

AUGUST PFLUGER
11TH DISTRICT, TEXAS

CHAIRMAN OF
THE COUNTERTERRORISM, LAW
ENFORCEMENT, &
INTELLIGENCE SUBCOMMITTEE

DEPUTY WHIP

Congress of the United States
House of Representatives
Washington, DC 20515-4311

1124 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3605

HOUSE COMMITTEE ON ENERGY
& COMMERCE

HOUSE COMMITTEE ON
HOMELAND SECURITY

October 9, 2024

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Chair Khan,

I write to express my serious concerns with the Federal Trade Commission's (FTC) recent decisions to block Scott Sheffield of Pioneer Natural Resources and John Hess of Hess Corporation from joining the Board of Directors of their respective acquiring companies.

In both cases, the FTC, on a 3-2 party-line vote, alleged improper communications with the Organization of the Petroleum Exporting Countries (OPEC) and domestic producers without providing the public with sufficient evidence to support its actions. In fact, a majority of the evidence that the FTC uses to prove anti-competitive behavior is redacted from the complaint and consent orders, and public statements do not sufficiently support the case. It is a betrayal of the mission of the FTC for such monumental and unusual decisions to be rooted in dubious evidence.

In the wake of the September 30th decision, you stated that the conclusion of anti-competitive behavior was reached as increased domestic production should have driven down prices for consumers but that prices instead rose. In this conclusion, the FTC fails to acknowledge the dynamics of the global oil market, especially since the pandemic, as well as administration policies that have pushed prices to record levels. Additionally, the FTC ignores the fact that not only do American producers compete fiercely with OPEC, but the inability of a single American company to intentionally inflate global oil prices.

On April 20, 2020, the West Texas Intermediate (WTI) traded at negative prices for the first time in history. COVID-19's impact on the global oil market and a price war between Russia and Saudia Arabia drove production to a standstill. To protect their economic viability, American producers wanted to produce responsible volumes while bad actors were flooding markets, and domestic demand was plummeting. Then, two years later, just as producers were beginning to financially recover from the 2020 price depressions, Russia invaded Ukraine, resulting in global sanctions and discounts on Russia's oil and gas, and significantly disrupted fuel supply chains.

It is well-documented that the global crude oil market reacts to world events. For example, on October 1, 2024, the WTI rose over 3 percent based on the news of a potential Iranian attack on Israel.¹ Given the

¹ Kimball, Spencer. "Crude Oil Rises More than 2% after Iran Fires Missiles at Israel." *CNBC*, October 1, 2024. <https://www.cnbc.com/2024/10/01/crude-oil-prices-today.html>

volatility of the oil market, especially since Russia's unprovoked attack on Ukraine, companies have desired to restore price stability and exercise capital discipline.

Meanwhile, the Biden-Harris administration has proposed and finalized excessive environmental regulations, enacted legislation to flood the grid with unreliable sources of energy, blocked permits for energy projects, banned liquefied natural gas exports, and proposed other policies detrimental to our energy independence. These actions, especially when coupled with hostile rhetoric toward producers, have contributed to record oil prices.

The accusations of collusion with OPEC to drive up prices are rooted in a false political narrative, one that the Biden-Harris administration created to attempt to distract the American people from its radical policy agenda and cater to climate extremists. It appears the FTC is supporting this dangerous narrative, which undermines its integrity and the rule of law.

The dissenting Commissioners criticized these decisions as politically motivated and lacking meaningful evidence to support the theory that allowing these CEOs onto corporate boards would cause anticompetitive harm. Indeed, the FTC's actions reflect not the careful work to assess legitimate anticompetitive risks, but retribution against industries that the Biden-Harris administration has openly lambasted.

Unchecked regulatory power is an abuse of power. The FTC's mission is to prevent business practices that are anticompetitive, deceptive, or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process, and to accomplish this without unduly burdening legitimate business activity.² Ironically, the agency responsible for checking power appears to be employing the very behaviors it was established by Congress to prevent, all to advance its political agenda.

Chair Khan, you have an obligation to ensure the integrity of the agency you lead. To help in this process, please respond to the following questions by November 15, 2024:

1. Will you commit to preserving all records and communications between you and your staff and the White House that relate to these decisions?
2. Will you commit to preserving all internal FTC records relating to the development of your theory of harm in these decisions?
3. Pioneer's daily production more than doubled in the last five years. How did the FTC conclude there were efforts to work with OPEC to cut production when Pioneer was not cutting production?
4. Is tracking a competitor's behavior now considered collusion?
5. Is the FTC planning to refer Mr. Sheffield or Mr. Hess to the Justice Department for further investigation, despite no evidence of illegal actions, as leaked to the press?
6. Will the FTC commit to opening an investigation into who leaked the aforementioned information to the press regarding a potential criminal referral? If not, why?
7. On November 8, 2023, a coalition of environmental groups sent a letter to the FTC urging the Commission to block the *Exxon-Pioneer* and *Chevron-Hess* deals.³ Did you meet with any of the groups who signed the letter during the proceedings of either case? Please identify any other groups you met with relating to the proceedings.

² "Mission." *Federal Trade Commission*, April 3, 2024. <https://www.ftc.gov/about-ftc/mission>

³ Oil Merger Letter, November 8, 2023. <https://www.economicliberties.us/wp-content/uploads/2023/11/2023-11-08-Oil-Merger-Letter-FINAL.pdf>

8. On November 17, 2021, President Biden sent the FTC a letter requesting it use its authority to uncover “illegal conduct” by oil and gas companies.⁴ How does the FTC define illegal conduct? Are the decisions in the cases of *Exxon-Pioneer* and *Chevron-Hess* an attempt by the FTC to create a narrative of “illegal conduct”?
9. Please explain how text messages regarding public information and other First Amendment activities are “illegal conduct.”
10. In the FTC’s complaint against *Chevron-Hess*, it is stated that the “...action builds on the Commission’s action in *Exxon-Pioneer*...” This seems to allude to an agenda that the FTC is working to fulfill.⁵ Does the FTC evaluate companies on a case-by-case basis?
11. In 2022, the FTC’s New Policy Statement regarding Section 5 of the FTC expanded the interpretation of enforcement to include “interlocking directorates.”⁶ Has the FTC examined whether these enforcement policies go beyond the FTC’s statutory authority following the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*?

John Hess and Scott Sheffield have spent decades building their respective companies from the ground up and built businesses that have driven the United States forward, provided thousands of jobs, lowered emissions, and helped make the United States energy independent. Unfortunately, the FTC has made them the scapegoat for the bad energy policies of the Biden-Harris administration. I look forward to your response.

Sincerely,



August Pfluger
Member of Congress

⁴ Federal Trade Commission. “FTC Gas Prices.” *New York Times*, November 17, 2021. <https://int.nyt.com/data/documenttools/ftc-gas-prices/92d93dca9793b8b4/full.pdf>

⁵ Khan, Lina M. “Statement of Chair Lina M. Khan in the Matter of Chevron Corporation and Hess Corporation.” *Federal Trade Commission*, September 30, 2024. https://www.ftc.gov/system/files/ftc_gov/pdf/statement-of-chair-lina-m-khan-joined-by-commr-rebecca-kelly-slaughter-and-commr-alvaro-bedoya-in-the-matter-of-chevron-corporation-hess-corporation.pdf

⁶ Federal Trade Commission. *Policy Statement Regarding Section 5 Enforcement*. November 10, 2022. https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf