



PROTECT the PUBLIC'S TRUST

VIA ELECTRONIC MAIL

July 28, 2021

Teri L. Donaldson
Inspector General
US Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Ms. Jocelyn Richards
Acting Assistant General Counsel
Office of the Assistant General Counsel
for Ethics and Personnel Law
US Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Request for Investigation into Potential Ethics Violations by Acting Assistant Secretary Kelly Speakes-Backman

Dear Ms. Donaldson and Ms. Richards,

Protect the Public's Trust (PPT) is a non-profit organization dedicated to promoting ethics in government and restoring the public's trust in government officials. In pursuit of that mission, we respectfully request the Office of the Inspector General conduct an investigation regarding potential misconduct by a senior Department official for a series of potential ethics violations.

Overview

Acting Assistant Secretary for Energy Efficiency and Renewable Energy Kelly Speakes-Backman has been a senior political appointee at the Department of Energy since the beginning of the Biden Administration in January 2021. Prior to joining the Biden Administration, Ms. Speakes-Backman was the CEO of the Energy Storage Association (ESA), the national trade association for energy storage entities. Ms. Speakes-Backman is currently bound by ethics obligations that include a prohibition on her participation in particular matters involving her former employer as well as others whom she may have a covered relationship, prohibition of any endorsements of those with whom she has a covered relationship, and a requirement to avoid



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participation in matters that may contribute to an appearance of bias among the public.

Through investigate research and information provided by members of the public and the federal workforce, PPT believes that Ms. Speakes-Backman may have violated her ethics obligations. Further, her pattern of behavior together with the records available to the public raise the question of whether Ms. Speakes-Backman is operating in a transparent, legally compliant manner. Based on the facts laid out in this complaint, we respectfully request an investigation into the issues identified herein.

Background

This is a follow up to a previous letter submitted to the Department of Energy's Ethics Office on May 13, 2021. In that letter, Protect the Public's Trust presented some concerning facts regarding Ms. Speakes-Backman's public appearances and conduct, provided the Department an opportunity to respond with an explanation, and requested records pertaining to the events in question. Since confirming receipt of PPT's letter, the Department has failed to provide any written response and withheld the requested public records. Subsequent media inquiries by multiple outlets including the Washington Free Beacon, Fox News, and E&E News, have also been met with the Department's refusal to comment or provide any defense of Ms. Speakes-Backman's potential misconduct.

As is stated in our May 13, 2021, letter, Ms. Speakes-Backman's participation and verbal statements made during several public appearances as a senior Administration official appear to have violated her ethics obligation to avoid endorsing a former employer. Specifically, according to federal regulations at 5 CFR § 2635.702 (c)-(d), federal employees are prohibited from using their official title or official capacity to endorse specific "products, services, or enterprises" or "give rise to an appearance of use of public office or of giving preferential treatment." For your convenience, we have attached our previous letter as Addendum A.

Also raised in that letter is an alarming pattern of participation in events involving and sponsored by her former employer's high-profile members (i.e., donors). Whether Ms. Speakes-Backman had consulted with and received approval from agency ethics officials prior to acceptance and participation remains an open question. What is clear is that these events all contribute to the appearance of impropriety and bias toward those with whom she either has a covered relationship or related entities that appear to be receiving preferential treatment given their former donor relationship with Ms. Speakes-Backman.



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Recent events involving continued potential misconduct by Ms. Speakes-Backman have been brought to the attention of PPT, which have in turn formed the basis of today's request for a formal investigation.

Additional Potential Ethics Violations by Ms. Speakes-Backman

On June 22, 2021, Ms. Speakes-Backman delivered yet another keynote address sponsored by one of her former board members while at ESA (specifically, NextEra Energy Resources). The paid-only industry event was part of the New York Battery and Energy Storage Technology Consortium's (NY BEST) "Capture the Energy 2021 Conference." The objective of the conference was stated as such (emphasis added): "Capture the Energy 2021 features industry leaders who are advancing energy storage globally and in New York State, where the State's nation-leading climate protection and clean energy goals have made it one of the fastest-growing markets for energy storage in the world."

