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December 5, 2018

The Honorable Mitch McConnell
317 Russell Senate Office Building
Washington, District of Columbia 20510

The Honorable Chuck Schumer
322 Hart Senate Office Building
Washington, District of Columbia 20510

Dear Majority Leader McConnell and Minority Leader Schumer,

The undersigned Attorneys General write to express our opposition to the nomination of Bernard McNamee as Commissioner to the Federal Energy Regulatory Commission (Commission or FERC). Based on Mr. McNamee's record promoting the retention of uneconomic, highly-polluting electric generation facilities and his public statements indicating a troubling hostility towards clean energy, we believe that his confirmation may hinder our states' ability to design and implement policies to achieve a clean energy future and our regions' abilities to operate competitive electricity markets, all to the detriment of customers.

As the Department of Energy's (DOE) Office of Policy Executive Director, Mr. McNamee played a key role in DOE's 2017 notice of proposed rulemaking (NOPR) that would have required our states to subsidize inefficient, uneconomic, and polluting coal plants and undermined the country's competitive energy markets.¹ The NOPR, unanimously rejected by the Commission, would have cost customers billions of dollars per year² and "would [have] exacerbate[d] the intensity and frequency of . . . extreme weather events by helping forestall the retirement of coal-fired generators," which are the largest source of U.S. power-sector emissions.³ A federally-mandated bailout of uneconomic, polluting resources would "freeze

¹ *Grid Resiliency Pricing Rule*, 82 Fed. Reg. 46,940 (Oct. 10, 2017) [hereinafter NOPR].

² See Robbie Orvis et al., *The Department of Energy's Grid Resilience Pricing Proposal: A Cost Analysis*, Energy Innovation (Oct. 2017), http://energyinnovation.org/wp-content/uploads/2017/10/20171021_Resilience-NOPR-Cost-Research-Note-FINAL.pdf (annual cost to customers conservatively estimated at \$2.4 -10.6 billion); ICF Int'l, Inc., *DOE Acts to Transform the Energy Landscape*, at 27 [Webinar] (Oct. 4, 2017), <https://www.icf.com/resources/webinars/2017/doe-nopr> (cost could reach \$3.8 billion per year); see also Jeff St. John, *FERC Commissioners and Staff Question DOE's Push for Cost Recovery for Coal and Nuclear*, GREENTECH MEDIA, Oct. 10, 2017, <https://www.greentechmedia.com/articles/read/ferc-commissioners-and-staff-question-does-push-for-cost-recovery-for-coal#gs.lnQFaSg>.

³ *Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures*, 162 FERC ¶ 61,012 (2018) (Glick, concurring).

yesterday's resource in place indefinitely" and significantly limit states' abilities to meet their unique energy needs and move towards a clean energy future.⁴

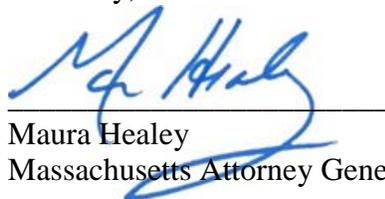
Despite the Commission's termination of the NOPR, Mr. McNamee has continued to promote plans to subsidize failing power plants, including in his appearance before the Senate Energy and Natural Resources Committee in July 2018.⁵ His efforts are flatly inconsistent with the Commission's long history of advancing competitive markets and raise serious questions about his commitment to FERC's mission.

Recently, a video surfaced of Mr. McNamee addressing a 2018 conference in Austin, Texas, during which Mr. McNamee described the choice between fossil fuels and renewables as a "constant battle between liberty and tyranny."⁶ Mr. McNamee stated that "when [renewables] come on and off [line] they screw up the whole physics of the grid."⁷ He also stated that as Deputy General Counsel at the DOE he had the "pleasure...to really see that the Clean Power Plan be put to death."⁸ Mr. McNamee's comments are inconsistent with the conduct expected of a Commissioner and demonstrate a bias that would make him unable to fairly evaluate existing Commission precedent and public comments, essential components of a fair adjudicatory process.

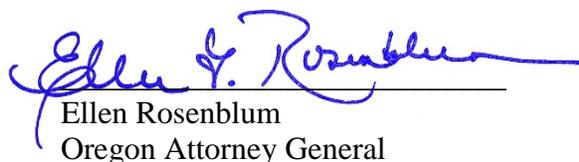
Finally, should Mr. McNamee be confirmed, it would be the first time since October 1990 that no Commissioner has had experience as a state regulator. Robert Powelson (whose position Mr. McNamee would fill) had been chairman of the Pennsylvania Public Utility Commission, and president of the National Association of Regulatory Utility Commissioners (NARUC). The Executive Director of NARUC said recently he is "concerned that we may for the first time in many years not have somebody with that state perspective," noting that 13 of the past 23 FERC appointees came from state commissions.⁹ To ensure the state perspective is considered, it is vital that the Administration maintain the long-standing practice of appointing at least one Commissioner with experience as a state regulator.

We ask the Senate to exercise its authority, oppose this candidate, and request a new nominee for the post.

Sincerely,



Maura Healey
Massachusetts Attorney General



Ellen Rosenblum
Oregon Attorney General

⁴ *Id.* (LaFleur, concurring).

⁵ See *Hearing on Administration Reorganization and Modernization Proposals for DOE and DOI Before the S. Comm. on Energy & Natural Resources*, 115th Cong. (2018), <https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=F549B937-C758-4DD7-B41E-6BE83068C050>.

⁶ 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/>.

⁷ *Id.* at 21:25.

⁸ *Id.* at 14:15.

⁹ Rod Kuckro, *Senate GOP Moves at "Light Speed" to Confirm Nominee*, E&E NEWS, Oct. 11, 2018.



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