United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

September 5, 2013

The Honorable Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Chairman Wellinghoff:

The Federal Energy Regulatory Commission (FERC) is an independent regulatory agency charged with the responsibility of assisting consumers in obtaining reliable and efficient energy services at a reasonable cost through appropriate regulatory and market means. In executing its mission, FERC should be making decisions that are truly in the best interests of everyone who pays a utility bill. As affordable energy is the lifeblood of our economy, it is essential that FERC maintain its commitment to the American public and execute policies free from political interference. Unfortunately, the Committee has uncovered evidence that suggests that as Chairman of FERC, you have failed to act in accordance with this important mandate. Accordingly, I am writing to request that you cooperate with the Committee's inquiry into this matter.

Specifically, I am concerned with a series of emails I have obtained showing communications with the former Administrator of the U.S. Environmental Protection Agency (EPA) at a time when EPA's regulations were the subject of significant controversy due to their perceived potential to shutter a significant number of electrical generating units, increasing the cost of electricity and jeopardizing grid reliability.[1] From the communications, it appears that on EPA's behalf, and perhaps direction, you publicly indicated that regulatory actions would not impact electric generation or grid reliability. Unfortunately, your public assurances have since been contradicted by the facts.

In October of 2010, the North American Electric Reliability Corp. (NERC) estimated that up to 7% of national power capacity could be forced offline by 2015. This estimate was made prior to the shuttering of nuclear facilities such as San Onofre, and before EPA began the process of slow-walking major air regulations, including ozone, as scientific and benefit justification remain lacking. However, in response to the 2010 NERC report, you personally downplayed such claims that now seem likely to come true. As reported by Politico on October 26, 2010, you said, "the administration is working to ensure that the EPA rules have no effect whatsoever on domestic power supply… including boosting supply side resources" and further state "the sky isn't falling."[2]

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[1] North American Electronic Reliability Corporation, *2011 Long-Term Reliability Assessment, Potential Impacts of Future Environmental Regulations*, (2011). Available at <http://www.nerc.com/files/epa%20section.pdf>

[2] Robin Bravander, *EPA: Enviro Regs Won't Affect Grid*, POLITICO, Oct. 26, 2010.

In the same Politico story EPA spokesman Brendan Gilfillan attempted to assuage concerns raised by the NERC report by stating "by NERC's own admission, its projections about electricity supply impacts rest on its own future-telling about future regulations that have not even been proposed yet" and further claimed "in reality, EPA has some discretion and will be more sensitive to reliability than NERC gives us credit for."[3] On the same day, Dave McCintosh at the EPA emailed then Administrator Lisa Jackson specifically requesting that she "consider calling FERC Chairman Wellinghoff to thank him for his very helpful comments in this Politico story."[4] It appears that you spoke with Jackson on October 26, 2010, and that you two agreed to meet on a monthly basis thereafter.[5] These internal EPA email exchanges raise issues related to your role as an otherwise "independent" commissioner on FERC.

Moreover, it appears that the sky may in fact be falling for some Americans who will face higher rates and lower reliability in the near future. On August 21, 2013, the Department of Energy (DOE) released a report, from ICF International, indicating that up to 20% of coal-burning power plants in the eastern United States will likely close over the next five years.[6] Although the report notes low growth in electricity demand, likely as a result of our ongoing economic woes, the uncertainty related to current and future environmental regulations play a critical role in the negative outlook for the sector. The report further notes that assuming current market conditions, "the additional costs of retrofits needed to comply with more stringent environmental regulations might force a greater fraction of the existing coal-fired fleet out of the market through retirement or conversion to natural gas" and that "any requirements to incorporate CCS technology driven by climate change regulation, with its additional costs and technology risks, will further disadvantage new coal plants relative to gas."[7]

Accordingly, it appears that you may have allowed political consideration to impact FERC's public position on the expected impact of EPA's impending regulations. Chairman Whitfield has expressed a similar concern, stating in 2012, "The reality is FERC has been bending over backwards to allow EPA to determine whether or not reliability is really an issue here…In some ways, the chairman over there and the commissioners have abdicated their responsibility for reliability."[8] The veracity of your 2010 claims continues to deteriorate as each week provides news of additional retirements.

In light of these revelations, I'd appreciate your thorough and complete responses to the following questions no later than September 19, 2013:

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[3] *Id.*

[4] *See* E-mail from David McIntosh, Associate administrator for congressional and intergovernmental relations, U.S. Environmental Protection Agency, to Richard Windsor (Alias for Lisa Jackson), Administrator, U.S. Environmental Protection Agency, (October 26, 2010).

[5] *See* E-mail from Richard Windsor (Alias for Lisa Jackson), Administrator, U.S. Environmental Protection Agency, to Aaron Dickerson, Staff Assistant to Chief of Staff, Office of the Administrator, U.S. Environmental Protection Agency, (October 26, 2010).

[6] Katherine Ling, *CCS Investment Won't Stop Power Plant Closures*, Greenwire, Aug. 21, 2013.

[7] *Id.*

[8] Jeremy Jacobs, *Whitfield accuses FERC of deferring to EPA on reliability issues*, Greenwire, Feb 10, 2012.

1. Did anyone in the Administration ask you to provide positive public statements, such as the one reported in the Politico story, in response to the NERC report? Please identify any such individuals.

2. Did any official within the Administration ask you to publically support EPA's regulatory efforts subsequent to the release of the NERC report? Please identify any such individuals.

3. Did anyone in the Administration attempt to influence your opinion on the impact that EPA's regulations would have on grid reliability? Please identify any such individuals.

4. What analysis in 2010 did you rely on to come to the conclusion that EPA regulations would not impact capacity or grid transmission reliability? Please provide copies of the analysis to the Committee.

5. From the email exchanges, it appears a call was arranged with you and Administrator Jackson to discuss FERC's position on EPA policies.[9] Please detail the items that were discussed during that phone call.

6. It also appears from internal email exchanges that you had a conversation with the current Administrator Gina McCarthy regarding grid reliability and supply in July 2010.[10] What specifically did you discuss with Ms. McCarthy?

7. Do you believe you have in any way facilitated what has been described as a war on coal? Please explain.
8. How does FERC plan to respond to compromises in grid reliability or increased electricity prices due to EPA regulations?

9. Do you believe it is FERC's role to facilitate regulatory actions or decisions that would force one form of energy out of the transmission grid in favor of another regardless of cost?

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[9] *See* E-mail from David McIntosh, Associate administrator for congressional and intergovernmental relations, U.S. Environmental Protection Agency, to Richard Windsor (Alias for Lisa Jackson), Administrator, U.S. Environmental Protection Agency, (October 26, 2010).

[10] *See* E-mail from Bob Sussman, Senior Policy Counsel to the Administrator, U.S. Environmental Protection Agency, to Gina McCarthy, Assistant Administrator, U.S. Environmental Protection Agency, (July 9, 2010).

Thank you in advance for your attention to this important matter. If you have any questions regarding this request, please contact Kristina Moore with the Environment and Public Works Committee at 202-224-5167 if you have any questions.

Sincerely,

David Vitter
Ranking Member
Committee on Environment and Public Works