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FERC Nominee Ron Binz: Lessons from Colorado Binz's Controversial Leadership of Colorado PUC Demonstrates He's Unfit to Head FERC

By William Yeatman*

"At another level, I'll be doing something similar to what I did in Colorado as [FERC] Chairman."—Ron Binzⁱ

On Tuesday, September 17, the Senate Energy and Natural Resources Committee will conduct a hearing to vet Ron Binz, President Obama's nominee to become chairman of the Federal Energy Regulatory Commission (FERC). FERC is responsible for regulating the inter-state electricity market.

Prior to his nomination, Binz spent four years (2007-2011) at the Colorado Public Utilities Commission (PUC), which regulates electric utilities within the state. This report reviews Binz's record at his previous position as chairman of the Colorado PUC, in an effort to draw parallels to what Binz would likely seek to accomplish (or ignore) as Chairman of FERC.

Binz's leadership of the Colorado PUC should worry all senators considering his nomination. In that role, he evinced a troubling willingness to push the boundaries of regulatory authority, in order to remake the utility industry so that it comports with his environmentalist viewpoint. He has, moreover, relegated cost and reliability to being secondary in priority relative to advancing green energy. Finally, Binz's history of ethical lapses indicates that he is unfit to maintain FERC's strict independence, as intended by the Congress.

I. The Colorado Experience: Ron Binz Is a Zealous Regulator Intent on "Making Over" the Utility Industry

*William Yeatman is Assistant Director of the Center for Energy and the Environment at the Competitive Enterprise Institute and a policy analyst at the Independence Institute.

Binz's operating thesis is that "today's regulation may not be up to the task" of "making over" the utility industry.ⁱⁱ Thus, Binz sought to expand his regulatory role at the Colorado PUC, in order to facilitate clean energy investment and energy efficiency. To this end, he actually participated in the drafting of legislation that mandated fuel switching from coal to gas for almost 1,000 megawatts of power generation.ⁱⁱⁱ From a separation of powers perspective, it is unsettling that Binz helped write legislation whose implementation he oversaw. Due to this appearance of impropriety, seven Colorado state senators sent former Colorado governor Bill Ritter a letter demanding that Binz recuse himself from implementing the fuel switching law.^{iv}

► ***FERC Impact: Ron Binz Is Perfect Fit for Obama's Authoritarian Climate Plan***

Earlier this summer, President Obama unveiled a climate change mitigation plan predicated entirely on action by the Executive Branch.^v In so doing, the president reasoned that his administration would impose climate policies that the Congress was unwilling to enact. Ron Binz's Colorado history demonstrates that he would likely push boundaries of FERC's jurisdiction in the service of the president's authoritarian climate plan.

II. The Colorado Experience: For Ron Binz, Cost Is Secondary To Social Engineering

Binz unabashedly gives priority to social engineering over minimizing ratepayer costs. To wit, he is on record claiming that "[r]egulation needs to shift from its backward-looking focus on costs, to a forward-looking emphasis on value and desired societal outcomes."^{vi} Before Binz was appointed to lead the Colorado PUC, its mission was to ensure "least cost"; under Binz, the PUC mission was changed from ensuring least cost to resource planning with a "clean energy preference."^{vii} At Binz's behest, green energy was developed rashly, and, as a result, electricity rates in Colorado increased twice as fast as inflation during his tenure at the PUC,^{viii} despite depressed demand (due to the faltering economy) and also historically low energy costs.

► ***FERC Impact: Ratepayers, Beware of Ron Binz***

FERC's "bread and butter" is the regulation of public utility transmission.^{ix} This is of vital concern to green energy producers, like wind and solar energy, which often are located hundreds of miles away from cities, where electricity demand is greatest. In fact, almost \$38 billion of potential green energy transmission was identified in a recent report by the Edison Electric Institute,^x and a key issue now before FERC is determining who will pay for the transmission lines to transport green energy from remote to urban areas.^{xi} Under Binz, FERC can be expected to socialize these costs to the maximum extent, such that end-use consumers of renewable energy are subsidized by all ratepayers, even if they don't actually benefit from the green energy.

III. The Colorado Experience: Ron Binz Seeks Collaboration, Except with Industries He Dislikes

Binz stresses that “regulation’s methods need to be much more collaborative,”^{xii} but he did not practice what he preached while in Colorado. As a participant in the drafting of the fuel switching legislation cited above, Binz worked with an investor-owned utility, environmental special interests, and natural gas companies. Notably, however, he did not collaborate with Colorado coal producers, who were among the entities most affected by the law.

► ***FERC Impact: Ron Binz Cannot Be Counted on To Treat All Stakeholders Equally***

Binz’s exclusionary policymaking in Colorado is a worrisome portent. To be precise, Binz has a history of affording carbon-intensive industries less input than he does low-carbon industries. There is no place for such stark partiality at FERC, which has regulatory authority over hundreds of stakeholders in the electricity market and which also conducts adjudicative proceedings to settle counter claims between scores of market participants every year.^{xiii} Binz’s penchant for narrow deal-making lends doubt to the question of whether he can chair FERC in an impartial fashion.

