MEMORANDUM TO: Sarah Venuto
Director
Office of External Affairs

FROM: Charles A. Beamon
Designated Agency Ethics Official

CHARLES BEAMON Digitally signed by CHARLES BEAMON Date: 2022.04.21 10:53:38 -04'00'

CONTACT: (b) (6)
Attorney-Advisor
(b) (6)

SUBJECT: Authorization for participation in RM21-17

This memorandum addresses your request for authorization to participate in Docket No. RM21-17, entitled "Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection." Authorization is necessary because you are or were recently seeking employment with the (b) (6) (b) (6) an entity that has submitted substantive comments in the proceeding.[1] As explained below, an authorization is granted.

Background

RM21-17

In Docket No. RM21-17, the Commission is taking initial steps in assessing potential reforms or revisions to existing regulations in order to improve the electric regional transmission planning and cost allocation and generator interconnection processes. In furtherance of this initiative, on July 15, 2021, the Commission issued an Advanced Notice of Proposed Rulemaking (ANOPR) in RM21-17 and invited all interested persons to submit comments on the potential reforms and respond to various related questions.

[1] By email dated Monday, April 18, 2022, you advised that you intend to discontinue seeking employment with (b) (6), but have not yet had the opportunity to follow up with your point of contact at the organization. You also indicated that (b) (6) (b) (6) whose affiliate had submitted comments in RM21-17. Finally, you advised that (b) (6) (b) (6) but our search of e-Library revealed that neither has filed comments in RM21-17.

On October 13, 2021, (b) (6) [redacted] submitted initial comments in response to the ANOPR. Among other things, the Commenters proposed the development of a formal process for transmission project siting to further the goals of avoiding delays, achieving just and reasonable rates, improving the climate, and achieving clean energy goals. The Commenters also opined that advanced transmission technologies, such as grid-enhancing technologies, should be part of the transmission planning process in order to promote just and reasonable rates and improve grid resiliency.

The comment period for RM21-17 has closed and comments are currently under review by FERC staff.

NWF

You were recently approached by (b) (6) regarding a potential employment opportunity with the organization and promptly contacted our office to recuse yourself. Given that (b) (6) filed comments in RM21-17, an important Commission initiative for which you have considerable responsibility in terms of your position as Director of the Office of External Affairs (OEA), you requested authorization to continue to work in this docket to review comments and provide feedback to Agency officials and stakeholders. Your prior work in this docket included review of the ANOPR and related comments, and utilization of your Capitol Hill expertise and substantive energy background.

Discussion

The Office of Government Ethics (OGE) regulations provide that with certain exceptions, an "employee may not participate personally and substantially in a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom the employee is seeking employment within the meaning of 5 C.F.R. § 2635.602(a)."

5 C.F.R. § 2635.604(a)(1) prohibits an employee from participating "personally and substantially in a particular matter that, to the employee's knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom the employee is seeking employment within the meaning of § 2635.603(b)," without prior authorization. Further, even in instances in which an employee's seeking employment would not have a "direct and predictable effect" on the financial interests of a prospective employer, an employee is prohibited from participating in the matter absent an authorization from me or staff acting on my behalf due to appearance concerns. *See* 5 C.F.R. § 2635.502.

As an initial matter, in consultation with the Office of Government Ethics, I have concluded that RM21-17 will not have a "direct and predictable effect" upon the financial

interest of (b) (6) as that term is defined under 5 C.F.R. § 2635.402(b)(1). Accordingly, a statutory waiver to avoid running afoul of 18 U.S.C. § 208 is not required. Nevertheless, OGE regulations also require employees to take appropriate steps to avoid an appearance of loss of impartiality in the performance of their official duties. *See* 5 C.F.R. Part 2635, Subpart E, *Impartiality in Performing Official Duties*.

Under these circumstances (*i.e.,* seeking employment with an entity that has filed comments in the proceeding), written authorization from me is necessary for you to participate in Docket No. RM21-17 and any rulemaking that may result from the ANOPR. *Id.* In order to grant an authorization to allow your participation, I must first determine that the government interest in your participation outweighs the concern that a reasonable person might question the integrity of the Commission's programs and operations. In particular, I may consider the following factors outlined in 5 C.F.R. § 2635.502(d):

(1) The nature of the relationship involved.

As noted above, recently, you were approached by (b) (6) regarding a potential opportunity with the organization. You have not made a determination as to whether to pursue the opportunity and have not engaged in any detailed discussions regarding salary, benefits, and other remuneration.

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship.

RM21-17 and the associated ANOPR seeks comments on the broad topic of electric transmission planning. As described above, (b) (6) comments similarly speak to broad proposed considerations relating to this subject matter. Further, (b) (6) without a financial interest in the proceeding and its comments do not reflect viewpoints that are particularly unique. We also note that over 200 comments were submitted by various commenters in the proceeding and RM21-17 is a matter of broad general applicability discussing policy-related issues relating to electric regional transmission planning and cost allocation and generator interconnection.

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter.

Given your unique professional background, including your experience on Capitol Hill and within industry, as well as your position as Director of OEA, you are relied upon to advise the Chairman and other decisionmakers of your informed perspective relating to various energy related matters and initiatives. In this regard, your advice and perspective are relied upon by Commission leadership, and the General Counsel confirmed that your availability for work in RM21-17 is important.

(4) The sensitivity of the matter.

The ANOPR is related to the Commission's FY22-26 Strategic Plan which includes, among other priorities, facilitating the development of the electricity infrastructure needed for the changing resource mix. In this regard, the ANOPR provides in part that:

> The electricity sector is transforming as the generation fleet shifts from resources located close to population centers toward resources, including renewables, that may often be located far from load centers. The growth of new resources seeking to interconnect to the transmission system and the differing characteristics of those resources are creating new demands on the transmission system. Ensuring just and reasonable rates as the resource mix changes, while maintaining grid reliability, remains the priority in the regional transmission planning and cost allocation and generator interconnection processes.

See ANOPR, Accession No. 20210715-3078.

The ANOPR further provides that in light of the foregoing conditions, the Commission believes that it is "timely and appropriate to consider whether there should be changes in the regional transmission planning and cost allocation and generator interconnection processes and, if so, which changes are necessary to ensure that transmission rates remain just and reasonable and not unduly discriminatory or preferential and that reliability is maintained." *Id.* Accordingly, this proceeding has significant regulatory significance and overall importance.

(5) The difficulty of reassigning the matter to another employee.

As noted, the ANOPR comment period is closed. Until your recusal relative to (b) (6), you were actively involved in review of the comments relative to RM21-17, as well as engaged in providing advice and feedback to Agency stakeholders in advance of an anticipated formal rulemaking. Further, as noted above, you are relied upon by Commission leadership in connection with major Commission initiatives. Thus, I accept that the absence of your review and perspective would create a significant hardship for the Commission. Your unique role in the process cannot be reassigned.

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Notwithstanding your particular expertise, which is needed and should be utilized, you are not the only source of legal and policy guidance. The Chairman, Commissioners, General Counsel, Deputy General Counsel, and others will consider your analyses and recommendations, and ultimately exercise their own informed judgment as to the best legal direction and representation of Commission interests and initiatives.

Conclusion

Although your work in Docket No. RM21-17 could raise concerns about your impartiality, on balance I am persuaded in light of all the relevant factors that I am required to consider as addressed above, that your participation is justified in furtherance of the government's interest.

Please contact me for additional guidance if you are concerned that RM21-17 is progressing in a manner that could have a direct and predictable effect on any covered financial interest that you may have, including actual knowledge of any submissions by such entities. *See* note 1, *supra*.