

Referral to FERC

**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>  
**Sent:** Wednesday, November 27, 2019 1:53 PM  
**To:** Charles Beamon <(b) (6)>  
**Cc:** Lynette Lawrence <(b) (6)>; Kathryn Allen <(b) (6)>  
**Subject:** Engagement Letter

No attachment found in search.

Dear Mr. Beamon:

Please find attached an engagement letter with a request for materials. A hard copy is being sent via regular mail.

Please let me know if you have any questions. I will be out of the office from the end of today until Monday, December 9. I will be checking email periodically, however; you may also contact Dale Christopher, Deputy Director for Compliance, at 303-482-9224 or [dachrist@oge.gov](mailto:dachrist@oge.gov) for a more timely response while I'm away.

Sincerely,

Doug Chapman  
**Chief, Program Review Branch**  
**U.S. Office of Government Ethics**  
**1201 New York Avenue, NW Suite 500**  
**Washington, DC 20005**  
**202-482-9223**

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**From:** [Douglas L. Chapman](#)  
**To:** [Charles Beamon](#)  
**Subject:** Teleconference Request  
**Date:** Friday, January 17, 2020 3:35:10 PM

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Hi Charles,

As I explained in the voicemail I just left for you, Seth Jaffee (Chief, Ethics Law and Policy Branch), David Taube (Associate Counsel), and I would like to briefly discuss the advice and counseling you provided in response to the request we sent you in our letter dated November 27, 2019. We would like to schedule a teleconference with you for next Thursday, January 23, 2020, at 9:30am. We anticipate the call would take 30 minutes or so. Of course, you're welcome to include anyone on your staff that you would like to participate.

Our goal will be to make sure our understanding of the documents you provided is correct and to address the concerns I noted in my voicemail. If you have additional information you would like to provide based on our discussion, we'd be happy to consider that as well.

I'm leaving for the day now, but I'll be back in the office on Tuesday. I'd be happy to discuss this further if you'd like. Please let me know if our proposed date/time work for you and your staff.

Have a good weekend,

Doug

**Doug Chapman**

*Chief, Program Review Branch*

*U.S. Office of Government Ethics*

*1201 New York Avenue, NW Suite 500*

*Washington, DC 20005*

*202-482-9223*

Referral to FERC



Referral to FERC



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**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>

**Sent:** Monday, January 27, 2020 4:06 PM

**To:** Marcos Araus <(b) (6)>

**Cc:** Charles Beamon <(b) (6)>; Kathryn Allen <(b) (6)>

**Subject:** RE: Follow up to January 23, 2020 teleconference

Thanks, Marcos. I forwarded your email to Seth, Branch Chief, Ethics Law and Policy Branch, and David Taube, one of the Associate Counsels who reviewed the advice you provided. I'll let you know if they have any questions, or, they may contact you directly. Also, we look forward to seeing what you find in your review of matters that the commissioners recused from.

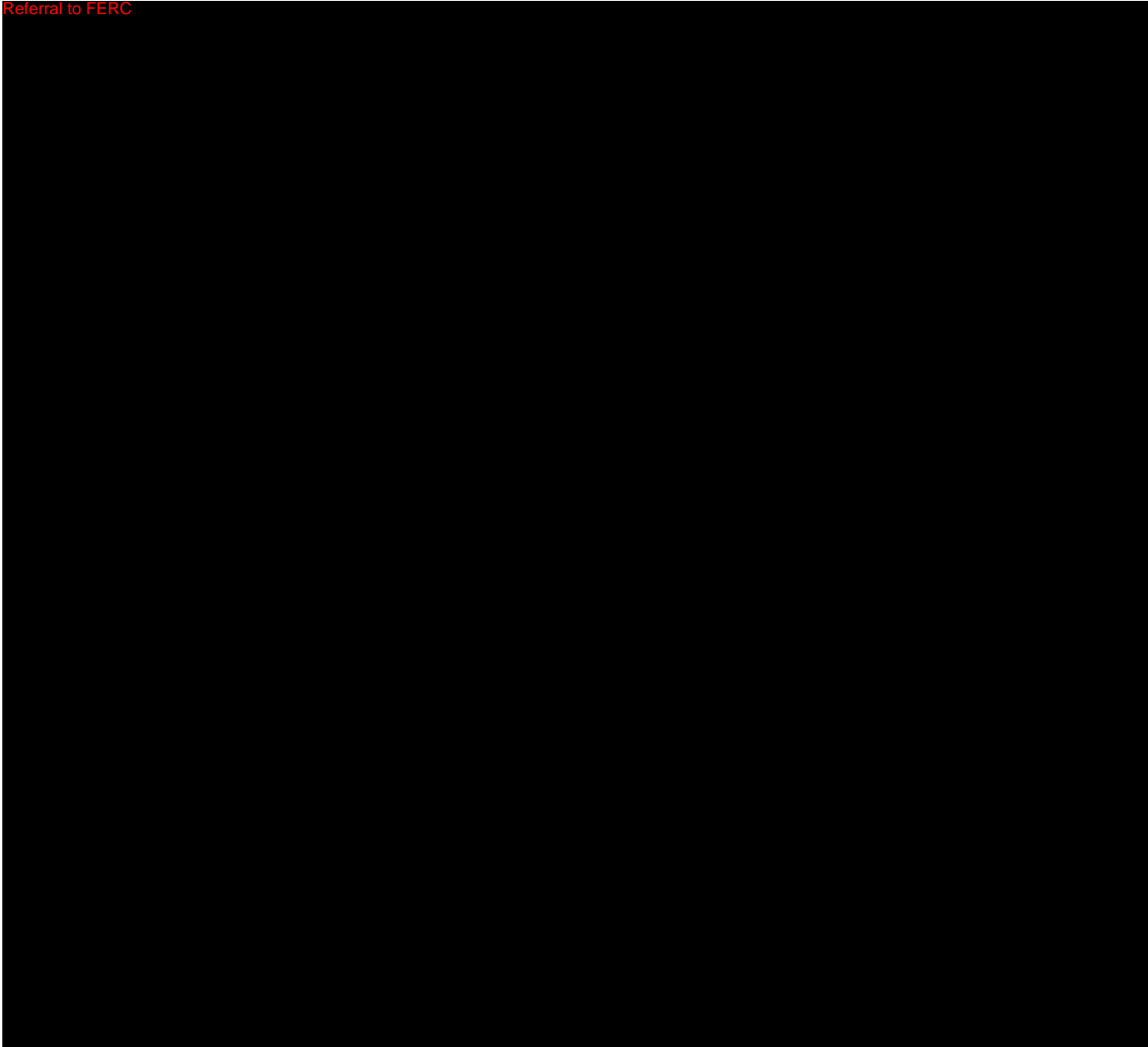
Thanks again,

Doug

Referral to FERC



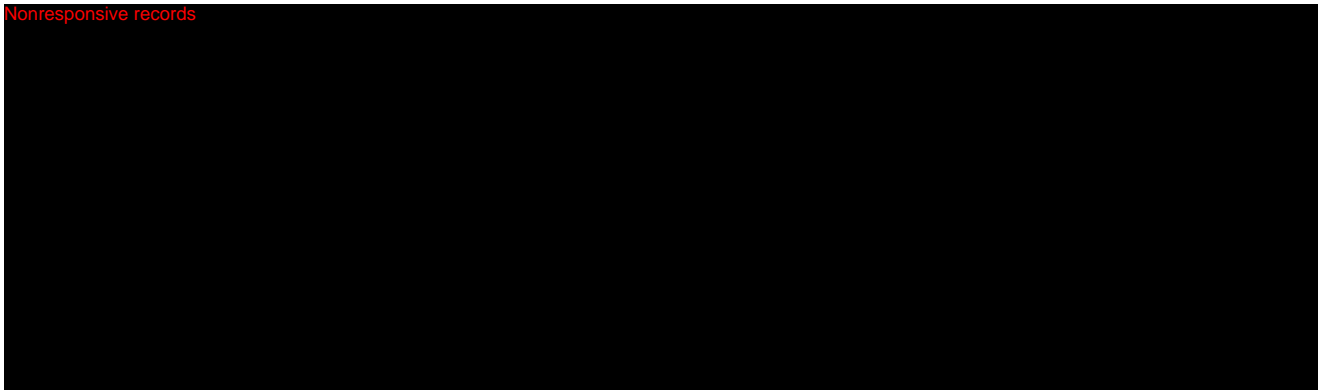
Referral to FERC



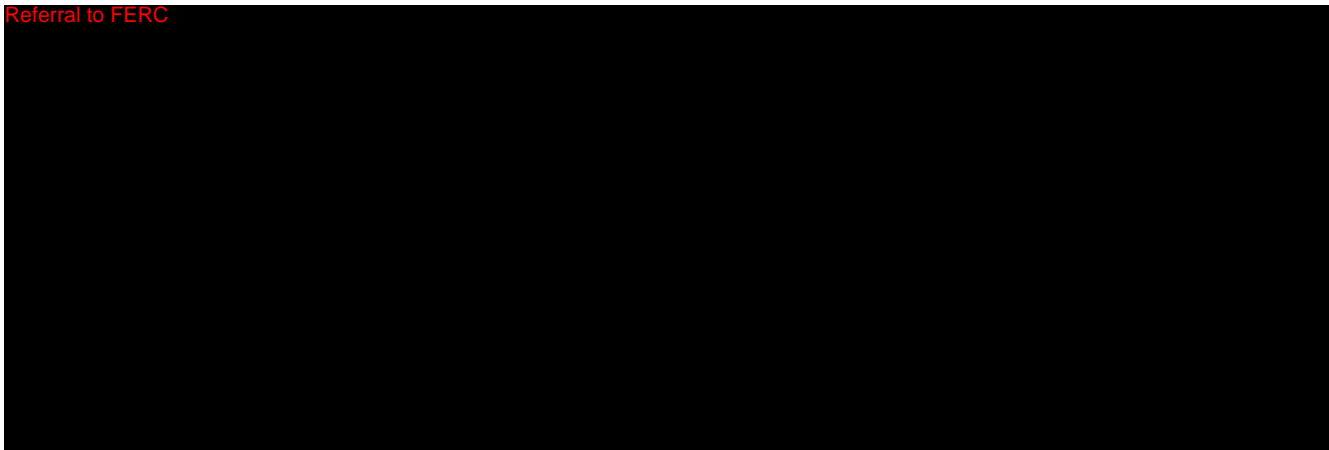
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Nonresponsive records



Referral to FERC



**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>  
**Sent:** Friday, April 17, 2020 11:56 AM  
**To:** Charles Beamon <(b) (6)>  
**Cc:** Kathryn Allen <(b) (6)>; Marcos Araus <(b) (6)>  
**Subject:** RE: Draft Report for Comment

Hi Charles,

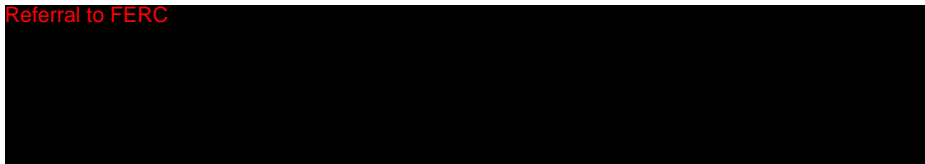
I've been told the extension is fine. So the agency comments are now due Friday, May 1.

Have a good weekend,

Doug

Sent from my Verizon, Samsung Galaxy smartphone

Referral to FERC



Referral to FERC



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**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>  
**Sent:** Thursday, April 16, 2020 5:29 PM  
**To:** Charles Beamon <(b) (6)>  
**Cc:** Kathryn Allen <(b) (6)>; Marcos Araus <(b) (6)>  
**Subject:** RE: Draft Report for Comment

Hi Charles,

Let me check on the extension but I think we can work out something. I'm off tomorrow but I'll be back Monday. I'll give you a call to let you know about the extension and see who we need to include on the conference call. If you want to talk about the technical analysis of the advice, we'll want to include the attorneys who worked on that.

I'll be in touch on Monday, have a good weekend.

