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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
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May 16, 2019

Charles J. Sheehan
Acting Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Inspector General Sheehan,

We write to request that the Environmental Protection Agency (EPA) Office of Inspector General (OIG) conduct an investigation into potential ethics violations by Elizabeth “Tate” Bennett, EPA’s Associate Administrator for the Office of Public Engagement and Environmental Education (OPEEE). The request for an investigation is based on Ms. Bennett’s potential violation of the Office of Government Ethics (OGE) “impartiality rule.”

Publicly available facts show that within weeks of starting at EPA, Ms. Bennett participated in undisclosed meetings with her former employer, the National Rural Electric Cooperative Association (NRECA), facilitated and participated in substantive conversations between NRECA and EPA regarding issues of interest to NRECA, and facilitated and participated in substantive conversations regarding an electric generation facility in Missouri owned by one of NRECA’s member companies, Associated Electric Cooperative Inc. (AECI)¹, that is subject to an EPA environmental enforcement action.

AECI owns and operates the Thomas Hill Energy Center and New Madrid Power Plant in Missouri.² In 2002, EPA sent AECI several requests for information regarding the “compliance status of the Thomas Hill Energy Center and New Madrid Power Plant.”³ In 2011, EPA sent AECI a Notice of Violation (NOV) notifying AECI that it had broken the law “by commencing construction of, and continuing to operate, a major modification at the Thomas Hill Energy Center without applying for or obtaining” the agency’s approval.⁴ The Notice further indicated that the facility was also in violation of its operating permit because it had not installed the best available pollution controls.⁵

Prior to beginning her appointment at EPA on March 19, 2017, Ms. Bennett was Senior Principal for Government Affairs at NRECA, where she was a registered lobbyist. NRECA represents the interests of more than 900 electric cooperatives—including AECI—in the United States.⁶ Ms. Bennett specifically lobbied on a wide range of EPA matters, including the Clean Power Plan, New Source Performance Standard,⁷ Ozone National Ambient Air Quality Standards (NAAQS), Clean Water Rule, EPA enforcement, coal combustion residual rules, pesticides bills, budget resolutions and appropriations bills. In the Recusal Statement she signed on November 1, 2017, she listed only three of those issues—Clean Power Plan, NAAQS and coal combustion residual issues—and agreed to “not participate personally or substantially in the merits of” those three issues without first consulting with EPA ethics officials.

¹ <https://www.electric.coop/our-organization/nreca-member-directory/>

² <https://www.aeci.org/resources/>

³ https://www.eenews.net/assets/2019/04/09/document_gw_04.pdf

⁴ Id.

⁵ Id.

⁶ <https://www.electric.coop/our-organization/>

⁷ [https://www.whitehouse.senate.gov/imo/media/doc/2017-05-](https://www.whitehouse.senate.gov/imo/media/doc/2017-05-16%20Elizabeth%20Tate%20Bennett%20Oversight%20Letter%20to%20EPA.pdf)

[16%20Elizabeth%20Tate%20Bennett%20Oversight%20Letter%20to%20EPA.pdf](https://www.whitehouse.senate.gov/imo/media/doc/2017-05-16%20Elizabeth%20Tate%20Bennett%20Oversight%20Letter%20to%20EPA.pdf)

An examination of available materials indicates that Ms. Bennett started to substantively engage in matters related to her former employer within weeks of her arrival at EPA. For example, former EPA Administrator Pruitt and other EPA officials, including Ms. Bennett, visited AECI's Thomas Hill Energy Center on April 20, 2017.⁸ These meetings were organized with the help of Ms. Bennett. Specifically, according to publicly released documents, Ms. Bennett:

- Participated in conversations with NRECA, AECI and the Association of Missouri Electric Cooperatives (AMEC), about media strategy around Pruitt's April 20, 2017 visit and meeting at AECI's Thomas Hill facility.⁹
- Participated in the April 20, 2017 site visit and a private meeting with Pruitt and NRECA¹⁰ about "a few action items."¹¹
- Facilitated several conversations between EPA political and career staff and AECI officials after the April 20 meeting about a potential settlement of an enforcement matter.¹²

A more detailed timeline of events is attached.

