

**January 30, 2019**

**ATTORNEY GENERAL RAOUL URGES FERC COMMISSIONER BERNARD MCNAMEE TO RECUSE HIMSELF FROM GRID RESILIENCY PROCEEDING**

***Raoul & Nine AGs Argue McNamee's Role in the Promoting the Failed Coal Bailout Prevents Him from Fairly Evaluating Resiliency of the Country's Power System***

**Chicago** — Attorney General Kwame Raoul today joined a coalition of 10 attorneys general in calling on Federal Energy Regulatory Commission (FERC) Commissioner Bernard McNamee, a vocal supporter of fossil fuels, to recuse himself from commission proceedings evaluating the resiliency of the country's regional bulk power systems.

In [comments submitted to FERC Monday](#), Raoul and the coalition argued that McNamee's record of promoting the retention of aging, uneconomic, and highly-polluting power plants shows a clear bias that prevents him from fairly participating in the commission's proceedings to evaluate the resiliency of the country's power grid. McNamee was the lead proponent of the U.S. Department of Energy's (DOE) failed multi-billion-dollar proposal for ratepayers to bail out coal and nuclear power plants.

"Commissioner McNamee has a proven record of protecting inefficient, highly-polluting power plants and must recuse himself from crucial proceedings to evaluate our power grid," Raoul said. "I am committed to continuing my predecessor's work to fight the administration's actions that put companies before the well-being of the public and our environment."

In October 2017, the Illinois Attorney General's Office was part of a coalition of attorneys general that submitted comments to FERC arguing that DOE's proposed coal bailout would jeopardize the nation's competitive markets for wholesale electric power and would add billions to customers' bills. The proposal would have exempted coal and nuclear power plants from having to compete in the market with other sources of power, like natural gas, wind, and hydropower. Instead of customers paying a competitively determined price for electricity, the proposed rule would have required customers to pay coal and nuclear power plants for all of their expenses plus a profit, outside of the competitive market. In [January 2018](#), FERC unanimously ruled that the retirement of these plants was not an emergency and rejected the proposal. In its order rejecting the proposal, FERC initiated a [new proceeding](#) to evaluate the resilience of the bulk power system in the regions of the country that are served by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) and to establish additional procedures if needed.

This week's letter reiterates concerns raised by the Illinois Attorney General's Office and the offices of the attorneys general of Maryland, Massachusetts, Oregon and New York in a December letter urging U.S. senators to oppose McNamee's confirmation as the newest FERC commissioner. The letter argued that his confirmation would harm the states' abilities to implement clean energy policies and their "region's abilities to operate competitive electricity markets, all at the detriment of customers."

The letter also reiterates comments McNamee made at a 2018 conference in Austin where he referred to the choice between fossil fuels and renewables as a "constant battle between liberty and tyranny," as further evidence that he should recuse himself from the proceeding.

Joining Attorney General Raoul in signing on to today's comments are the attorneys general of Massachusetts, California, Maryland, Michigan, Minnesota, New York, Oregon, and Vermont as well as the District of Columbia.



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>.

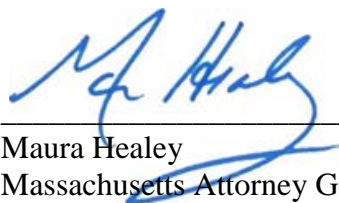
<sup>4</sup> Bernard McNamee Letter to Senate Democrats, January 7, 2019, at 3.

<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.

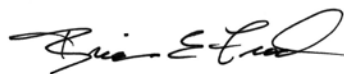
A reasonable observer informed of Commissioner McNamee's work history and prior statements would conclude that he has already determined that additional Commission action to subsidize uneconomic and polluting fossil fuel resources is appropriate and necessary for the resilience of the bulk power system. 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



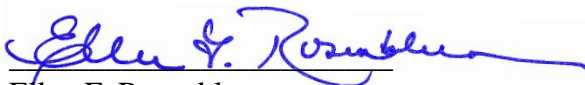
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Xavier Becerra  
California Attorney General



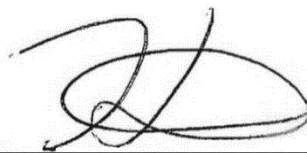
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Letitia James  
New York Attorney General



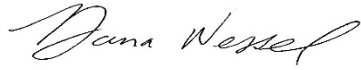
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Kwame Raoul  
Illinois Attorney General



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Keith Ellison  
Minnesota Attorney General



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Thomas J. Donovan, Jr.  
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.

/s/ Sarah Bresolin Silver  
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Dated: January 28, 2019