

Congress of the United States
Washington, DC 20515

August 22, 2018

The Honorable Kevin J. McIntyre
Chairman
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Dear Chairman McIntyre:

We are deeply troubled by recent statements attributed to your Chief of Staff, Anthony Pugliese, which indicate the Federal Energy Regulatory Commission (FERC) is working with Trump Administration officials at the Department of Energy (DOE) and National Security Council on an ill-conceived plan to interfere with the operation of the nation's wholesale electric markets. We believe this action would violate the requirement that FERC remain a neutral and unbiased decisionmaker. We are equally concerned by highly partisan political remarks reportedly made by Mr. Pugliese in the media and at a recent industry conference that are highly inappropriate and undermine the Commission's independence.

As you know, under the Commission's organic act, the Chairman is "responsible on behalf of the Commission for the executive and administrative operation of the Commission." Among the administrative functions the law assigns to the Chairman are the selection, appointment, and supervision of the Commission's staff.¹

In placing responsibility for the Commission's administrative functions and the supervision of its staff in the Chairman, Congress was deliberately retaining the organizational arrangement it had previously approved for the Federal Power Commission in Reorganization Plan No. 9 of 1950, as well as for other independent regulatory commissions in similar reorganization plans. Each of those reorganization plans was based upon the recommendations of the Commission on the Organization of the Executive Branch, better known as the Hoover Commission. The Hoover Commission recommended that "all administrative responsibility be vested in the chairman of the commission," in order to "center responsibility for the functioning of the commission" and to make the chairman "the commission's principal spokesman."

Still more fundamentally, Congress structured FERC as an independent regulatory commission to carry on the Federal Power Commission's rate-setting functions. It understood that "[s]uch actions require all elements of due process be provided to the parties involved."² First and foremost, due process "requires a neutral and unbiased decisionmaker."³ To ensure the

¹ 42 U.S.C. § 7171.

² H. Rept. 95-346, part 1, 8 (1977).

³ *E.g., Pham v. Blaylock*, 712 Fed. Appx. 360, 363 (5th Cir. 2017).

Commission's neutrality and keep it unbiased, "A special effort was made to preserve the independence of action and decision of the Commission and to insulate it from influences from other parts of the Department" or political control.⁴

Congress established FERC as an independent regulatory commission because it believed this structure would best ensure the Commission's independence from political influence. As the Supreme Court had previously said:

"The commission is to be non-partisan; and it must, from the very nature of its duties, act with impartiality. It is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominantly quasi-judicial and quasi-legislative. ...[I]ts members are called upon to exercise the trained judgment of a body of experts 'appointed by law and informed by experience.'"⁵

For these reasons, we are deeply concerned that your chief of staff, for whom you bear special responsibility, has been making public statements that call into question his impartiality and independence from political pressure. Left unchecked, we believe such statements must ultimately call into question the impartiality and independence of the Commission itself.

Moreover, we believe that you have the responsibility, as Chairman, to safeguard the Commission's independence, its neutrality, and its impartiality, and to uphold the professional conduct of the Commission's employees, and most especially those on your own personal staff. Thus, in light of Mr. Pugliese's troubling remarks and your statutory responsibility as the Commission's Chairman, we ask that you answer the following questions:

1. Do Mr. Pugliese's remarks represent the views of the Commission or any of its members?
2. Have you at any time authorized Mr. Pugliese to speak publicly about matters pending before the Commission on behalf of the Commission? If so, please identify the matters and the occasions on which he was speaking for the Commission.
3. Were you or any other member of the Commission aware of what Mr. Pugliese planned to say prior his appearance on *Breitbart News Sunday* or at the American Nuclear society meeting?
4. What policies, protocols, and procedures does the Commission have in place to review and approve in advance public speaking engagements and media appearances by its staff?

⁴ See note 2.

⁵ *Humphrey's Executor v. United States*, 295 U.S. 602, 624 (1935), quoting *Illinois Central Railroad Co. v. Interstate Commerce Commission*, 206 U.S. 441, 454 (1907); *Standard Oil Co. v. United States*, 283 U.S. 235, 238-239 (1931).

5. What policies, protocols, and procedures does the Commission have in place to ensure that its staff does not engage in partisan political activity in violation of the Hatch Act?
6. What, if any, contact has the Commission or its staff had with DOE officials or any other executive branch officials in connection with the Administration's widely reported consideration of emergency orders to require public utilities to give preference or advantage to higher priced sources of electricity in the name of "grid resilience"?
7. Was Mr. Pugliese appointed to his position from the competitive service or the excepted service under Schedule C? In light of the Hoover Commission's recommendation that the staff of an independent regulatory commission must not be "political" and should be qualified by "training and expertise," what criteria were used in his selection for his position?

Sincerely,



Frank Pallone, Jr.
Ranking Member
House Committee on Energy
and Commerce



Maria Cantwell
Ranking Member
Senate Committee on Energy
and Natural Resources