Ms. Bennett's involvement in an EPA enforcement matter against a member company of her former employer violates OGE's so-called "impartiality rule,"¹³ which requires the following in relevant part:

Where an employee ... knows that a person with whom he has a covered relationship is or represents a party to [a particular matter involving specific parties], and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee....

Ms. Bennett has a covered relationship with her former employer, NRECA. NRECA represents AECI. AECI is a specific party involved in a particular matter with EPA, EPA's ongoing New Source Review enforcement action at the New Madrid Power Plant.¹⁴ Because Bennett was a lobbyist for NRECA, which represents the interests of its members, she should not have been permitted to participate in discussions about the enforcement action against a NRECA member unless specifically authorized. As of January 24, 2019, Ms. Bennett had not received a waiver to the "impartiality rule" to participate in matters where NRECA "is or represents a party."¹⁵

EPA officials also appear to have taken efforts to conceal several aspects of the April 20 site visit and follow up from public view. Recent reporting and emails produced by EPA under FOIA identified several meetings during the April 20 trip to Missouri that did not appear on Pruitt's public calendars or his calendars released through FOIA. At least one of these meetings included Bennett and a NRECA representative. This reporting also identified another off-calendar meeting about the New Madrid Power Plant convened on April 27, 2018, by Susan Bodine, EPA's Assistant Administrator for Enforcement and Compliance Assistance. An Inspector General investigation could determine whether these omissions were intentional violations of the Federal

⁸ <https://www.eenews.net/greenwire/2019/04/15/stories/1060165123>

⁹ Exhibit F. Hart (AMEC), Bell (NRECA), Wilkinson (AECI), and Bennett exchanged emails about negative media coverage of April 20, 2017 event

¹⁰ Exhibit K. April 20, 2017 Agenda

¹¹ Exhibit L. April 20, 2017 follow-up between AECI, AMEC, and Bennett

¹² Exhibit M. Bennett connecting Chu, Wagner, and AECI

¹³ 5 C.F.R. 2635.502

¹⁴ 5 C.F.R. part 2637.102(a)(7) ("[A] Particular Government matter involving a specific party means any judicial or other proceeding...claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.")

¹⁵ <https://www.whitehouse.gov/wp-content/uploads/2019/01/Waiver-Chart-1-24-19-1.pdf>

Records Act and associated regulations designed to obfuscate the influence of regulated entities and their trade associations on a specific enforcement matter.

This is not the first time Members of Congress have raised ethical concerns about Ms. Bennett.¹⁶ Despite being on notice of concerns about Ms. Bennett, EPA officials still allowed her to participate in matters from which she should have been recused. This is also not the first time that we have written to you with serious concerns regarding EPA political appointee compliance with federal ethics rules. In February, you were asked to investigate Bill Wehrum and David Harlow¹⁷ for similar violations of the OGE “impartiality rule.” Ethics problems appear to plague this administration, and are currently under investigation by other Inspectors General, such as the Department of Interior Inspector General’s recent announcement that it has launched an ethics investigation into Secretary Bernhardt¹⁸ and other officials at DOI.

An OIG investigation is accordingly warranted. No other federal agency or component of EPA will be able to fully ascertain whether, and if so the degree to which, ethics violations have occurred. One of your mandates under the Inspector General Act of 1978 is to keep “the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.”¹⁹ We view all of our requests in this letter as consistent with that responsibility.

Attached is additional information in support of this request. We respectfully request you give this matter your fullest consideration. Should you have any questions, please contact Michal Freedhoff (michal_freedhoff@epw.senate.gov) of the Environment and Public Works Committee staff, Joe Gaeta (joe_gaeta@whitehouse.senate.gov) of Senator Whitehouse’s staff, or Logan Hollers (logan_hollers@merkley.senate.gov) of Senator Merkley’s staff.

Sincerely yours,



Tom Carper
Ranking Member
Committee on Environment and
Public Works



Sheldon Whitehouse
Ranking Member
Subcommittee on Clean Air and
Nuclear Safety



Jeffrey A. Merkley
United States Senator

¹⁶ See <https://www.whitehouse.senate.gov/news/release/whitehouse-merkley-ask-how-epa-appointee-could-possibly-do-her-job-given-extensive-ethics-conflicts>

¹⁷ <https://www.whitehouse.senate.gov/news/release/whitehouse-carper-pallone-raise-new-questions-about-wehrum>

¹⁸ <https://www.nytimes.com/2019/04/15/climate/bernhardt-interior-department-ethics-investigation.html>

¹⁹ 5 U.S.C. (IG Act) App. § 2(3)

Timeline of Events Related to Tate Bennett

March 16, 2017 – Former Administrator Scott Pruitt and Byron Brown, then Deputy Chief of Staff for Policy, met with NRECA¹ two days before Elizabeth “Tate” Bennett started at EPA. The meeting was with NRECA CEO Jim Matheson, and the Vice President for Legislative Affairs, John Cassady. Pruitt’s calendar does not indicate the topic of the meeting.

March 19, 2017 – Elizabeth “Tate” Bennett began her employment with EPA.²

April 10, 2017 – Bennett introduced Barry Hart, who was at the time CEO of the Association of Missouri Electric Cooperatives (AMEC), and Joe Wilkinson, Senior Vice President at AECI, to Millan Hupp, Mr. Pruitt’s scheduler, to facilitate scheduling for the April 20, 2017 event.³ AECI and AMEC are members of NRECA.⁴

April 12, 2017 – Joe Wilkinson (AECI) sent Bennett and others a formal invitation for the April 20, 2017 event, as well as several fact sheets about AECI.⁵ Among the many regulatory challenges identified in those fact sheets are the Clean Power Plan (CPP), National Ambient Air Quality Standards (NAAQS), New Source Performance Standards (NSPS), Waters of the United States (WOTUS) (also known as the Clean Water Rule) and “coal ash” regulations.

April 13, 2017 – In anticipation of Pruitt’s visit to Thomas Hill on April 20, Joe Wilkinson (AECI) sent Bennett and three other EPA political appointees an extensive fact sheet about the Thomas Hill and New Madrid sites.⁶ The fact sheets discuss several challenges, including compliance with the coal combustion residuals rule (CCR).

April 14, 2017 – Barry Hart (AMEC) sent an email to Bennett stating that the “private” meeting they had scheduled for April 20 with her and Pruitt would have “a huge potential to have a major impact on Missouri and our communities.”⁷ AECI is a member of AMEC.⁸

April 16, 2017 – Hupp scheduled a meeting between Pruitt and Missouri Secretary of State Jay Ashcroft for 11:30am on April 20, 2017.⁹ Pruitt’s calendars do not reflect that meeting.¹⁰

April 17-18, 2017 – Barry Hart (AMEC), Stephen Bell (NRECA), Joseph Wilkinson (AECI) and others exchanged emails discussing how to address a negative media tweet on MissouriNet, a media outlet, about the April 20 meeting and event.¹¹ Barry Hart asked: “Can we get on [sic] conference call to discuss our approach now that cats [sic] out of the bag.” Bennett agreed, and instructed Amy Graham, EPA’s Deputy Associate Administrator for Public Engagement, to “touch base tomorrow to right the ship here with MO Net re what we will actually be discussing? With a little direction, they might actually be helpful to our efforts.” She also cc’d Stephen Bell (NRECA): “Also, Stephen Bell (cc’d) is a great resource here. I know

¹ Exhibit A. Pruitt and Byron Brown met with NRECA on March 16, 2017

² Exhibit B. Tate Bennett Recusal Statement

³ Exhibit Q. Bennett connected Hart (AMEC), Wilkinson (AECI), and Hupp

⁴ <https://www.electric.coop/our-organization/nreca-member-directory/>

⁵ Exhibit R. Invitation

⁶ Exhibit C. AECI sent Bennett a fact sheet about Thomas Hill and New Madrid sites

⁷ <https://www.eenews.net/stories/1060165123/print>

⁸ <http://amec.coopwebbuilder2.com/content/our-co-ops>

⁹ Exhibit D. Pruitt was scheduled to meet with Ashcroft

¹⁰ Exhibit E. FOIA’d Pruitt Calendar for April 20, 2017 does not show private meetings

¹¹ Exhibit F. Hart (AMEC), Bell (NRECA), Wilkinson (AECI), and Bennett exchanged emails about negative media coverage of April 20, 2017 event

he's been in touch with Konkus [then EPA's Deputy Associate Administrator for Public Affairs], but you need to know him too! He might have ideas on how to push this out to natl press." The next day, Barry Hart told Bennett and the others that he would be meeting with "Missourinet first thing in am to shut [the Twitterer] down. We were planning on them doing state radio coverage. Very few saw her tweet."