Doug

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**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>  
**Sent:** Wednesday, April 15, 2020 1:48 PM  
**To:** Charles Beamon <(b) (6)>  
**Cc:** Kathryn Allen <(b) (6)>; Marcos Araus <(b) (6)>  
**Subject:** Draft Report for Comment



Hi Charles,

I hope this finds you and yours safe and well.

Attached is the draft report on our review of the advice and counseling provided to FERC's Commissioners. As previously discussed, the draft is being provided to allow you the opportunity to raise any questions you might have, identify anything you believe is in error, and provide comments you would like included in the final report. If you have corrections regarding typos, anything you believe is factually incorrect, etc., please provide those separately from any comments you would like included in the report.

We're asking that you provide your comments by April 22, 2020. However, in recognition of the challenges we all face in dealing with the pandemic, we would be willing to consider any reasonable request for more time. If you would like to discuss the report before providing comments, please let me know and I'll be happy to set up a teleconference.

Thanks, be safe,

Doug

**Doug Chapman**

*Chief, Program Review Branch*

*U.S. Office of Government Ethics*

*1201 New York Avenue, NW Suite 500*

*Washington, DC 20005*

*202-482-9223*

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Referral to FERC



**From:** Douglas L. Chapman

**Sent:** Thursday, April 23, 2020 2:24 PM

**To:** Charles Beamon

**Cc:** Kathryn Allen ; Marcos Araus

**Subject:** RE: Teleconference

Hi Charles,

It was good talking to you again. We appreciate the cooperative and constructive manner in which you've engaged during this review.

Yes, if you'll get me the language you want us to consider for the Agency Background section, I'll coordinate the other changes and we'll send you a revised version. We still need your comments by May 1, so the sooner the better.

Stay safe,

Doug

Referral to FERC



Referral to FERC

**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>  
**Sent:** Wednesday, April 22, 2020 10:43 AM  
**To:** Charles Beamon <(b) (6)>  
**Cc:** Kathryn Allen <(b) (6)>; Marcos Araus <(b) (6)>; Victoria Swangin <(b) (6)>  
**Subject:** RE: Teleconference

Good morning,  
For our conference call tomorrow, please call this number:

(b) (5) Call-in toll number (US/Canada)

And enter this access code when prompted:

Meeting number (access code): (b) (5)

There is no participant number, so you'll be prompted to hit # after you enter the access code. We'll open the meeting right at 11:00, so you might want to wait until a minute or two after 11:00 to call in.

Thanks,  
Doug

Referral to FERC

**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>  
**Sent:** Monday, April 20, 2020 7:52 PM  
**To:** Charles Beamon <(b) (6)>  
**Cc:** Kathryn Allen <(b) (6)>; Marcos Araus <(b) (6)>  
**Subject:** RE: Teleconference

You're welcome. I'll set it up for 11:00. We'll be using a conferencing service. I'll send you the call in information when I have it, but it may be Thursday morning. Kathryn and Marcos will be joining from separate locations/numbers? It'll be Seth Jaffee, David Taube, and me from our office. I might also involve one more person who actually knows how to make the conference service work.

We look forward to "meeting" with you again on Thursday.

Doug

Referral to FERC

**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>

**Sent:** Monday, April 20, 2020 5:53 PM

**To:** Charles Beamon <(b) (6)>

**Subject:** Teleconference

Hi Charles,

Tomorrow is pretty full and I'm out on Wednesday. Would 11:00-12:00 or 3:30-4:30 this Thursday, April 23, work for you and your staff? Both of those slots are adjacent to some other meetings for our folks, but we think we'll be ok. At worst, we think we might need a 5-10 minute delay.

Please let me know if either of those times work.

Thanks,

Doug

Doug Chapman

***Chief, Program Review Branch***

***U.S. Office of Government Ethics***

***1201 New York Avenue, NW Suite 500***

***Washington, DC 20005***

***202-482-9223***

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Referral to FERC



Referral to FERC



**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>

**Sent:** Tuesday, May 05, 2020 7:51 PM

**To:** Marcos Araus <(b) (6)>

**Cc:** Charles Beamon <(b) (6)>; Kathryn Allen <(b) (6)>

**Subject:** RE: Revised Draft Report

Hi Charles, Kathryn, and Marcos:

(b) (5)

We've revised those numbers accordingly, as reflected in attached draft.

