

MEMORANDUM TO THE FILE

February 22, 2022

Re: Commissioner Phillips' Participation in Docket No. EL19-47

According to Commissioner Phillips' ethics agreement, for a period of one year from his resignation from the Organization of PJM States, Inc. (OPSI), he shall not knowingly participate personally and substantially in any particular matter involving OPSI, unless first authorized by the Designated Agency Ethics Official pursuant to 5 C.F.R. § 2635.502(d).

On January 20, 2022, Commissioner Phillips participated in a Commission order in Docket No. EL19-47 (Independent Market Monitor for PJM) without knowledge of OPSI's involvement. In particular, OPSI intervened in Docket No. EL19-47 on March 3, 2019, filed comments on April 15, 2019, and then filed an initial brief on May 3, 2021. As we understand it, the January 20, 2022 order Dismissing Motion for Clarification and Waiver was a last-minute addition to the January agenda. Notably, OPSI was not listed as a captioned party, intervenor, or commenter in the order.

By way of background, prior to joining FERC, Commissioner Phillips served as Chairman of the DC Public Service Commission, by which he automatically received a position on the OPSI board of directors. In particular, the Chairman of a member utility commission automatically receives a seat on the OPSI board, unless he designates another official to serve on his behalf. To clarify, his automatic role on the OPSI board was secondary, rudimentary, and tangential to his service on the DC PSC, which was his consuming and overarching responsibility at the time. Notably, the DC PSC is not involved in Docket No. EL19-47.

On December 3, 2021, Commissioner Phillips was sworn in as a FERC Commissioner. On December 8, 2021, the Commissioner and his interim advisor very promptly and expeditiously received his mandatory ethics briefing which included a review of his recusal obligations and the recusal process.

However, starting in January 2022, the Commissioner transitioned to new permanent staff, while his interim staff was transitioning to other responsibilities. The January 20, 2022 vote was inadvertently made during this transition period without the Commissioner's knowledge of OPSI's filings and without newly assigned permanent staff's knowledge of the recusal obligation.

On February 4, 2022, prior to the discovery of the oversight, the Commissioner's newly assigned permanent staff promptly received guidance on the Commissioner's and their ethical obligations. Although the Commissioner had already received his mandatory ethics

briefing on December 8, 2021, he conscientiously and voluntarily joined his staff in the February session.

The February ethics briefing resulted in discovery of the oversight that occurred during the transition period. In particular, following their ethics briefing, the Commissioner's recently acquired staff checked Docket No. EL19-47 prior to his further participation and discovered that OPSI had made filings. Consequently, on February 7, 2022, the Commissioner requested authorization to participate in the docket, which the DAEO granted on February 11, 2022. That authorization is attached.

Going forward his staff will continue to screen each matter prior to his participation to ensure his recusal when required, or to seek authorization when appropriate.

Charles A. Beamon
DAEO