

United States Senate

WASHINGTON, DC 20510

December 12, 2018

The Honorary Bernard L. McNamee
Commissioner
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Commissioner McNamee,

The Federal Energy Regulatory Commission (FERC) has a requirement to ensure that electric rates are just and reasonable and not unduly discriminatory or preferential. As a FERC Commissioner, you will have a responsibility to uphold that requirement.

We are concerned about positions you have taken, both while serving as the U.S. Department of Energy's (DOE) Deputy General Counsel for Energy Policy and in the private sector. These positions and statements suggest a lack of independence and an inappropriate predisposition on a number of topics likely to be involved in proceedings that will come before you in your new role as a FERC Commissioner.

We were initially troubled by the implications of your involvement in the development of DOE's Notice of Proposed Rulemaking (NOPR) for the Grid Reliability and Resilience Pricing Rule, previously submitted to FERC. We believe that the viewpoints evident from the thrust of the NOPR, with its emphasis on propping up uneconomic coal and nuclear plants, along with statements you made more recently favoring fossil fuel and denigrating renewable resources, could present an appearance of a lack of impartiality in carrying out your responsibilities as a FERC Commissioner. In light of that, we respectfully request that you commit to recusing yourself in any future matters before FERC that might be characterized as pitting one fuel source against another.

We have been troubled by this Administration's persistent efforts to interfere in our energy markets in order to subsidize coal and nuclear energy generation at the expense of ratepayers and other more economically produced forms of energy. As you know, in July 2017, a draft report prepared by DOE on the reliability of the U.S. electric grid stated: "The power system is more reliable today due to better planning, market discipline, and better operating rules and standards." This draft report found two primary conclusions – that coal and nuclear plants are retiring primarily because of cheaper energy sources such as natural gas, not because of the rise of renewable energy generation or the implementation of environmental regulation, and that the retirement of coal and nuclear plants has not impacted grid reliability.

Notwithstanding the conclusions of the draft report, just months later Secretary Perry submitted a proposed rule for FERC's consideration to subsidize power plants that can store 90 days of fuel on site, which only nuclear and coal plants can do, citing a critical need for enhanced grid resilience and reliability. This proposed action immediately drew condemnation from the oil, gas, and renewable energy industries. In January 2018, FERC unanimously rejected the proposed rule, noting that DOE failed to provide evidence that retiring coal and nuclear plants represented an existential threat to grid reliability and resilience. Instead, FERC Commissioners opened a new docket to push the country's grid operators to examine grid resilience from storms and floods, cyber or physical attacks, and other major disruptions.


As mentioned above, our concerns over your apparent lack of impartiality are not based solely on the role you played in formulating the NOPR. Your Earth Day op-ed, and your comments during a 2018 public policy forum in Texas display a pronounced preference for fossil fuels and nuclear energy, and at a minimum suggest a strong bias against renewable energy technologies: "Renewables, when they come on and off, it screws up the whole physics of the grid. So when people want to talk about science, they ought to talk about the physics of the grid and know what real science is, and that is how do you keep the lights on? And it is with fossil fuels and nuclear."

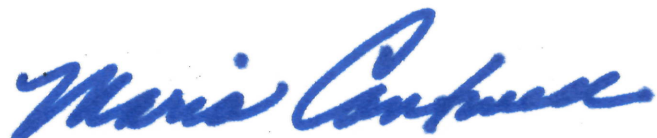
These actions and comments suggest that you may be unable or unwilling to take a "fuel-neutral" approach, but rather will favor particular technologies and outcomes. Moving forward, and particularly as FERC considers matters related to grid resilience and reliability, we urge you to remain true to your commitment to the Committee on Energy and Natural Resources to be "fair, objective, and impartial" and to work with your colleagues "to fulfill (FERC's) mission to ensure just and reasonable rates under the law." With that in mind, we urge you to recuse yourself from any future FERC proceedings where your impartiality could be questioned based upon your past statements, positions, or work on the DOE NOPR.

Finally, at your nomination hearing on November 15, 2018, you said you would need to consult with ethics officials regarding specific topics you can and cannot participate as a FERC Commissioner. We request that you provide us with an update about both the specific guidance you sought and the ethics guidance you have received by January 9, 2019.

Thank you for your attention and consideration of this matter.

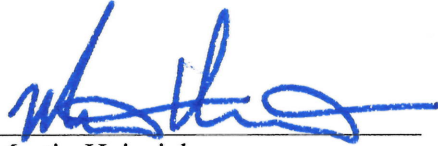
Sincerely,


Catherine Cortez Masto
United States Senator

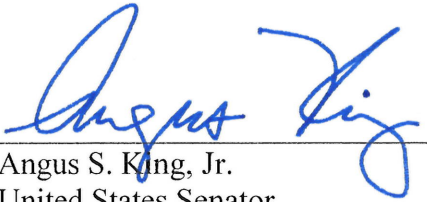

Maria Cantwell
United States Senator



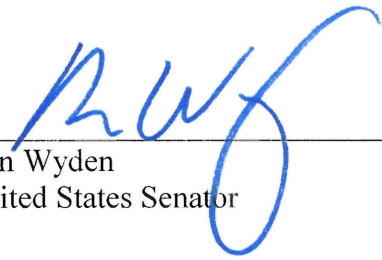
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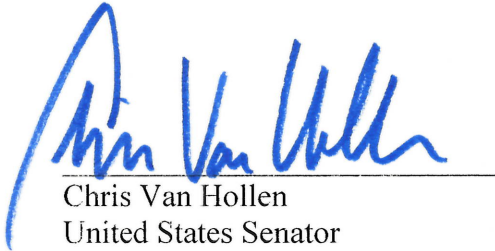
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Ron Wyden
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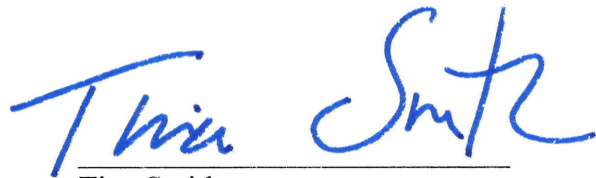
Chris Van Hollen
United States Senator



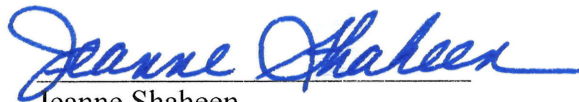
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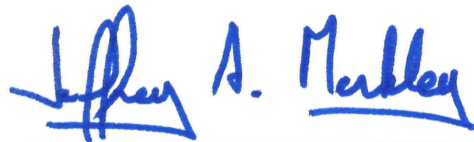
Debbie Stabenow
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