

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

**Grid Resilience in RTOs/ISOs**

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**Docket No. AD18-7-000**

**Comments of the Attorneys General for Massachusetts, California, Illinois, Maryland,  
Michigan, Minnesota, New York, Oregon, Vermont and the District of Columbia.**

The undersigned Attorneys General write to urge Commissioner McNamee to recuse himself from Docket No. AD18-7. Commissioner McNamee’s recent decision not to recuse himself from this proceeding will negatively impact stakeholder confidence in the Federal Energy Regulatory Commission’s (Commission) decision-making process, engender continuous scrutiny of his involvement, and increase the potential for legal challenges. Commissioner McNamee’s record promoting subsidies to retain uneconomic, highly-polluting electric generation facilities creates, at a minimum, an appearance that he has prejudged the issues he would be called upon to decide in this matter.<sup>1</sup> Commissioner McNamee should recuse himself.

During Commissioner McNamee’s confirmation process, many of us urged the Senate to vote against Mr. McNamee’s appointment. That opposition was based on Commissioner McNamee’s record and public comments favoring unjustified subsidies for existing fossil fuel generators at the expense of renewable technology through Commission action. The letter highlighted Commissioner McNamee’s (1) role as the lead proponent of the Department of Energy’s 2017 notice of proposed rulemaking (NOPR) which would have required states to subsidize inefficient, uneconomic, and polluting coal plants; (2) continued promotion of

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<sup>1</sup> These comments focus on one reason for Commissioner McNamee’s recusal—the appearance of his prejudgment of the issues raised in this proceeding. As set forth in other filings, appearance of prejudgment may not be the only ground for recusal here. *See* Motion of National Resources Defense Council, Sierra Club, and Union of Concerned Scientists for Recusal of Commissioner McNamee, December 18, 2018; Comment of the Harvard Electricity Law Initiative, December 6, 2018. Moreover, the rationales for recusal here may apply to other dockets where related issues are pending or likely to arise, and the Attorneys General reserve their right to request Commissioner McNamee’s recusal in such other dockets.

subsidizing such power plants even after the Commission’s termination of the NOPR; and (3) comments in a recently publicized video wherein Commissioner McNamee described the choice between fossil fuels and renewables as a “constant battle between liberty and tyranny.”<sup>2</sup> Based on this record, it was reasonable to believe that, if confirmed, Mr. McNamee would be “unable to fairly evaluate existing Commission precedent and public comments” due to an appearance of bias.<sup>3</sup>

In a January 7, 2019 letter to Senate Democrats, Commissioner McNamee indicated that he would recuse himself from Docket No. RM18-1, but not from Docket No. AD18-7. Enclosed with the letter was a memorandum from the Commission’s ethics official that supported Commissioner McNamee’s decision, but also cautioned the “need for continuous oversight to ensure that Docket No. AD18-7 does not develop in such a way as to replicate or closely resemble Docket No. RM18-1.”<sup>4</sup> It is our view that this proceeding already “replicate[s] or closely resembles” Docket No. RM18-1.<sup>5</sup> Here, the Commission is evaluating “the resilience of the bulk power system” and “whether additional Commission action regarding resilience is appropriate at this time.”<sup>6</sup> In Docket No. RM18-1, the Commission also considered the resilience of the bulk power system and, specifically, whether establishing a mechanism to increase resiliency was warranted.

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<sup>2</sup> *Grid Resiliency Pricing Rule*, 82 Fed. Reg. 46,940 (Oct. 10, 2017); Texas Public Policy Foundation, *Life: Powered: How Fossil Fuels Impact Life Today*, YouTube (February 7, 2018, 21:10), <https://pv-magazine-usa.com/2018/11/21/video-shows-ferc-nominee-bernard-mcnamees-bias-against-renewables/>.

<sup>3</sup> Multistate McNamee Opposition Letter, December 5, 2018, at 2, available at <https://www.mass.gov/files/documents/2018/12/05/Multistate%20McNamee%20Opposition.pdf>.

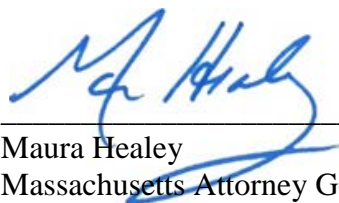
<sup>4</sup> Bernard McNamee Letter to Senate Democrats, January 7, 2019, at 3.

<sup>5</sup> The public comments submitted in Docket No. AD18-7 demonstrate that stakeholders have uniformly approached this docket as an outgrowth of RM18-1 and understood the nature of the inquiry to be inextricably connected to the subject matter of RM18-1. See e.g. Reply Comments of FirstEnergy Utilities in AD18-7, at 1 (requesting the Commission to take immediate action to preserve fuel secure baseload generation). The Commission indicated it would consider options proposed by stakeholders, such as FirstEnergy’s filing in AD18-7, that were highly consistent with those proposed in RM18-1.

<sup>6</sup> *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, 162 FERC ¶ 61,012 (2018), at 10.

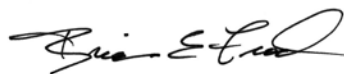
A reasonable observer informed of Commissioner McNamee's work history and prior statements would conclude that he has already determined that additional Commission action to subsidize uneconomic and polluting fossil fuel resources is appropriate and necessary for the resilience of the bulk power system. This objective appearance of prejudgment requires Commissioner McNamee to recuse himself from participation, not only in RM18-1 but also in this docket and any further Commission action related thereto. Doing so is necessary to preserve the integrity of the Commission's process and to maintain the public's confidence in the Commission's decision-making.

Sincerely,



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Maura Healey  
Massachusetts Attorney General



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Brian E. Frosh  
Maryland Attorney General



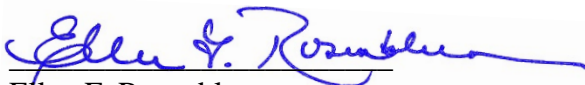
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Xavier Becerra  
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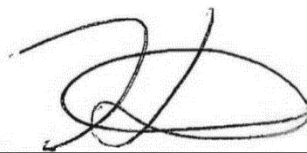
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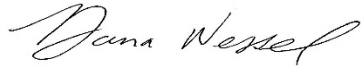
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Vermont Attorney General

January 28, 2019

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service lists compiled by the Secretary in these proceedings.

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Dated: January 28, 2019