On that same day, Bennett, Hart (AMEC), Wilkinson (AECI), Bell (NRECA) and others received a proposed social media strategy for the event prepared by ARCmedia.¹²

April 19, 2017 – The day before the planned April 20 meeting, Joseph Wilkinson (AECI) sent Millan Hupp a list of attendees for a meeting occurring at 11:45am.¹³ AMEC sent her an extensive final attendee list for the larger event preceding the 11:45am meeting.¹⁴

That evening, Barry Hart (AMEC) organized a dinner in Columbia, MO for those participating in the April 20 event.¹⁵ Expected attendees from EPA included Bennett and Hupp. It is unclear whether Pruitt was scheduled to attend this dinner. His calendar indicates that he arrived in Columbia on the evening of April 19.¹⁶

Later that evening, Hupp sent Joseph Wilkinson (AECI) an agenda for the April 20, 2017 event "per our discussions today."¹⁷ According to that agenda, a "private meeting" was to occur in the Plant Manager's office at 11:30-11:40am, and a meeting with "AMEC executives" was to occur at 11:45am-12:15pm.

April 20, 2017 – The 30-minute AMEC Executives meeting included: Barry Hart (AMEC); Pruitt; Bennett; two other EPA appointees; Bennett's former boss, NRECA CEO Jim Matheson; AECI CEO David Tudor; Joe Wilkinson (AECI) and three other AECI executives; and Tony Campbell, president and CEO of the East Kentucky Power Cooperative. Joe Wilkinson also arranged a "private meeting" 10 minutes prior to the broader discussion with AMEC executives.¹⁸ This meeting was previously not known to the public because it does not appear in Pruitt's online calendar¹⁹ or in his calendars released through FOIA.²⁰

In an email to Barry Hart following the meeting, Hupp noted: "It seems a few action items came from the last meeting as well which is good."²¹ In his reply to Hupp and Bennett, Joe Wilkinson referred to a "sitdown at the end" of the April 20 meeting: "That issue is very important to us and we were truly excited by the Administrator's response." Later that evening, Bennett reached out to Edward Chu, a career official who was serving as acting chief of EPA's Region 7, which includes Missouri, connecting Chu and Joe Wilkinson: "Ed- the Administrator wanted to make sure you and David [Tudor] [AECI] (CC'd) were able to connect today."²² The next morning, Bennett suggested that AECI officials bring Kenneth Wagner, a senior adviser to Pruitt for regional and state affairs, "up to speed on [New Source Review (NSR)] and your need for consistent guidance."

¹² Exhibit S. Proposed social media response strategy by ARCmedia

¹³ Exhibit G. AECI sent list for April 20, 2017 Executive Meeting attendees

¹⁴ Exhibit H. Final attendee list for April 20, 2017 event

¹⁵ Exhibit I. Barry Hart organized a dinner for April 19, 2017

¹⁶ Exhibit J. FOIA'd Pruitt Calendar for April 19, 2017

¹⁷ Exhibit K. April 20, 2017 Agenda

¹⁸ Id.

¹⁹ <https://archive.epa.gov/epa/senior-leaders-calendars/calendar-scott-pruitt-former-administrator.html>

²⁰ Exhibit E. FOIA'd Pruitt Calendar for April 20, 2017 does not show private meetings

²¹ Exhibit L. April 20, 2017 follow-up between AECI, AMEC, and Bennett

²² Exhibit M. Bennett connecting Chu, Wagner, and AECI

April 21, 2017 – On an email chain including David Tudor (AECI), Bennett and Chu, Wagner wrote: “David . . . if you could detail the particular issue so that we may fully understand and set up a meaningful meeting within the next two weeks as we discussed. We are looking forward to bringing resolution to the issue!”²³

On that same day, Bennett wrote to Brian Prestwood, an AECI Vice President: “Perhaps David and Brett can bring Ken up to speed on NSR and your need for consistent guidance? In the meantime, I’ll check in with HQ Policy Office. Feel free to send any materials demonstrating employment/economic impacts you might have our way.” Brian Prestwood replied that he would have a “short summary” for them to review early the following week.²⁴

April 24, 2017 – In an email to Bennett, Wagner and others with the subject line “CONFIDENTIAL,” Brian Prestwood (AECI) proposed a “preliminary agenda” for the potential meeting, which AECI hoped would include discussion about a “high-level NSR Settlement proposal.”²⁵

May 1, 2017 – Wagner met with AECI on May 1, 2017, at EPA’s regional headquarters in the Kansas City metropolitan area. Wagner indicated that he “had several meetings with Regional staff in anticipation of the meeting.”²⁶

May 16, 2017 – Bennett signed the Trump Ethics Pledge.²⁷ In that Pledge, she agreed not to “participate in any particular matter involving specific parties that is directly and substantially related to [her] former employer or former clients” for the first two years after her appointment.

May 23, 2017 – Bennett forwarded a press release titled, “EPA Administrator Meets With Congressional Coal Caucus” to several congressional staffers and a few private entities, including Joe Wilkinson (AECI), with the note “ICYMI.”²⁸ That press release discussed Pruitt’s trip to Thomas Hill Energy Center on April 20.

September 22, 2017 – Bennett wrote to Brian Prestwood (AECI) asking if he had time to speak with her.²⁹ That afternoon, Prestwood sent an email to Bennett with a “CONFIDENTIAL” subject line: “A global resolution [of the Thomas Hill facility notices of violation] give us more certainty on future repairs and maintenance on our entire fleet—actions which will promote economic growth and save jobs.”³⁰

November 1, 2017 – Bennett signed her Recusal Statement.³¹ In that Statement, she acknowledged that she is “prohibited from participating in any particular matter involving specific parties in which [her] former employer, National Rural Electric Cooperative Association (NRECA), is a party or represents a party.” She was advised by EPA’s ethics officials that “particular matters involving specific parties’ is broadened to include any meetings or other communication relating to the performance of [her] official duties.” She further promised that “[s]hould an unexpected situation arise in which [she is] asked to participate in a more substantive role, [she] will first consult with OGC/Ethics for advice before taking any action.” Again, because she was a lobbyist for NRECA, which represents the interests of its members,

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ <https://www.eenews.net/greenwire/2019/04/15/stories/1060165123>

²⁷ Exhibit N. Signed Trump Ethics Pledge

²⁸ Exhibit O. Bennett forwarded a press release to Wilkinson (AECI) and others regarding Pruitt’s trip to Thomas Hill on April 2017

²⁹ Exhibit M. Bennett connecting Chu, Wagner, and AECI

³⁰ <https://www.eenews.net/greenwire/2019/04/15/stories/1060165123>

³¹ Exhibit B. Tate Bennett Recusal Statement

we believe these ethics obligations may also apply to AECI as a member of NRECA. It is unclear to us whether Bennett consulted with the Office of General Counsel (OGC) or the Designated Agency Ethics Official (DAEO) before any of the meetings or other interactions she had with representatives of NRECA, AECI or other stakeholders.

April 27, 2018 – Susan Bodine, EPA’s Assistant Administrator for Enforcement and Compliance Assurance, organized a meeting “re: New Madrid Power Plant” which was to include Bill Wehrum, Assistant Administrator of EPA’s Office of Air and Radiation; Mandy Gunasekara; Brian Prestwood (AECI); Patrick Traylor, Deputy Assistant Administrator for the enforcement office; and David Harlow, Senior Counsel to the Assistant Administrator for Air and Radiation.³² A note in the calendar entry states: “Call with Mr. Prestwood will be 3:00-3:30pm and 3:30-4:00pm for internal EPA discussion.” This meeting does not appear on Bodine’s public calendar.³³

³² Exhibit P. EPA political appointees met with AECI on April 27, 2018

³³ <https://www.epa.gov/senior-leaders-calendars/calendar-susan-bodine-assistant-administrator-enforcement-and-compliance>