IV. The Colorado Experience: For Ron Binz, Reliability Is Secondary to the Promotion of Green Energy

Binz recently co-wrote a study on risk in the utility sector titled, “Practicing Risk-Aware Electricity Regulation: What Every State Regulator Needs to Know.”^{xiv} In the study, Binz claims that wind and solar energy are the least risky choices for electricity generation.^{xv} Remarkably, electric reliability—that is, keeping the lights on—did not figure into Binz’s risk criteria.^{xvi} This point of view mirrors Binz’s actions in Colorado. As chairman of the PUC, Binz created an incentive structure for the reckless expansion of green energy, with inadequate attention given to reliability. In 2013, for example, Colorado’s largest utility overbought renewable energy 403%. In 2014, it is projected to overshoot its target 521%.^{xvii} This has proven problematic because wind and solar energy are intermittent sources of energy, whereas the electricity grid is engineered to accommodate stable power flows. By adding too much intermittent renewable energy too fast, Binz facilitated a reliability threat in Colorado. In recent testimony, the PUC staff expressed “alarm” about the reliability concerns engendered by Binz’s green energy binge.^{xviii}

► ***FERC Impact: Binz Can’t Be Trusted to Keep the Lights on***

The U.S. utility industry is facing an unprecedented challenge. Due to a suite of EPA regulations, collectively known as the ‘war on coal,’^{xix} FERC has estimated that almost 81,000 megawatts of coal-fired electricity generation is “likely” to retire.^{xx} This loss in electric generating capacity should be a significant issue to FERC, which is authorized by the Energy Policy Act of 2005 to oversee the nation’s electricity grid.^{xxi} It follows that Senators charged with ensuring that FERC fulfills its responsibility to keep the lights on should be concerned with Ron Binz’s history of promoting green energy without an evident concern for reliability.

V. The Colorado Experience: Binz Doesn't Play by the Rules

In December 2011, Colorado's Independent Ethics Commission ruled that Binz had violated the “ethics in government” provision of the Colorado Constitution, when he accepted a free trip to Houston sponsored by a natural-gas company in 2010.^{xxii} As noted by Denver Post columnist Vincent Carroll, such travel was all too common for Binz: “[F]rom June 2007 through November 2010 alone, Binz took more than 50 out-of-state trips, ‘including two overseas, and spent about 200 days on the road... In short, Binz spent the equivalent of at least one in four workdays at conferences, jetting to Greece, Jordan, Santa Monica, San Diego, Santa Fe, Whitefish (Montana), Las Vegas, Hawaii, San Francisco, Amelia Island (Florida), Park City, Seattle, Austin, Los Angeles, and numerous other hardship outposts.’”^{xxiii} Finally, a May 2012 Colorado state audit requested by members of the legislature uncovered widespread lax enforcement by Ron Binz's PUC of state laws restricting travel by utilities commissioners.^{xxiv}

► *FERC Impact: Binz Is Already Pushing the Limits of Propriety*

Emails obtained with a Freedom of Information Act request indicate the Ron Binz has taken the unprecedented measure of coordinating his FERC nomination with green energy lobbyists.^{xxv} More worrying still, it has been reported that Green Tech Action Fund, a San Francisco group that describes itself as a nonpartisan grant-making organization, has hired VennSquared Communications to advocate for Ron Binz as the next chairman of FERC.^{xxvi} This raises an obvious question: What special interests are funding the coordinated campaign by green energy advocates to push Ron Binz? Indeed, Binz's collaboration with special interests seemingly flies in the face of the Congress's intended for FERC to be an independent agency. It is also noteworthy that FERC's rules prohibit ex parte discussions between commissioners and stakeholders before the commission.

ⁱ Mark Jaffe, “Ron Binz, President Obama's nominee to Head the FERC, talks about the agency (video),” Denver Post Tout account, posted 21 August 2013, available <http://www.tout.com/u/bymarkjaffe>

ⁱⁱ In a June 26, 2013 speech before the University of Michigan Ross School of Business, Binz explained his “Thesis: Today's regulation may not be up to the task” regarding incentives for “firm efficiency, clean energy investment, energy efficiency, [and] innovation.” See slide 36, available at <http://rossmedia.bus.umich.edu/rossmedia/Play/dfa145f62d7e475b93cdca20f48987fc1d?catalog=4549b45f-ddb9-48a1-9f2b-1d7bc2609ff4>. During the slide, Binz stated, “Regulation itself can be a very bulky and judicial process, not exactly the atmosphere you want if you want to make over the utility industry.”