As the list of presenters and conference website makes clear, the goals were to provide a forum for corporations and market participants in the energy storage industry to share information and better understand how they can financially benefit from federal financial assistance in what has become a very friendly federal and state regulatory landscape. To this effect, the conference offered two high-ranking officials from DOE to share information about the agency's priorities, outline their regulatory plans, and draw a roadmap for those companies interested in receiving federal taxpayer dollars. The speakers were Ms. Speakes-Backman, who provided "Updates from Washington," and Robert Marcum, the Chief Operating Officer for DOE's Loan Programs Office, who provided information for those interested in obtaining federal financial support.

On its face, the potential for Ms. Speakes-Backman's acceptance and participation to create a conflict of interest, opportunity for endorsement, or the appearance of bias is clear and undeniable.

One need not look far for these concerns to be further validated. For instance, the bios on the NY BEST's conference website for both Ms. Speakes-Backman and Mr. Marcum hyperlink their titles to a previous NY BEST event featuring Julian Boggs, the State Director for the US Energy Storage Association, Ms. Speakes-Backman's former employer.¹ It is unclear why the organization decided to hyperlink the titles of Ms. Speakes-Backman (and Mr. Marcum) to Ms. Speakes-Backman's former employer. Whether this is

¹ The hyperlink from Ms. Speakes-Backman's title to the ESA State Director's biography and April event can be found here: <https://embed.emamo.com/event/the-energy-storage-annual-conference-expo/r/speaker/julian-boggs-1>.



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intentional or an error by NY BEST is unclear. Nonetheless, it is an implicit endorsement of Ms. Speakes-Backman's former employer and not permitted under the law. It is also the precise type of situation that can be anticipated by ethics officials when providing guidance to senior officials such as Ms. Speakes-Backman who seek to participate in events so closely linked to her former employer and the financial interests of her former board members. In the wake of an outstanding complaint on related issues one would expect Ms. Speakes-Backman to exercise even greater diligence in avoiding situations that could create a perception of conflict or endorsement regarding her former employer. However, this incident reveals this is not the case and that Ms. Speakes-Backman has continued her previous pattern of bad judgment with respect to her former employer and its major donors.

Adding to the list of concerns pertaining to Ms. Speakes-Backman's participation in the NY BEST conference is the list of other sponsors and speakers present at the conference. For instance:

1. President of ConEdison of NY, a Leadership Circle member of ESA and previous keynote sponsor of Ms. Speakes-Backman on April 21, 2021 (detailed in our May 13, 2021 letter), spoke in the timeslot directly before Ms. Speakes-Backman on June 22;
2. Electric Power Research Institute, an ESA Sponsorship partner, was a listed sponsor of the conference;
3. Savion, an ESA Policy Partner, was a listed sponsor of the conference.

As we stated in our previous letter to the Department, before even hearing the substance of her speech, a neutral observer is left to wonder whether Ms. Speakes-Backman is adhering to her ethics obligations and acting impartially. Of course, this is before listening to any prepared remarks on how Ms. Speakes-Backman's office (and agency) is advancing the policy and financial interests of the energy storage industry she used to work for.

To make matters even worse, the public is left in the dark to even monitor the event as it is protected behind a financially hefty paywall for the implicit benefit of industry participants to receive information not available to the general public.² This contributes further to the public perception that Ms. Speakes-Backman does not take her ethics commitment seriously, is regularly communicating with those with whom she may have a covered relationship, and may be personally and substantially participating in matters in which she should be recused.

² The conference [website](#) lists non-member general registration rates as: Corporate (\$495); Non-profit, Academic, and Government (\$400), Non-Member Student (\$100), Start-Up (\$400).



