

April 15, 2015

Mr. Gregory H. Friedman
Inspector General
United States Department of Energy
Washington, DC 20585

VIA FAX: (202) 586-4902, **EMAIL:** ighotline@hq.doe.gov

Dear Inspector General Friedman,

As you continue the investigation described in your October 23, 2014 letter to Senators John Barrasso and Susan Collins,¹ we write to bring to your attention to records recently provided to us by the Federal Energy Regulatory Commission in *Energy & Environment Legal Institute v. FERC* (D.D.C. 1:14-cv-1743).

By their descriptions in the attached *Vaughn* Index, these records appear to be relevant to the senators' specific inquiries, particularly involving the activities of FERC's Office of Enforcement in the then-record settlement by Constellation Energy to resolve an enforcement action, and how that effort related to a contemporaneous, controversial merger approval (Barrasso/Collins Question # 3).² As you are aware, this raised concerns of a *quid pro quo* arrangement.³

As such it seems likely that the existence of these records — and FERC's description of them — are of interest to you.

By way of background, when we initially requested these records under the Freedom of Information Act, FERC withheld them in full, refusing to provide even basic and readily-segregable factual information such as dates and parties to the correspondence, or the Subject field. This blanket over-withholding substantially delayed the information's release until now.

¹ See e.g., FERC letter to Sen. Barrasso at http://www.eenews.net/assets/2014/11/18/document_gw_01.pdf, responding to the September 12, 2014 letter from Senators John Barrasso and Susan Collins, both letters attached.

² Specifically, they seemingly inform the issue of Mr. Norman Bay's involvement, which he indicates was peripheral despite his position at the time of Director of FERC's Office of Enforcement. Testimony of Norman Bay to United States Senate Committee on Energy and Natural Resources, Responses to Questions for the Record posed by members of the Committee; Response to Question 5 from Ranking Sen. Lisa Murkowski, pp. 50-52.

³ *Id.* We were also provided many other, heavily redacted emails by FERC in this litigation and another action, cited *infra*, in which you might also be interested, given that they also seem to address to one extent or another the senators' inquiry and your investigation.

Other emails we obtained under the Freedom of Information Act, again heavily redacted, after great delay and again only after filing a separate suit against FERC (*E&E Legal, et al. v. FERC*, D.D.C. 1:14-cv-00502), may also be of interest to you given your investigation.⁴

We therefore copy you on these records which, by their dates and what content FERC released, are apparently relevant to the months-long pursuit by members of the Senate for information shedding further light on this matter. Our review of hearing transcripts and Responses to Questions for the Record indicates that, although senators have asked very specific questions, the responses have on occasion been vague or not forthcoming. These records may be of some help in obtaining further clarity.

Regardless, it goes without saying that FERC's handling of the Constellation merger, as well as subsequent inquiries made by both senators and the public, is of great public importance. As such, given the inquiry you have informed Senators Barrasso and Collins is underway, it occurred to us that it was important for your office to be aware of these records, in the event it was not.

Please do not hesitate to contact me with any questions.

Best,



Christopher C. Horner
For the Free Market Environmental Law Clinic
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cc: Sen. John Barrasso
Sen. Susan Collins

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⁴ See <http://eelegal.org/wp-content/uploads/2015/04/DISCRETIONARY-RELEASE-Energy-and-Environment-Legal-Institutue-v.-FERC-1-14-cv-01743-TSC-FOIA-2014-93-2-9-14.pdf>, <http://eelegal.org/wp-content/uploads/2015/04/ENCLOSURES-Discretionary-release-2-9-15.pdf>. For example, these instructively show James Pederson, chief of staff to FERC's then-Chairman, specifically arguing that "the Constellation settlement" was a major qualification of Mr. Bay for a senior FERC position, because of the settlement's "game changing role for the Commission," representing "the complete overhaul of [Office of Enforcement] that has occurred under Norman" Bay. In this email to FERC's Chief Human Capital Officer Eduardo Ribas, asking Mr. Ribas to emphasize this to the White House as one of Mr. Bay's qualifications to hold a senior FERC leadership position, Mr. Pederson added "Copying the Chairman", thereby leaving his correspondents no doubt of the importance FERC's leadership placed on these assertions.