

Federal Energy Regulatory Commission
Washington, D.C. 20426

Office of General Counsel
General and Administrative Law

MEMORANDUM TO: Commissioner Willie L. Phillips

FROM: Charles A. Beamon
Associate General Counsel
General and Administrative Law
Designated Agency Ethics Official

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CONTACT: (b) (6)
Staff Attorney (b) (6)

SUBJECT: Authorization pursuant to 5 C.F.R. § 2635.502(d) to
Participate in Docket No. ER22-1606

This memorandum addresses your request for authorization to participate in PJM Interconnection, LLC (PJM), Docket No. ER22-1606, a proposal from PJM Transmission Owners to modify the use of the solution-based distribution factor (DFAX) methodology used by PJM to allocate costs of Reliability Projects identified in PJM's Regional Transmission Expansion Plan. The Organization of PJM States, Inc. (OPSI) filed a document-less motion to intervene in this proceeding on April 26, 2022. According to your ethics agreement executed on September 21, 2021, you may not for a period of one year from your resignation from OPSI, "knowingly participate personally and substantially in any particular matter involving OPSI, unless first authorized by the Designated Agency Ethics Official (DAEO) pursuant to 5 C.F.R. § 2635.502(d)." As explained below, authorization is granted.

On April 11, 2022, the PJM Transmission Owners submitted for filing an amendment to Schedule 12, Section (b)(iii)(A)(6) of the PJM Open Access Transmission Tariff. The proposed amendment would revise the procedures for the calculation of cost allocation assignments using a solution-based DFAX methodology for reliability projects approved under the Regional Transmission Expansion Plan. Under the proposed amendment, the 1% de minimis threshold provision of the solution-based DFAX methodology would not be applied to the Host Zone, the Zone in which an upgrade is constructed. In its April 26, 2022 filing, OPSI took no position on the merits.

Discussion

As referenced in your Ethics Agreement, the Office of Government Ethics (OGE) regulations provide that where an employee knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee

determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter without written authorization from the DAEO. *See* 5 C.F.R. § 2635.502, Personal and business relationships. An employee has a covered relationship with any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee. *See* 5 C.F.R. § 2635.502(b)(iv). Given that OPSI has only made a doc-less filing without addressing the merits, there is little or no basis for a reasonable person to question your impartiality.

As an initial matter, I reiterate that your board membership with OPSI has ended and you have no financial interest concerning OPSI. I also reiterate, as I have done in prior determinations, that you were automatically assigned as an OPSI Board member by way of being Chairman of the DC Public Service Commission (DC PSC). Notably, the DC PSC is not a party to this proceeding.

Importantly, your staff has explained that this proceeding has great institutional significance for the Commission. Issues regarding the cost allocation methodology for reliability projects approved under PJM's Regional Transmission Expansion Plan has been an issue the Commission has been working on for almost a decade. Also, of note, over 20 different entities have filed motions to intervene and comments in this proceeding.

As a Commissioner, you have a uniquely important role in the regulatory process and were appointed by the President to apply your personal judgments in Commission decision-making. Your vote will be one of five votes in determining the ultimate outcome in this particular matter. The secondary nature of your position on the board and the absence of any valid appearance concern given that OPSI only filed a doc-less and is not addressing the merits, do not preclude nor outweigh the need for your participation in this particular matter under the circumstances described herein.

In light of the significance of this proceeding, the volume of parties participating, the diverse interests of those parties, and the fact that OPSI has not taken a position in the proceeding, I accept your view that your participation in Docket No. ER22-1606 would further the Commission's interests, and therefore the interest of the public at large. I note that I am granting this authorization to participate in the proceeding despite your one-year recusal from OPSI matters as detailed in your ethics agreement. In line with your ethics agreement, I anticipate the need for such authorizations only on an infrequent basis.

Conclusion

In light of all relevant circumstances, including the facts you have presented and the findings set forth above, I find that the Government's interest in your participation in Docket No. ER22-1606 outweighs the concern that a reasonable person may question the integrity of the Commission's decision-making process, programs, or operations. *See* 5

C.F.R. § 2635.502(d). Accordingly, you are hereby authorized to participate in Docket No. ER22-1606.

As a caution, please note that many state bar associations may impose more stringent restrictions than the Office of Government Ethics with regard to various types of matters, including those involving prior clients. This authorization does not negate any obligations you might have under your state bar requirements, comparable authority, or any post-employment agreement you may have had with your former clients. If you have any further questions about these proceedings or whether your participation in any matter is appropriate, please let me know.