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Conclusion

While the energy storage industry is positioned to benefit from millions (and potentially billions) of taxpayer dollars originating at Ms. Speakes-Backman's agency, it is of the utmost public interest to understand whether she is acting in a lawful and ethical manner. Given the agency's silence and refusal to provide records demonstrating ethics compliance or consultation, Protect the Public's Trust requests the DOE's Office of Inspector General initiate a formal investigation into the potential endorsements and pattern of related misconduct of Ms. Speakes-Backman. Specifically, we request you investigate and provide the public answers on the following questions:

- 1) Whether or not Ms. Speakes-Backman has endorsed, intentionally or otherwise, her former employer and its members while speaking in her official capacity at any of the events identified in Attachment A of this complaint and as such violated 5 CFR § 2635.702.
- 2) Whether Ms. Speakes-Backman was aware that one of her former employer's "Leadership Council Members" was the lone sponsor for the portion of the conference where Ms. Speakes-Backman was the keynote speaker on April 21, 2021. Whether she was aware that her former employer's board member NextEra Energy Resources was the lone sponsor of her keynote presentation on June 22, 2021.
- 3) Whether she relayed any of this information to ethics officials prior to accepting the invitations to speak. If so, what guidance, if any, did the Ethics Office provide to Ms. Speakes-Backman about possible conflicts and/or an appearance of a conflict of interest that could result from her acceptance of these invitations? Did she provide her prepared remarks for ethics approval prior to accepting these invitations and attending the events?
- 4) Whether Ms. Speakes-Backman sought guidance or received counseling to avoid participating in events that present an inherent appearance of a conflict of interest or endorsement of a former employer's member.
- 5) Whether Ms. Speakes-Backman is participating in particular matters involving her former employer or board members that may violate federal law, regulations or the Biden Ethics Pledge. In exploring this question, all records of meetings and particular matters that Ms. Speakes-Backman is or has been involved in should be reviewed and, at the appropriate time, provided to the public for review.
- 6) Whether the current process for political appointees at DOE such as Ms. Speakes-Backman includes appropriately communicating with ethics officials for all public speaking engagements and whether they are appropriately informed of the particular matters they should recuse themselves from prior to deliberating, deciding, or acting upon.



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- 7) Whether Ms. Speakes-Backman plans to continue participating in events sponsored by her former employer's board members and donors. Is this a practice condoned by DOE ethics officials and consistent with past practice for senior government officials?

Ethics obligations exist to reduce the likelihood that senior government officials are making decisions in a biased or arbitrary manner or to benefit the interests of former employers, clients, or related parties. Ensuring the avoidance of conflicts of interest or the appearance of bias is crucial to ensuring honest, ethical government that preserves the trust of the American people.

Sincerely,

Michael Chamberlain
Director
Protect the Public's Trust



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ATTACHMENT A

May 13, 2021

Ms. Jocelyn Richards
Acting Assistant General Counsel
Office of the Assistant General Counsel
for Ethics and Personnel Law
US Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
Jocelyn.Richards@hq.doe.gov

Re: Possible Ethics Violation by Acting Assistant Secretary Kelly Speakes-Backman

Dear Ms. Richards,

Protect the Public's Trust (PPT) is a non-profit organization dedicated to promoting ethics in government and restoring the public's trust in government officials. To that end, we respectfully ask your office to provide information that would assist the public in understanding whether Acting Assistant Secretary for Energy Efficiency and Renewable Energy Kelly Speakes-Backman has violated ethics laws, regulations, and/or the Biden Administration's Ethics Pledge during recent public speaking engagements.

Prior to joining the Biden Administration, Ms. Speakes-Backman was the CEO of the Energy Storage Association, the national trade association for energy storage entities. Upon joining the Department of Energy (DOE), Ms. Speakes-Backman became bound by ethics obligations including those concerning endorsement, involvement in particular matters involving her former employer and an obligation to avoid the appearance of bias when acting in her official capacity. Specifically, according to federal regulations at 5 CFR § 2635.702 (c)-(d), federal employees are prohibited from using their official title or official capacity to endorse specific "products, services, or enterprises" or "give rise to an appearance of use of public office or of giving preferential treatment."

Endorsement of the Energy Storage Association

On April 16, 2021, Ms. Speakes-Backman spoke in her official capacity as Acting Assistant Secretary for Energy Efficiency and Renewable Energy at a virtual International Conservation Caucus Foundation panel discussion entitled "[U.S. Congressional Briefing on Energy Storage Technology](#)". During the event, Ms. Speakes-Backman unnecessarily made multiple mentions of her former employer and implied her involvement in a major program initiative that would likely financially benefit her former employer and its members.



