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U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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December 18, 2006

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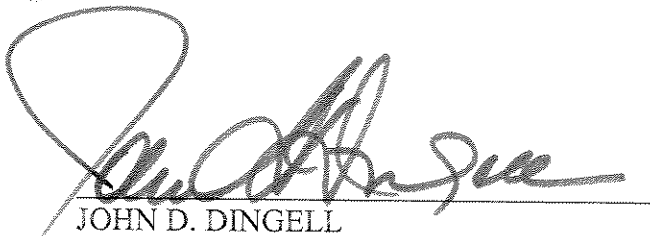
The Honorable Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Chairman Kelliher:

During the 110th Congress, we expect the Committee on Energy and Commerce to conduct oversight on the Federal Energy Regulatory Commission's (FERC) implementation of the Energy Policy Act of 2005 (EPACT).

EPACT gave FERC substantial new authorities and responsibilities, and we commend the Commission for its timeliness in implementing many of these provisions.

In order to help inform Committee members about the Commission's actions on EPACT and related issues, we would appreciate your response to the attached questions no later than Friday, January 5, 2007.



JOHN D. DINGELL
RANKING MEMBER

Sincerely,



RICK BOUCHER
RANKING MEMBER
SUBCOMMITTEE ON ENERGY AND
AIR QUALITY

Attachment

Questions for the Hon. Joe Kelliher
Chairman, Federal Energy Regulatory Commission
from Hon. John D. Dingell and Hon. Rick Boucher

1. The Commission staff recently forwarded to Committee staff a legal memorandum authored by Richard Pierce, Jr., entitled “Federal Energy Regulatory Commission Ex Parte Regulations and Practices.” The memo states that the Commission had requested Mr. Pierce’s views on these subjects, and that “FERC’s request was prompted, in part, by allegations in recent cases that pre-filing meetings between applicants and FERC Commissioners may violate the rules regarding ex parte communications contained in the Administrative Procedure Act (APA)” (p.1).
 - a. Why did the Commission seek this outside counsel? Was any compensation provided?
 - b. Does the Commission concur in Mr. Pierce’s conclusions?
 - c. Please describe any relevant circumstances or cases involving Commissioners or Commission staff that have given rise to allegations of inappropriate ex parte contacts.
 - d. Do the Commission’s current rules and practices ensure adherence with not only applicable legal requirements regarding ex parte communications, but also with the need to avoid the appearance of impropriety with respect to matters related to the public interest?

2. In a press release accompanying the Commission’s final rule “Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities” (Order No. 689, November 16, 2006), Chairman Kelliher stated that FERC would use its authority under EPACT “to supplement state transmission siting.”
 - a. Why does the Commission view its authority as a “supplement” to State authority?
 - b. Does the Commission interpret EPACT sec.1221 as authorizing it, under certain circumstances, to preempt State determinations and effectively moot ongoing State proceedings?

3. Order No. 689 modified the Commission's proposed rule with respect to "prefiling" transmission siting applications, providing that neither a formal application nor "the initiation of prefiling" could occur until one year after the initiation of a State proceeding.
 - a. What activities are included in the term "prefiling"?
 - b. What rules govern contacts between prospective applicants, interveners, and other members of the public and Commission staff, the Chairman, or other Commissioners?
 - c. How do such rules differ during the time prior to prefiling, during the prefiling process, and after prefiling?
 - d. Will a record of such contacts be made public? Why or why not?
4. Please describe the Commission's procedures for complying with the National Environmental Policy Act of 1969 in connection with its transmission siting authorities under EPACT, including any authority or responsibility delegated to it by the Department of Energy.
5. With respect to the Commission's authorities and responsibilities under EPACT relating to the electric industry, please provide a list of (a) all actions taken by the Commission and (b) any other actions planned for EPACT implementation.