FW: : Commissioner Phillips Participation in RM21-17

Charles Beamon <Charles.Beamon@ferc.gov>
Fri 4/15/2022 4:58 PM
To: (b) (6)

FYI—thanks for your work on this.

From: Charles Beamon
Sent: Friday, April 15, 2022 4:57 PM
To: Karin Herzfeld <karin.herzfeld@ferc.gov>; Mannshya Grace Hu <MannshyaGrace.Hu@ferc.gov>; Willie Phillips <Willie.Phillips@ferc.gov>
Cc: Marcos Araus <Marcos.Araus2@ferc.gov>; Kathryn Allen <kathryn.allen@ferc.gov>
Subject: : Commissioner Phillips Participation in RM21-17

Good Afternoon Karin,

Consistent with past practice under these specific circumstances, I am approving the Commissioner's participation by this email. I do not find that a formal 502 memo is required. In any event, the facts documented in this email would support a 502 authorization, though not required in this instance. (Based on my past communications with OGE, 502 authority should not be exercised unnecessarily.)

You requested confirmation regarding Commissioner Phillips's participation in Docket No. RM21-17. I understand that the Commission initiated this rulemaking proceeding to consider the potential need for reforms or revisions to existing regulations to improve the electric regional transmission planning and cost allocation and generator interconnection processes. Specifically, on July 15, 2021, the Commission issued an Advanced Notice of Proposed Rulemaking that discussed proposed changes to existing processes in several broad categories: regional transmission planning, regional cost allocation, generator interconnection funding, generator interconnection queueing processes and consumer protection. You have asked whether the Commissioner requires authorization to participate because within the past year, in his capacity as Chairman of the District of Columbia Public Service Commission (DC PSC), he served on the Boards of two entities, NARUC and the Organization of PJM States (OPSI), both of which are participating in the rulemaking. (NARUC submitted comments, and OPSI submitted a motion for extension of time to file comments, but did not do so.)

Under OGE regulation 5 CFR 2635.502(a), an employee should not participate in any particular matter with specific parties if the 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, unless the employee has received authorization from the DAEO to participate. An employee has a covered relationship with any person for whom the employee has served as an officer within the last year. See 5 CFR 2635.502(b)(1)(iv).

As a general rule, rulemakings are not considered to be particular matters with specific parties. Rather, they are particular matters of general applicability. Because this proceeding is not a particular matter with specific parties, the submittals of NARUC and OPSI do not necessitate the Commissioner's recusal under the ethics regulations. Furthermore, for the same reason, his participation would not violate the terms of his Ethics Agreement. Under these particular circumstances, given the absence of specific parties, Commissioner's participation in Docket No. RM21-17 does not require written authorization from the DAEO. However, even if NARUC or OPSI could be deemed as specific parties, which they are not so far for purposes of RM21-17, the facts before us would warrant an authorization.

It is notable that transmission planning reform is a top priority for the Commission and the rulemaking may provide an opportunity to build the transmission that future new generation resources will require. This proceeding is of significant interest to the entire electric industry and will be subject to a high level of public

scrutiny, as the number of comments submitted indicate. This rulemaking follows Order No. 1000, *Transmission Planning and Cost Allocation,* which was a high-profile issuance nearly a decade ago, and this docket considers subsequent reforms and revisions that may impact the entire electric industry. To date, over 275 comments have been submitted in this proceeding, representing diverse views on the matter. The overall facts and the Commissioner's unique role as one of five officials statutorily empowered to vote in this important proceeding, would justify his participation in furtherance or the government interest as would be required by a 502 authorization.

As a proceeding evolves, it is possible for a rulemaking to become a particular matter with a specific party. For example, if a commenter acquires a unique and specialized interest in the rulemaking, including for example as a uniquely impacted entity or an adversarial litigant, it might be analogized to a specific party or appear as such. If the Commissioner becomes aware of developments that may cause a reasonable person with knowledge of the relevant facts to question his participation in the matter, a written authorization may become necessary. See 5 CFR 2635.501(a). In that case, please contact me or my staff for further guidance, prior to any further participation.

Please let me know if you have any questions. In particular, please especially follow up with me as to any factual inaccuracy concerning this determination.

From: Karin Herzfeld <Karin.Herzfeld@ferc.gov>
Sent: Friday, April 8, 2022 5:20 PM
To: Charles Beamon <Charles.Beamon@ferc.gov>
Cc: Mannshya Grace Hu <MannshyaGrace.Hu@ferc.gov>; Willie Phillips <Willie.Phillips@ferc.gov>
Subject: Commissioner Phillips Participation in RM21-17

Charles,

We would like to confirm that Commissioner Phillips will be able to receive authorization to vote on the Notice of Proposed Rulemaking in Docket No. RM21-17-000, *Building for the Future Through Electric Regional Transmission Planning and Generator Interconnection*. The item is currently scheduled for the April Commission Meeting.

According to Commissioner Phillips' ethics agreement, for a period of one year from his resignation from the Organization of PJM States, Inc. (OPSI) and National Association of Regulatory Utility Commissioners (NARUC), 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 August 20, 2021, OPSI filed a motion for extension of time to submit comments in this proceeding. OPSI did not file any substantive comments. On October 12, 2021, NARUC filed comments in this proceeding.

In October 2021, Commissioner Phillips resigned from the OPSI Board and stopped participating on the NARUC board. He resigned from NARUC on December 3, 2021. Commissioner Phillips did not participate in the approval of NARUC's October 2021 comments.

This large generic rulemaking proceeding was instituted on July 15, 2021 when the Commission issued an Advanced Notice of Proposed Rulemaking (ANOPR) seeking comment on more than 200 questions regarding potential revisions to FERC's rules governing transmission planning, cost allocation, and generator interconnection. There are nearly 275 comments filed in the docket from nearly 200 unique commenters totaling over 5,500 pages of comments. In short, this is one of the largest proceedings the Commission has initiated in over a decade. Because the ANOPR issued in Docket No. RM21-17-000 covered several very broad policy topics, the Commission will likely issue several follow-up NOPRs in multiple new RM dockets that are yet to be created. Although there will likely be several different RM docket numbers, these dockets will all stem from the ANOPR in RM21-17 and are all related proceedings.

Please let us know if you have any further questions.

Thanks,
Karin

Karin Herzfeld
(202) 502-8459