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The first instance occurred when Ms. Speakes-Backman was discussing the Energy Storage Grand Challenge – a major initiative at the Department of Energy and one she and her former employer were involved in supporting in 2020. At 32:03 of the video found here: <https://www.youtube.com/watch?v=5Nv4-O7Ib4U>, Ms. Speakes-Backman states, “Back in December 2020, when I was still with the Energy Storage Association, DOE published the energy storage grand challenge road map.”

During her presentation, Ms. Speakes-Backman also outlines several programmatic aspects of DOE’s energy storage goals that closely track initiatives articulated by the Energy Storage Association while she was CEO. In fact, many of these specific policies were even suggested as actions that her current office (EERE) should take during the Biden Administration as found in her former employer’s “[ESA Recommendations To Congress and the Administration for 2021 Energy Storage Policy](#).” Viewed in total, these statements contribute to the public’s perception that Ms. Speakes-Backman is giving preferential treatment to her former employer and its members while performing her official duties at DOE. A few examples of such statements are included below:

“This roadmap incorporates five tracks starting with fundamental R&D for storage technologies and following **all the way through to storage and commercialization.**”

“The first track, the technology development track will be on DOE’s **ongoing future storage R&D** with clear performance goals.”

“The manufacturing track or supply chain track, I should say, will develop **technologies approaches and strategies for US manufacturing** that supports and strengthens our leadership in innovation and continued scale manufacturing.”

“The technology transition track is going to ensure that DOE’s R&D transitions to domestic markets through field validation, **public-private partnerships, bankable business model development and the dissemination of high-quality market data.** Especially for technologies beyond batteries.”

“Then there's the **policy and valuation track, one of my favorites** that is going to provide important data and tools and analysis to **appropriately value energy storage** for its flexibility in markets and for providing capacity resilience and ancillary services.”

“And finally, the workforce development track is going to advance technical education workforce development programs to train and educate a growing workforce to conduct further research and to **develop design manufacturers and operate energy storage systems.**”



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A neutral observer could likely hear such statements and believe Ms. Speakes-Backman is directly involved with and deliberating on issues that are likely to deliver a financial benefit and/or endorsement of the Energy Storage Association and its private sector members. Many of these member companies may also stand to receive federal dollars to help achieve these programmatic goals.

Later in her talk at marker 43:18, Ms. Speakes-Backman again references her former employer in what may be a Freudian slip given the previous statements: “I’m stealing this a little bit from my days at Energy Storage Association but [energy storage] really does provide a more resilient, efficient, sustainable and affordable grid...”

The multiple references to the Energy Storage Association and subsequent policy discussion on specific programmatic elements likely to deliver financial benefits to her previous employer raise several concerns:

- 1) Ms. Speakes-Backman’s comments mentioning the Energy Storage Association by name while speaking in her official capacity at an event centered around the very products and services the entity and its members sell and/or advocate could be or perceived to be an endorsement of that entity by the Department of Energy. Has this been investigated and discussed with Ms. Speakes-Backman to avoid similar incidents from occurring in the future?
- 2) Ms. Speakes-Backman’s comments throughout the event suggest that she may be working on or participating in deliberations concerning matters that directly financially benefit her former employer and its members. If so, this likely raises questions of whether she is acting consistently with her ethics obligations under 5 CFR § 2635.702 and the Biden Ethics Pledge. What procedures are in place to ensure Ms. Speakes-Backman is not violating her ethics obligations by participating in particular matters that could financially benefit or endorse her former employer or its members?
- 3) What is the process by which Ms. Speakes-Backman was approved or cleared to attend and speak at this event by DOE’s Ethics Office? Did the Ethics Office clear her prepared remarks in advance to ensure the text did not include possible endorsements such as the aforementioned remarks?

Continued Communications with Former Employer?

Ms. Speakes-Backman’s remarks at the April 16, 2021 event were further marred by the event’s subsequent panelist, who implied continued communications with the Acting Assistant Secretary. Mark Reedy, a partner at Kilpatrick Townsend – which is a Full Member of the Energy Storage Association, according to their website – stated in his opening remarks at marker 53:27, “It’s going to be tough to refer to her as the acting



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secretary or the assistant secretary because I know her as Kelly having worked with her closely on the Energy Storage Association for years.”

