DEFENSE NUCLEAR FACILITIES SAFETY BOARD
Washington, DC 20004-2901

September 12, 2024

To: Dr. Patricia Lee
Board Member

From: Joseph Gilman
Acting General Counsel
Designated Agency Ethics Official

Subject: Limited Waiver of Executive Order 13989 for Dr. Patricia Lee

Pursuant to Section 3 of Executive Order 13989, Ethics Commitments by Executive Branch Personnel, January 20, 2021, ("Ethics Pledge" or "Executive Order"), I hereby grant you a limited waiver of the requirements of Section 1, paragraph 2. Specifically, this limited waiver permits you to participate in matters involving your former employer, Battelle Memorial Institute and Savannah River Alliance (collectively Battelle). However, the waiver does not apply to any specific party matters in which you participated personally and substantially on behalf of your former employer. After consultation with the Counsel to the President, I have determined this waiver is necessary and in the public interest to enable you to effectively carry out your duties as a Board Member of the Defense Nuclear Facilities Safety Board (DNFSB or Board).

Background

The Executive Order imposes ethics requirements beyond federal ethics laws and regulations. All individuals appointed to political positions on or after January 20, 2021, are required to sign the Ethics Pledge, which sets forth the "former employer" restriction at Section 1, paragraph 2:

> I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

Under Section 2(k) of the Executive Order, "former employer" is specifically defined to include "any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner."

With the approval of the White House, the Acting Director of OMB has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.[1] Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver.

[1] Waiver Authority and Making Waivers Public under Section 3 of Executive Order 13989, "Ethics Commitments by Executive Branch Personnel," U.S. Office of Government Ethics, Legal Advisory LA-21-04, (Feb. 18, 2021).

Prior to your appointment as a Board Member, you were employed at the Savannah River Site by the Battelle Savanah River Alliance, a nonprofit organization wholly owned and operated by Battelle Memorial Institute, from June 2021 to August 2024. Therefore, for purposes of the Ethics Pledge former employer restriction, your former employers include Battelle Savanah River Alliance, Battelle Memorial Institute, and any other entity for which Battelle is a parent organization.

Analysis

In accordance with Section 3 of Executive Order 13989, it is in the public interest to grant a limited waiver of the requirements of Section 1, paragraph 2 of the Executive Order to enable you to effectively carry out your duties as a Board Member.

In making this assessment, I have considered the factors set forth in Section 3 of the Executive Order, which include:

(i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;
(ii) the uniqueness of the individual's qualifications to meet the government's needs;
(iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and
(iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services.

Government Need and Unique Qualifications

The Board's mission is to provide independent analysis, advice, and recommendations to the Secretary of Energy to inform the Secretary, in the role of the Secretary as operator and regulator of the defense nuclear facilities of the Department of Energy, in providing adequate protection of public health and safety at such defense nuclear facilities, including with respect to the health and safety of employees and contractors at such facilities.[2]

The Board reviews and evaluates the content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility.

Pursuant to the Atomic Energy Act of 1954 (AEA), Board Members are required to be "respected experts in the field of nuclear safety with a demonstrated competence and knowledge relevant to the independent investigative and oversight functions of the Board."[3]

In other words, Board Members are required by law to have significant demonstrated expertise in the highly nuanced field of nuclear safety related specifically to the U.S. Department of Energy's (DOE) defense nuclear complex. This legal requirement significantly limits the universe of eligible candidates for the position of Board Member; a position which is vital to protecting the interests of national security and public health and safety at DOE's defense nuclear facilities.

[2] 42 U.S.C. § 2286a(a).

[3] 42 U.S.C. § 2286(b)(1).

As a Ph.D. nuclear engineer and health physicist with 30 years of experience in radiation protection and nuclear safety, you are uniquely qualified to serve as a Board Member. The majority of your career has been spent performing or managing research and development associated with some of the nation's largest nuclear facilities under the purview of the DNFSB. Moreover, your experience includes several years serving as the DOE Environmental Management Liaison to the DNFSB, requiring acute awareness and active development of the governing policies and procedures for oversight of DOE's defense nuclear facilities.

Additionally, you have a decade of experience managing and building strategy for advanced computational research and development for safe operations of nuclear facilities and handling of nuclear materials. You have also managed and served on a U.S. Department of Health and Human Services Federal Advisory Committee, the national Health Physics Society Board of Directors, and other technical and community affiliation boards demonstrating experience being an effective member of collegial bodies.

If you are not permitted to participate in particular matters involving Battelle, you would be required to recuse from the majority of DNFSB matters. Such a recusal would render you largely unable to effectively perform your duties as a Board Member for a significant portion (i.e., two years) of your limited term.[4]

This recusal would be significant because of your former employer, Battelle's, expansive role at DOE defense nuclear facilities. Battelle is currently a contractor at nine DOE sites: Oak Ridge National Laboratory, National Renewable Energy Laboratory, Idaho National Laboratory, Pacific Northwest National Laboratory, Brookhaven National Laboratory, Los Alamos National Laboratory, Savanah River National Laboratory, Lawrence Livermore National Laboratory, and National Biodefense Analysis & Countermeasures Center. DNFSB has oversight of approximately 10 different DOE sites, and Battelle is involved at 5 of those sites.

As a result of this recusal, you would be unable to perform critical duties as a Board member that are in the public interest, including but not limited to participation in investigative and oversight responsibilities of defense nuclear facilities, under the Board's purview, that involve Battelle.

Prior Lobbying

You have no history as a registered lobbyist.

Other Limitations

Without this waiver, your ability to perform the role of a Board Member would be significantly impaired. This waiver does not otherwise affect your obligation to comply with all other applicable government ethics rules and provisions of the Executive Order. Additionally, the waiver expressly precludes you from participating in specific party matters in which you participated personally and substantially on behalf of your former employer. Put simply, you are not permitted, as a Board Member, to participate in the review of your own former work.

[4] Under the AEA, Board Members are appointed to rotating 5-year terms and are limited in their eligibility to serve a second term depending on their confirmation date. *See* 42 U.S.C. § 2286(d).

Conclusion

The significant public interest in the DNFSB's ability to accomplish its mission requires that you be able to fully perform your duties as a Board Member. Due to the scope of Section 1, Paragraph 2 of the Executive Order, a broad application of this prohibition would be detrimental to the government's interest. Without a waiver, you would be restricted from participating in any particular matters involving specific parties that are directly and substantially related to Battelle for a period of two years. As explained above, this would equate to a recusal from the majority of the DNFSB's vital safety oversight, rendering you unable to effectively perform your duties as a Board Member for a significant portion of your limited term.

For the foregoing reasons, I grant you a limited waiver of the restrictions in Section 1, Paragraph 2 of the Executive Order to enable you to effectively carry out your duties as a Board Member.

Pursuant to this waiver, you may participate in specific party matters where Battelle is a party or represents a party, and you are permitted to participate in those specific party matters, including meetings or other communications, where a former employer is present. However, the waiver does not apply to any matters in which you directly and personally participated on behalf of Battelle.

Cc: Counsel to the President, Office of the White House Counsel

JOSEPH GILMAN

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