RE: Phillips Recusal Question

Stacey Steep <Stacey.Steep@ferc.gov>

Mon 12/20/2021 3:32 PM

To: Charles Beamon <Charles.Beamon@ferc.gov>

Cc: Mindi Sauter <Mindi.Sauter@ferc.gov>;Christopher Young <Christopher.Young@ferc.gov>;Marcos Araus <Marcos.Araus2@ferc.gov>;Jamond Perry <Jamond.Perry@ferc.gov>;(b) (6)

Thanks Charles!

From: Charles Beamon <Charles.Beamon@ferc.gov>
Sent: Monday, December 20, 2021 2:59 PM
To: Stacey Steep <Stacey.Steep@ferc.gov>
Cc: Mindi Sauter <Mindi.Sauter@ferc.gov>; Christopher Young <Christopher.Young@ferc.gov>; Marcos Araus <Marcos.Araus2@ferc.gov>; Jamond Perry <Jamond.Perry@ferc.gov>; (b) (6) <(b) (6)
Subject: RE: Phillips Recusal Question

Thanks Stacey,

This is to confirm that the Commissioner may participate, as specified below.

From: Stacey Steep <Stacey.Steep@ferc.gov>
Sent: Monday, December 20, 2021 2:56 PM
To: Charles Beamon <Charles.Beamon@ferc.gov>
Cc: Mindi Sauter <Mindi.Sauter@ferc.gov>; Christopher Young <Christopher.Young@ferc.gov>; Marcos Araus <Marcos.Araus2@ferc.gov>; Jamond Perry <Jamond.Perry@ferc.gov>
Subject: RE: Phillips Recusal Question

Thank you Charles, this is accurate. Appreciate you looking into this.

Looping in Jamond, who just joined the office.

From: Charles Beamon <Charles.Beamon@ferc.gov>
Sent: Monday, December 20, 2021 1:58 PM
To: Stacey Steep <Stacey.Steep@ferc.gov>
Cc: Mindi Sauter <Mindi.Sauter@ferc.gov>; Christopher Young <Christopher.Young@ferc.gov>; Marcos Araus <Marcos.Araus2@ferc.gov>
Subject: Phillips Recusal Question

Hi Stacey,
(As promised. Please review this proposed approval for factual accuracy.)

You have asked whether Commissioner Phillips should recuse himself from an upcoming order that must be issued by January 4, 2022, addressing a motion in Docket No. IN18-9, filed by the estate of Andrew Kittell, a GreenHat trader. In particular, you have noted the DC Public Service Commission's (DC PSC) participation in Docket No. ER18-2068, while the Commissioner served as its Chairman.

Docket No. ER18-2068

On January 30, 2019, the Commission denied PJM Interconnection, L.L.C.'s (PJM) request, pursuant to section 205 of the Federal Power Act (FPA) for a waiver of certain Financial Transmission Rights (FTR) liquidation rules in the PJM Open Access Transmission Tariff so it could liquidate the defaulted GreenHat FTR portfolio in a manner that attempted to minimize distortion to FTR markets. The DC PSC filed a late motion to intervene and sought rehearing asking the Commission to reconsider its denial of the waiver order. The Commission denied the DC PSC's intervention request, and established hearing and settlement judge procedures to resolve this proceeding. On February 27, 2020, Commission staff approved a settlement, which closed the proceeding.

Docket No. IN18-9

On November 5, 2021, almost three years after the Commission ruled in Docket No. ER18-2068, the Commission issued an order, finding that GreenHat and several individuals violated section 222 of the FPA, which prohibits energy market manipulation, by engaging in a manipulative scheme in the PJM FTR market. The Commission determined that GreenHat and others garnered more than $13 million in unjust profits and imposed approximately $179 million in losses on PJM members. The order did not address a motion from the estate of a GreenHat trader. Subsequently, the Commission has determined to take action by January 4, 2022, to be compatible with the timing of ongoing probate proceedings.

Determination

While both of these proceedings stem from GreenHat's and others' misconduct in the PJM FTR market, they are separate docketed proceedings. The first proceeding was a one-time waiver of liquidation rules, which has since been closed. The second proceeding involves penalties for that underlining conduct, and the assessment of penalties against the estate of Andrew Kittell. Docket No. ER18-2068, a matter which has already been closed for nearly three years, should not preclude the Commissioner's participation in Docket No. IN18-9 in which he has had no prior participation.

From: Charles Beamon <Charles.Beamon@ferc.gov>
Sent: Friday, December 17, 2021 3:04 PM
To: Stacey Steep <Stacey.Steep@ferc.gov>; Marcos Araus <Marcos.Araus2@ferc.gov>
Cc: Mindi Sauter <Mindi.Sauter@ferc.gov>; Christopher Young <Christopher.Young@ferc.gov>
Subject: Re: Phillips Recusal Question

Thanks Stacey. Our expectation is to get back to you on Monday.

On: 17 December 2021 14:57,
"Stacey Steep" <Stacey.Steep@ferc.gov> wrote:

And the docket for the PJM waiver request is ER18-2068, -000, -001, -002, -004.

Thanks!

From: Stacey Steep
Sent: Friday, December 17, 2021 2:46 PM
To: Charles Beamon <charles.beamon@ferc.gov>; Marcos Araus <Marcos.Araus2@ferc.gov>
Cc: Mindi Sauter <mindi.sauter@ferc.gov>; Christopher Young <christopher.young@ferc.gov>
Subject: Phillips Recusal Question

Hi Charles and Marcos,

We wanted to follow up on whether Commissioner Phillips should recuse himself from a forthcoming GreenHat order.

For background, GreenHat had the largest Financial Transmission Rights (FTR) portfolio in PJM, and in June 2018, defaulted on the portfolio, leaving other PJM members to cover the losses. In May 2021, the Commission issued an order to show cause alleging that GreenHat violated the FPA and PJM's tariff and operating agreement by engaging in a manipulative scheme in the FTR market. In November 2021, the Commission issued an order assessing civil penalties, but in doing so, failed to address a motion from the estate of a GreenHat trader. The Commission now plans to respond, and, due to probate court deadlines, must issue the order by January 4, 2022.

While Commissioner Phillips was Chair of the DC PSC, the DC PSC was not a party to any PJM proceeding related to GreenHat's actions, but it did attempt to participate in one. PJM sought a waiver of FTR liquidation rules so it could liquidate the defaulted GreenHat FTR portfolio in a manner that attempted to minimize distortion to FTR markets. After the Commission denied PJM's request, the DC PSC filed a late motion to intervene and sought rehearing. DC PSC supported PJM's request and urged the Commission to reconsider its denial of the waiver order. The Commission denied the DC PSC's intervention request, and established hearing and settlement judge procedures to resolve this proceeding. Commission staff subsequently approved an uncontested settlement between PJM and the protesting parties.

We wanted to get your thoughts on whether Commissioner Phillips should recuse himself from this forthcoming matter due to the DC PSC's interest in the repercussions from GreenHat's default.

Happy to chat about it too – please feel free to give the Phillips team (cc-ed) a call in Teams anytime.

Thank you,

Stacey Steep (she/her)
Attorney Advisor (detail)
Office of Commissioner Willie L. Phillips
Federal Energy Regulatory Commission