Did Ms. Speakes-Backman disclose to the ethics office prior to the event that a former member would be one of the panelists? Did she receive guidance and approval based on this information? Mr. Reedy’s remarks contribute to public perception that Ms. Speakes-Backman may continue to have a working relationship on issues important to her former employer. Have ethics officials at DOE provided guidance to Ms. Speakes-Backman that this would likely present a conflict of interest if pertaining to particular matters?

Endorsement and/or Financial Benefit to Former Member Company?

Review of Ms. Speakes-Backman’s other public appearances suggest that PPT’s concerns may not be limited to the April 16, 2021 event.

On April 21, 2021, Ms. Speakes-Backman gave a keynote presentation at the Association of Energy Engineers’ Conference titled, “Energy Efficiency for Transformative Solutions.” Specifically, she was the Keynote Speaker for the [CWEEL Plenary Session](#). While the conference had many sponsors, Ms. Speakes-Backman’s specific role as a CWEEL Keynote speaker had only one sponsor which happened to be ConEdison, a “Leadership Circle Member” of her former employer.

Again, these facts surrounding Ms. Speakes-Backman’s public appearance raise questions about whether she violated her ethics obligation by attending and speaking in her official capacity at an event sponsored by a prominent member of her former employer.

- 8) Was Ms. Speakes-Backman aware that one of her employer’s “Leadership Council Members” was the lone sponsor for the portion of the conference where Ms. Speakes-Backman was the keynote speaker?
- 9) Did she relay this information to ethics officials prior to accepting the invitation to speak? If so, what guidance, if any, did the Ethics Office provide to Ms. Speakes-Backman about possible conflicts and/or an appearance of a conflict of interest that could result from her acceptance of this invitation? Did she provide her prepared remarks for ethics approval prior to accepting the invitation and attending the event?
- 10) Has Ms. Speakes-Backman sought guidance or received counseling to avoid participating in events that present an inherent appearance of a conflict of interest or endorsement of a former employer’s member?

Pattern of Preferential Treatment?

On March 11, 2021, Ms. Speakes-Backman participated in a panel discussion for the National Association of Energy Service Companies (NAESCO) titled, “What’s on the



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Horizon for Energy Efficiency?” The only other panelist joining Ms. Speakes-Backman was Kelly Glover, the President of the Alliance to Save Energy. While not her immediate previous employer, Ms. Speakes-Backman’s time at the organization was surrounded by [ethics concerns](#). Notably, she started at the Exelon-funded Alliance to Save Energy shortly after approving the Exelon-Pepco merger in her role at the Maryland Public Service Commission.

Viewed in light of the previous events discussed in this letter, Ms. Speakes-Backman’s public appearances suggest a pattern of advancing the interests of her former employers and potentially endorsing them. At the very least, her participation contributes to a perception that she may not be fully consulting with the Department’s Ethics Office or providing sufficient information in order to receive appropriate guidance and counseling prior to accepting such invitations.

Ethics obligations exist to reduce the likelihood that senior government officials are making decisions in a biased or arbitrary manner or to benefit the interests of former employers, clients, or related parties. Ensuring the avoidance of conflicts of interest or the appearance of bias is crucial to ensuring honest, ethical government that preserves the trust of the American people.

Therefore, PPT asks you to respond and provide the relevant records demonstrating whether or not Ms. Speakes-Backman is acting consistently with her ethics obligation; whether or not she has endorsed, intentionally or otherwise, her former employer and its members while speaking in her official capacity; whether or not she is providing sufficient information and receiving appropriate guidance from ethics officials on whether it is appropriate to participate in similar events in the future. Finally, we seek to understand the process by which such speaking invitations are reviewed and approved by the DOE Ethics Office. The Freedom of Information Act request seeking these specific records is attached in Attachment A below. Thank you.

Sincerely,

Michael Chamberlain
Director
Protect the Public’s Trust