The revised numbers are highlighted.

As a follow-up to my voicemail to Charles yesterday evening, we intend to publish the report soon. And we are still concerned about the last paragraph of your comments. As I noted in my voicemail,

(b) (5) [Redacted]

Additionally, the comments in the last paragraph could be read to indicate that (b) (5)

[Redacted]

We think a simple solution would be to (b) (5)

[Redacted]

Please provide any revised comments or let us know you do not want to revise your comments, no later than cob tomorrow, Wednesday, May 6.

Finally, we normally mail a hard copy of our reports to an agency's head, DAEO, and Inspector General. Because of the Pandemic, we're only emailing reports. Therefore, I would ask you to provide the email address I should use to send the report to the Chairman. If the Chairman is opposed to releasing his email address, we would be willing to send the report to his Chief of Staff. It just has to go through different channels independent of the ethics office.

Thanks and please don't hesitate to give me a call if you have questions.

Doug

Referral to FERC [Redacted]

Referral to FERC



Referral to FERC



Begin Forwarded Message:

**From:** "Douglas L. Chapman" <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>

**Subject:** RE: Revised Draft Report

**Date:** 28 April 2020 17:10

**To:** "Charles Beamon" <(b) (6)>

**Cc:** "Dale A. Christopher" <[dachrist@oge.gov](mailto:dachrist@oge.gov)>

Hi Charles,

Since I'm going to be off on Friday, I'd ask you to send your comments to my boss, Dale Christopher. (I think you know Chip?) He's cc'd on this email.

Thanks,

Doug

Referral to FERC



Referral to FERC

**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>

**Sent:** Tuesday, April 28, 2020 4:25 PM

**To:** Charles Beamon <(b) (6)>

**Cc:** Marcos Araus <(b) (6)>; Kathryn Allen <(b) (6)>

**Subject:** Revised Draft Report

Hi Charles,

Attached are two versions of our revised draft report. The version amended on 4/28/20 is what the report currently looks like. The version amended on 4/24/20 is the draft report I originally sent you with edits based on your comments and input on FERC's background. I left the edits in track changes so you could more easily see the changes we made.

Substantively, the numbers were changed, as we discussed (b) (5)

. Please let me know whether the new paragraph alleviates the concerns you raised. And please let me know if there are any other issues you would like to discuss.

We'd still like your comments by this Friday. If you anticipate needing more time, please let me know as soon as possible.

Thanks and be well,

Doug

Doug Chapman

*Chief, Program Review Branch*

*U.S. Office of Government Ethics*

*1201 New York Avenue, NW Suite 500*

*Washington, DC 20005*

*202-482-9223*

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No attachment found in search.



Referral to FERC

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On: 07 May 2020 11:04, "Douglas L. Chapman" <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)> wrote:

Charles,

No, OGE isn't including any response to your comments. There was discussion about the statement that:

where a Commissioner participated in a proceeding based on my authorization that did not account sufficiently for the Ethics Pledge, that development does not affect the validity of the Commission's action.

In the end, as stated in our objectives, we never sought to determine the outcomes of any of the advice we looked at. Also, in general, determining whether a problem with the advice and counseling provided to an employee would invalidate an agency's action wouldn't be within our jurisdiction. Therefore, we decided not to comment.

Doug

Referral to FERC

**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>

**Sent:** Thursday, May 07, 2020 9:59 AM

**To:** Charles Beamon <(b) (6)>

**Cc:** Marcos Araus <(b) (6)>; Kathryn Allen <(b) (6)>

**Subject:** RE: Quick and Admittedly Late In The Day Follow-Up--Revised Draft Report

Hi Charles,

(b) (5)

We expect to issue the report today. That means that I'll be sending the report via email to you , the Chairman, and the IG. (As you may recall, our normal process is to email our reports to an agency's DAEO and also send hard copies of the report to the agency head, DAEO, and IG via regular mail. As a result of the pandemic, we're only sending reports via email.) We'll post the report to our website today, but it may not show up until tomorrow.

Please let me know if you have any questions.