ⁱⁱⁱ See William Yeatman, “Incriminating Emails Suggest Gov. Ritter Played Puppet Master on HB 1365,” Independence Institute Energy Policy Center, 8 November 2010 available at <http://energy.i2i.org/2010/11/08/incriminating-emails-suggest-gov-ritter-played-puppet-master-on-hb-1365/>

^{iv} Ethan Howland, “Colo. Lawmakers want to remove PUC Chairman,” Platts Coal Trader, 8 November 2010

^v William Yeatman, “President Unveils a New Authoritarian Climate Agenda,” GlobalWarming.org, 25 June 2013, available at <http://www.globalwarming.org/2013/06/25/president-unveils-authoritarian-climate-agenda/>

^{vi} Ron Binz, “Ron Binz's Perspective,” Rocky Mountain Institute, accessed 16 September 2013, available at http://www.rmi.org/ron_binz_perspective

^{vii} See slide 27, Ron Binz, “Presentation of Ron Binz, Chairman Colorado Public Utilities Commission to Colorado Sierra Club Energy Committees,” 6 November 2008, available at

http://rmc.sierraclub.org/ipp/energy/eventENERGYMeeting_Nov_2008.pdf

^{viii} Associated Press, “Xcel Electricity Rates up 21 Percent in Colorado,” 6 February 2011, available at

http://www.denverpost.com/dontmiss/ci_17311687

^{ix} See slide 10, Lawrence R. Greenfield, Office of General Council, FERC, “An Overview of the Federal Energy Regulatory Commission and Federal Regulation of Public Utilities in the United States,” December 2010, available at <http://www.ferc.gov/about/ferc-does/ferc101.pdf>

^x Edison Electric Institute, “Transmission Projects: At a Glance,” March 2013, available at

http://www.eei.org/ourissues/ElectricityTransmission/Documents/Trans_Project_lowres.pdf

^{xi} Travis Fisher, “FERC Order 1000: Cost Socialization for “Green” Energy (NRDC, AWEA Rejoice), Master Resource, 8 April 2013, available at <http://www.masterresource.org/2013/04/ferc-order-1000/>

^{xii} Endnote 5, *supra*

^{xiii} See, e.g., Federal Power Act §206, which authorizes FERC, either pursuant to a complaint or on its own, may find that an existing rate, term, or condition is not just and reasonable or is unduly discriminatory or preferential.

^{xiv} Ron Binz et al., “Practicing Risk-Aware Electricity Regulation: What Every State Regulator Needs to Know,” Ceres, April 2012, available <http://www.ceres.org/resources/reports/practicing-risk-aware-electricity-regulation/view>.

^{xv} *Ibid*, p 8

^{xvi} Other than proper nouns (i.e., organizational names or report titles), the word “reliability” appears only once in the report (p. 23), in a context that has nothing to do with the report’s risk criteria.

^{xvii} Derived from Exhibit WJD-1, Exhibits of William Dalton, Staff of the Public Utilities Commission, In the Matter of the Application of Public Service Company of Colorado Approving Its 2012 Renewable Energy Standard Compliance Plan, 21 September 2011

^{xviii} Inez G. Dominguez, Answer Testimony and Exhibit of Inez G. Dominguez, Staff of the Colorado Public Utilities Commission, in the Matter of the Application of Public Service Company of Colorado for Approval of Its 2011 Electric Resource Plan, 4 June 2012

^{xix} William Yeatman, “Yes, America, There Is a War on Coal,” GlobalWarming.org, 23 September 2012, available at <http://www.globalwarming.org/2012/09/23/yes-america-there-is-a-war-on-coal/>

^{xx} FERC Office of Electric Reliability, “Potential of Coal Fired Generation and Its Effect on System Reliability,” Attachment 8 to Utility Air Regulatory Group Request for Reconsideration of EPA’s National Emissions Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, April 2012

^{xxi} See §215 Energy Policy Act of 2005

^{xxii} Peter Blake, “Former PUC Chair Broke Ethics Law—But Warrants No Penalty,” La Junta Tribune-Democrats, 16 December 2011

^{xxiii} Vincent Carroll, “Return of the Globe-Trotter,” Denver Post, 15 July 2013

^{xxiv} Colorado Office of the State Auditor, “Public Utilities Commission, Department of Regulatory Agencies, Performance Audit,” May 2012

^{xxv} Stephen Dinan, “Greens, lobbyists and partisans helping Ron Binz, Obama’s FERC pick, move through Senate,” Washington Times, 12 September 2013, available at http://www.washingtontimes.com/news/2013/sep/12/greens-lobbyists-and-partisans-helping-obamas-ferc/?utm_source=RSS_Feed&utm_medium=RSS

^{xxvi} Hannah Northey, “Clean energy group taps PR firm to advocate for Binz amid mounting attacks,” Energy and Environment Daily, 23 July 2013