a subpoena on the Company seeking information and documents relating to the development of Prairie State. The Company is cooperating with the SEC's investigation. Based on current information, the Company believes that such other pending or threatened proceedings are likely to be resolved without a material adverse effect on its financial condition, results of operations or cash flows.

Update: From the 10-Q filed on 8-May-2013 – BTU disclosed more details into the SEC investigation.

In addition, in January 2013, the Securities and Exchange Commission (SEC) staff served a subpoena on the Company seeking information and documents relating to the development of Prairie State Energy

Campus, a 1,600 megawatt coal-fueled electricity generation plant and adjacent coal mine in Illinois in which the Company owns a 5.06% undivided interest. The Company is cooperating with the SEC's investigation.

Update: From the 10-Q filed on 12-May-2014 – BTU disclosed that it had not received any communication with the SEC since Aug-2013.

In January 2013, the Securities and Exchange Commission (SEC) staff served a subpoena on the Company seeking information and documents relating to the development of Prairie State Energy Campus, a 1,600 megawatt coal-fueled electricity generation plant and adjacent coal mine in Illinois in which the Company owns a 5.06% undivided interest. The Company cooperated with the SEC's investigation and has not received any related communication from the SEC since August 2013.

Updates: This text, as shown here, was repeated verbatim in the **10-K filed on 25-Feb-2015**, and the **10-Q's filed on 07-Aug-2015**, and again on **09-Nov-2015** –

In January 2013, the Securities and Exchange Commission (SEC) staff served a subpoena on the Company seeking information and documents relating to the development of Prairie State Energy Campus, a 1,600 megawatt coal-fueled electricity generation plant and adjacent coal mine in Illinois in which the Company owns a 5.06% undivided interest. The Company cooperated with the SEC's investigation and has not received any related communication from the SEC since August 2013.

Update: From the 8-K filed on 14-Dec-2015 – This is, again, a repeat verbatim from earlier disclosures.

In January 2013, the Securities and Exchange Commission (SEC) staff served a subpoena on the Company seeking information and documents relating to the development of Prairie State Energy Campus, a 1,600 megawatt coal-fueled electricity generation plant and adjacent coal mine in Illinois in which the Company owns a 5.06% undivided interest. The Company cooperated with the SEC's investigation and has not received any related communication from the SEC since August 2013.

Most Recent Disclosure: From a press release of 21-Jan-2016 – “Peabody Energy Announces Agreement To Sell Interest In Prairie State Energy Campus” (There was no accompanying 8-K found at press time).

ST. LOUIS, Jan. 21, 2016 /PRNewswire/ -- Peabody Energy (BTU) announced today that it has entered into a definitive agreement to sell the subsidiary holding its 5.06 percent share of the Prairie State Energy Campus to the Wabash Valley Power Association for \$57 million, subject to certain customary closing adjustments.

The definitive agreement was entered into following a competitive bidding process Peabody launched in the fourth quarter of 2015 as part of the company's emphasis on portfolio optimization and sale of non-core assets.

Prairie State is a 1,600 megawatt coal-fueled electricity generation plant and adjacent coal mine in Washington, St. Clair and Randolph counties in Illinois, which commenced operations in 2012. It is one of the cleanest coal-fueled plants in the nation and the lowest-cost coal plant in one of the world's largest energy and operating reserve markets.

Closing on the transaction is anticipated to occur before the end of the second quarter of 2016, subject to certain governmental and regulatory approvals, expiration of purchase rights and other customary conditions. Peabody expects to use transaction proceeds for general corporate purposes and/or deleveraging activities, and expects to record a modest gain related to the sale.

The sale is the latest in a series of actions to reshape Peabody's portfolio and increase proceeds through sales of non-core assets. The planned sale of the Prairie State interest, along with other recently announced or enacted transactions, would bring total proceeds from asset sales to nearly \$500 million since the beginning of the second quarter of 2015.

- Probes Reporter®

Notable Freedom of Information Act History/Data from the Probes Reporter Database

23-Aug-2012	FOIA Response	Possible SEC investigation; access to records blocked.
1-Jul-2013	FOIA Response	Possible SEC investigation; access to records blocked.
16-Dec-2013	FOIA Response	Possible SEC investigation; access to records blocked.
21-Mar-2014	FOIA Response	Possible SEC investigation; access to records blocked.
3-May-2014	PR Research	Disclosure of SEC investigation found.
20-Jan-2015	FOIA Response	Possible SEC investigation; access to records blocked.
3-Mar-2015	FOIA Response	On-going enforcement proceedings confirmed; access to records blocked.
6-Mar-2015	PR Research	Disclosure of SEC investigation found.
13-Apr-2015	PR Research	Disclosure of SEC investigation found.
23-Sep-2015	FOIA Response	Possible SEC investigation; access to records blocked.
6-Nov-2015	PR Research	Disclosure of SEC investigation found.
30-Nov-2015	FOIA Response	On-going enforcement proceedings confirmed; access to records blocked. SEC acknowledges there are/were multiple probes at the time our FOIA request was initially processed in Sep-2015. One file remanded to FOIA Office for additional processing.
24-Dec-2015	FOIA Response	No records found in search of the remanded investigative file.
18-Jan-2016	PR Research	Disclosure of SEC investigation found.

Documents Acquired Under the Freedom of Information Act:

None in our library at this time.

Confirmed Undisclosed SEC Investigation – On Watch List: This indicator is assigned when the SEC confirmed this company’s involvement in on-going enforcement proceedings as basis to deny our Freedom of Information Act (FOIA) request and subsequent appeal. A confirmed investigation is the highest standard we can achieve regarding undisclosed SEC activity at a public company. While an SEC investigation may go nowhere, the potential harm from an undisclosed SEC probe can also be quite serious. This company will be tracked on our Watch List of companies with undisclosed SEC probes until such time it is either disclosed or new data from the SEC causes us to revise the indicator.

“**Disclosure Games**” is a term we use to highlight those public companies engaging in disclosure practices we find as misleading, confusing, evasive, or otherwise lacking the transparency needed for investors to make well-informed investment decisions regarding a potentially material exposure.

Notes: *All companies with undisclosed SEC investigations are maintained on our Watch List of companies with undisclosed SEC probes. The SEC did not disclose the details on investigations referenced herein. All we know is that they somehow pertain to the conduct, transactions, and/or disclosures of the companies referenced. The SEC reminds us that its assertion of the law enforcement exemption should not be construed as an indication by the Commission or its staff that any violations of law have occurred with respect to any person, entity, or security. New SEC investigative activity could theoretically begin or end after the date covered by this latest information which would not be reflected here.*

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