Doug

Referral to FERC

Referral to FERC

**From:** Douglas L. Chapman <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)>

**Sent:** Wednesday, May 06, 2020 5:24 PM

**To:** Charles Beamon <(b) (6)>

**Cc:** Marcos Araus <(b) (6)>; Kathryn Allen <(b) (6)>

**Subject:** RE: Quick and Admittedly Late In The Day Follow-Up--Revised Draft Report

Hi Charles (Marcos & Kathryn),

“Late in the Day” seems to have become a relative condition in the current work/home/office/life environment.

I’ll pass this on to the folks who reviewed the advice and ask them to check their notes regarding the

(b) (5). I’ll also ask if they have any objections to your suggested revisions to

(b) (5)

Once we clear this level of review and we send the report to the Chief of Staff for her final review before forwarding to the Director, it’s unlikely that we would make any more changes.

Thanks to you all for your cooperation in what we’re fully aware has not been an enjoyable endeavor. The issues involved are difficult enough. We’re grateful that we haven’t had to deal with a combative agency as well. Your responsiveness and positive attitude have made this process much less onerous than it could have been.

Be safe and have a good evening,

Doug

Referral to FERC

Remainder of email released above

Referral to FERC

On: 07 May 2020 14:08, "Douglas L. Chapman" <[dlchapma@oge.gov](mailto:dlchapma@oge.gov)> wrote:  
Charles,

The report will be sent within the next 10-30 minutes. It will go to you, the Chairman and the IG.

Doug

**Doug Chapman**

*Chief, Program Review Branch*

*U.S. Office of Government Ethics*

*1201 New York Avenue, NW Suite 500*

*Washington, DC 20005*

*202-482-9223*

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**From:** [Douglas L. Chapman](#)  
**To:** (b)(6) - Neil Chatterjee's email address  
**Subject:** OGE Report on the Advice and Counseling Provided to FERC's PAS Officials  
**Date:** Thursday, May 7, 2020 2:18:46 PM  
**Attachments:** [image001.png](#)  
[FERC Report 20-17LS Final.pdf](#)

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May 7,  
2020

The Honorable Neil Chatterjee  
Chairman  
Federal Energy Regulatory Commission  
888 First Street N.E.  
Washington, DC 20426

Dear Mr. Chatterjee:

The United States Office of Government Ethics (OGE) has completed a review of the advice and counseling provided to the Federal Energy Regulatory Commission's (FERC) Presidentially Appointed, Senate-Confirmed (PAS) officials. The purpose of the review was to address concerns that the advice and counseling provided to FERC's PAS officials was not consistent with applicable statutes, regulations, and other governing authorities.

Our report is attached. I appreciate the courtesies extended to the OGE program inspection staff. If you would like to discuss the report, please contact me at 202-9223 or reply to this email.

Sincerely,

Doug Chapman  
Chief, Program Review Branch  
Compliance Division  
202-482-9223

Attachment



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# Federal Energy Regulatory Commission

Review of Ethics-related Advice and  
Counseling Provided to Presidentially  
Appointed, Senate-confirmed Officials

Report No. 20-17LS  
May 7, 2020



The United States Office of Government Ethics (OGE) reviewed the ethics-related advice and counseling provided from January 28, 2017, through November 26, 2019, to Presidentially appointed, Senate-confirmed (PAS) officials at the Federal Energy Regulatory Commission (FERC). This report summarizes the findings of OGE’s review.

## Contents

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## Objectives, Scope and Methodology

**Objectives:** OGE provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest. The Ethics in Government Act gives OGE the authority to evaluate the effectiveness of executive agency ethics programs.<sup>1</sup>

OGE was made aware of concerns that FERC Commissioners<sup>2</sup> were receiving advice and counseling that was not consistent with applicable statutes, regulations, and other governing authorities. OGE’s objective in conducting this limited scope review was to determine whether the advice and counseling provided to FERC’s PAS officials was consistent with applicable statutes, regulations, and other governing authorities. OGE did not seek to determine the impact or outcome of any advice that was not consistent with applicable statutes, regulations, or other governing authority.

**Scope:** The scope of this review was all ethics-related advice provided by FERC’s Office of General Counsel (OGC) to FERC’s PAS officials during the period January 28, 2017, through November 26, 2019.

**Methodology:** OGE requested that FERC provide all records of ethics-related advice and counseling given by FERC’s OGC to PAS officials from January 28, 2017, through November 26, 2019. This included any advice and counseling provided by any employee within FERC’s OGC that relates to the criminal conflict of interest statutes (18 U.S.C. §§ 202-209), 5 C.F.R. parts 2634 through 2641, or Executive Order 13770 titled, “Ethics Commitments by Executive Branch Appointees.”

FERC provided OGE approximately 370<sup>3</sup> instances of advice in response to OGE’s request. OGE examined this advice to determine whether it was consistent with applicable

<sup>1</sup> See 5 U.S.C. app. § 402 and 5 C.F.R. part 2638.

<sup>2</sup> All of FERC’s Commissioners are PAS officials.

<sup>3</sup> Much of the advice provided to PAS officials was provided via email. It was not uncommon for an initial question to result in several exchanges between the person seeking advice and the

statutes, regulations, and other governing authorities. OGE discussed its initial findings with FERC ethics officials to obtain any necessary clarifications.

## Agency Background

FERC is an independent agency that regulates the transmission and wholesale sale of electricity and natural gas in interstate commerce, and regulates the transportation of oil by pipelines in interstate commerce. FERC also reviews proposals to build interstate natural gas pipelines, natural gas storage projects, and liquefied natural gas terminals and licenses non-federal hydropower projects. Congress assigned these responsibilities to FERC in various laws enacted over nearly 100 years. These laws include the Federal Power Act, Public Utility Regulatory Policies Act, Natural Gas Act, and Interstate Commerce Act. More recently, as part of the Energy Policy Act of 2005, Congress gave FERC additional responsibilities to protect the reliability and cybersecurity of the bulk-power system through the establishment and enforcement of mandatory reliability standards, as well as additional authority to enforce FERC regulatory requirements through the imposition of civil penalties and other means.

## Who Provides Ethics-related Advice

FERC's ethics program is administered by its Designated Agency Ethics Official (DAEO). The DAEO is an Associate General Counsel who also heads the General and Administrative Law component of FERC's OGC. An attorney-advisor within the General and Administrative Law component serves as the Alternate Designated Agency Ethics Official (ADAEO). The DAEO and ADAEO are supported by 11 other General and Administrative Law staff members who serve as ethics officials. The DAEO, ADAEO, and staff are responsible for providing advice and counseling to FERC's Commissioners.

FERC's General Counsel is not involved in the day-to-day operations of FERC's ethics program. However, based on OGE's examination, the General Counsel has been consulted concerning the advice provided to FERC's Commissioners and is usually copied when ethics officials provide substantive advice to them. On one occasion, the DAEO consulted with the General Counsel regarding a determination as to whether the Chairman should be recused from a matter because a "close affiliate" of one of the Chairman's former clients was involved. The General Counsel concurred with the DAEO's assessment that the Chairman should be recused.

## Findings of OGE's Review

OGE examined advice and counseling that addressed a variety of topics. Recusals, gifts, and financial disclosure requirements were among the more common issues addressed. After having examined all of the advice and counseling provided by FERC, OGE's concerns were

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ethics official responsible for responding. Therefore, the number of "instances" of advice included in such an exchange can be highly subjective. All of the material in FERC's response was examined by OGE.

focused on one area: how FERC applied the restrictions found at 5 C.F.R. § 2635.502 and at Paragraph 6 of the Ethics Pledge. These concerns are discussed below.

FERC's PAS officials are required to sign an Ethics Pledge<sup>4</sup> and are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch<sup>5</sup> (Standards of Conduct). In pertinent part, this means they are subject to two similar but distinct impartiality safeguards. Paragraph 6 of the Ethics Pledge requires appointees to commit that they will not for a period of two years from date of appointment participate in any particular matter involving specific parties that is directly and substantially related to their former employer or former clients, including regulations and contracts. The impartiality regulation in the Standards of Conduct states that an employee should not participate in a matter without informing the agency designee and receiving authorization when an employee knows that their former employer or former client is or represents a party to a particular matter and the employee believes that a reasonable person would question their impartiality.<sup>6</sup> This restriction lasts for one year after the end of the employee's service to the former employer or client.

