

United States Senate

WASHINGTON, DC 20510

January 5, 2017

The Honorable Norman Bay
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Chairman Bay,

Thank you for your most recent response to our letter concerning Spectra Energy's proposed Atlantic Bridge pipeline project and possible conflicts of interest that may exist between a third party contractor used for this project and this company. We write because your response raises additional questions about the rules and processes in place at FERC to ensure that conflicts of interest are not present in these sorts of situations.

Your response indicates that FERC did not believe a conflict of interest was present in this instance because the third-party contractor, NRG, derived less than one-percent of its total revenue in each of the years 2012, 2013, and 2014 from entities owned by Spectra and none of these relationships were related to this specific pipeline project. However, this test that is applied by FERC raises questions as to whether all potential conflicts of interest would be weeded out under this standard and how this standard was developed. For instance, for 2014, the most recent fiscal year at the time the questionnaire was completed, NRG indicated that it derived 0.75% percent of its total income from Spectra or its affiliates. That income is approaching the threshold set by FERC to be a disqualifying conflict of interest.

In addition, your response indicates that FERC only asks about business relationships going back three years. If a third-party contractor derived a significant share of its income from a specific company, or even 100 percent, four years prior to such an application that would not show up as a disqualifying conflict of interest under FERC's current test. It is hard to imagine that in such a scenario a conflict of interest from a long and significant business relationship would not be present.

We are therefore concerned that FERC's current test regarding conflicts of interest may not be sufficient to ensure that all potential conflicts of interest are eliminated. As such, we ask that you respond to the following questions in writing:

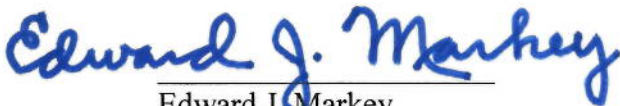
1. How did FERC develop the standard of one percent of total income as the level above which a potential conflict of interest may exist between a third party contractor? Does FERC believe that a third-party contractor deriving a lower percentage of its revenue – 0.75 or 0.5 percent – could ever represent a conflict of interest? If not, why not? If so, will FERC change its policies to disqualify any contractor in such an instance?
2. How did FERC develop the standard of examining the previous three years for financial relationships between companies and contractors? Does FERC believe that financial

relationships between companies and contractors outside the current three-year window could present a conflict of interest? If not, why not? If so, will FERC immediately change its policies to require that such financial relationships are evaluated over a longer period of time and how many previous years will FERC commit to requiring and reviewing for such relationships going forward?

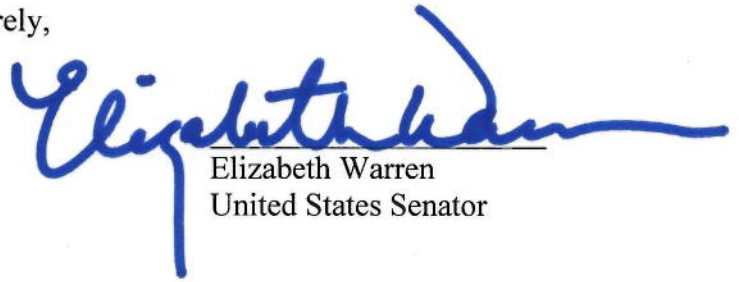
3. Finally, your response indicates that “Commission staff does in fact perform an independent and objective legal analysis of the information to determine whether a disqualifying conflict exists.” Does this response indicate that FERC staff independently verifies that the information provided by third-party contractors is both accurate and complete?

Thank you for your consideration of this request.

Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator