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December 21, 2012

The Honorable Heath Schuler
229 Cannon House Office Bldg.
Washington, DC, 20515

Dear Representative Shuler:

Earlier this month, you announced that you will be taking a position as vice president of federal affairs at Duke Energy, the nation's largest electric power company, after your current term as a Member of the 112th Congress ends in January. Your decision to accept a government affairs position at Duke Energy raises significant potential conflicts of interest and certainly creates the appearance of such conflicts for the time you remain in office.

Given that almost any action you may take in your official capacity will likely affect the interests of the energy sector, the Campaign Legal Center urges you to consider immediately resigning your position. As the Legal Center advised former Representative Albert Wynn (D-MD) in 2008 when he accepted employment from Dickstein Shapiro while serving in the U.S. House, it is likely that most actions you might take in an official capacity will affect the interests of your future employer. Should you choose not to resign, you should, at a minimum, recuse yourself from all official matters relating to the issues of energy and the environment, including votes regarding broader fiscal matters, such as legislation addressing the "fiscal cliff."

We urge you to take these steps because your acceptance of a position with Duke Energy gives rise to a number of potential conflicts of interest and the appearance of conflicts. The need to take these steps is especially compelling in light of Duke Energy's high-profile lobbying presence on the Hill. According to the Center for Responsive Politics, Duke Energy spent \$6,340,000 in 2011 on federal lobbying activities, and \$4,930,000 in 2012.

Are you planning on voting "present" on all remaining House floor votes? Do you intend to provide detailed public statements about the interests of Duke Energy and explaining how they are affected by your votes and statements on the House floor? Do you intend to publicly disclose the persons with whom you meet and the topics discussed? The simple and harsh truth is, even if you took these extraordinary measures, the concerns regarding conflicts of interest and the appearance of conflicts would remain to undermine public confidence in the institution.

Staying in Congress under such circumstances both disservices your constituents and damages the integrity of the U.S. House of Representatives. It is certainly reasonable for your constituents as well as other citizens to question whether the interests of Duke Energy and your new responsibility to that organization are playing a part in your decision-making.

As you know, the House Code of Official Conduct prohibits a House Member from receiving compensation if “the receipt of which would occur by virtue of influence improperly exerted from his position in Congress.” House Rule 23, cl. 3. The Honest Leadership and Open Government Act of 2007 amplified this general requirement to require any sitting member of the House who is in negotiations for, or has accepted an offer of, future employment to recuse himself or herself from any official matter that might affect his or her future employer. Specifically, House Rule 27 requires Members to recuse themselves from “any matter in which there is a conflict of interest or an appearance of a conflict” with their future employer, and to notify the Committee on Standards of Official Conduct of such recusal. House Rule 27, cl. 4.

Therefore, consistent with the Statement of Recusal filed with the Committee on Standards of Official Conduct, you cannot “act directly or through others in deciding, approving, or disapproving official matters” or “recommend, investigate, advise or otherwise contribute to or influence such official matters” that might affect any interests of Duke Energy.

In addition, you should recuse yourself from participating in the consideration of broader fiscal legislation such as the current negotiations addressing the expiration of the Bush tax cuts and planned spending cuts under the Budget Control Act of 2011. Even if a bill addressing the “fiscal cliff” is characterized as a measure of broad applicability, it is likely to have a direct financial impact on the energy sector and Duke Energy. These concerns would become even more acute in the event provisions targeted at specific companies or industries are added to the legislation.

It is crucial to preserving public confidence in the integrity of Congress that Members avoid creating even the appearance that they are leveraging the powers and privileges of their office for their own financial benefit or for the benefit of a private interest. According to a recent survey by Democracy Corps and Public Campaign Action Fund, the number one policy voters believe Congress should enact—favored by 81 percent of voters—are new laws to prevent government workers from “cashing in” on their connections by closing the revolving door between the government and entities that seek to influence policy in Washington.

While your decision to accept employment before leaving Congress with a firm that seeks to influence policy-making in Washington may make sense for you personally, this type of “cashing in” threatens once again to increase public cynicism about the motives of our politicians. You are now put in the position of trying to serve two masters. Such a conflict is not in the best interests of the U.S. House of Representatives as an institution.

The Legal Center urges you to resign immediately. Should you choose not to resign, we urge you to recuse yourself from any further official actions that could directly or indirectly affect the interests of your future employer or create the appearance of such an effect.

Sincerely,

Handwritten signature of J. Gerald Hebert in black ink.

J. Gerald Hebert
Executive Director and Director of Litigation

Handwritten signature of Meredith McGehee in black ink.

Meredith McGehee
Policy Director