Based on OGE's evaluation of the advice provided, FERC ethics officials applied the wrong analysis in 29 instances when determining whether Commissioners were required to recuse from certain matters involving former employers or clients as required by the impartiality regulation and Ethics Pledge. In some cases, this may have led to Commissioners participating in matters which could have resulted in them violating the Ethics Pledge they signed as a condition of employment.

Specifically, OGE's analysis indicated that, in 20 cases, FERC ethics officials granted authorizations under the impartiality regulation (5 C.F.R. § 2635.502) without indicating that they had considered the ban imposed by the Ethics Pledge required by Executive Order 13770. There were also 9 cases in which ethics officials mentioned the Ethics Pledge in their analyses, but nevertheless granted authorizations under 5 C.F.R. § 2635.502.<sup>7</sup> In these 29 instances, the circumstances that were deemed to require recusal under 5 C.F.R. § 2635.502 would also have required recusal under the Ethics Pledge. Yet FERC ethics officials improperly advised FERC Commissioners that they could participate in particular matters based on § 2635.502 authorizations alone, even though no Ethics Pledge waivers were apparently sought or granted.<sup>8</sup>

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<sup>4</sup> Executive Order 13770

<sup>5</sup> 5 C.F.R. part 2635

<sup>6</sup> 5 C.F.R. § 2635.502

<sup>7</sup> In OGE's discussions with the DAEO, OGE noted that no one who asked for an authorization was denied. The DAEO explained that if a Commissioner is considering requesting an authorization, the Commissioner or the Commissioner's staff typically has an initial discussion with ethics officials to determine whether it is likely that the authorization would be granted. If it appears that the authorization wouldn't be granted, no formal request is made. This gives the appearance that all requests for authorizations are granted.

<sup>8</sup> OGE notes that some of the 29 involved particular matters of general applicability but we did not assess whether the Ethics Pledge or § 2635.502 restricted the Commissioner's participation.



## Actions Taken

OGE conducted a teleconference with FERC's ethics officials upon completion of its initial review of the advice and counseling provided to PAS officials and confirmed its substantive findings. Further, OGE confirmed that FERC officials were now fully aware of the relevant issues and were no longer using the flawed analysis that had been applied to recusal determinations.

## Recommendations

- FERC's DAEO and ADAEO, as well as any other ethics official the DAEO identifies, should obtain formal training on how to properly apply the provisions of 5 C.F.R. § 2635.502 and Executive Order 13770. OGE's Institute for Ethics in Government has agreed to provide this training.

## Agency Comments

As the DAEO for FERC, I thank OGE staff for this careful review. FERC takes ethics issues seriously, and we are committed to continually improving our processes. I appreciate and accept OGE's offer of training on subjects related to this review.

I also appreciate this opportunity to explain briefly the rationale that, at the time, I determined supported the authorizations under 5 CFR § 2635.502 that are discussed in this review. Section 501 expands the use of section 502 analysis to "other circumstances" that would raise a question regarding an employee's impartiality. 5 CFR § 2635.501(a). Section 502 allows the DAEO to consider, among other factors, the nature of the matter for which authorization is sought, the role of the participant, and the integrity of the process. Applying these factors on a case-by-case basis, I determined that participation by the requesting Commissioner was appropriate after accounting for the institutional and regulatory significance of the matter at issue in each request; the role of a Commissioner, whose individual authority cannot be exercised by others; and the detailed explanation I would provide as to why the Commissioner's participation was appropriate, prior to the Commission making its decision based on a public record. I conducted this analysis consistently with respect to each of the instances identified in this review, which constituted less than 1 percent of all matters pending under each concerned Commissioner's authority and responsibility.

OGE's review finds that the analysis discussed above did not account sufficiently for the Ethics Pledge that FERC PAS officials have signed pursuant to Executive Order 13770. I accept this conclusion and, indeed, I had changed my practice prior to OGE initiating this review on November 27, 2019. During consultations beginning in July 2019, I informed White House Ethics Officials of my prior authorizations based on the analysis discussed above, and I explained that I did not view those authorizations as a waiver of the Ethics Pledge. White House Ethics Officials stated that notwithstanding my case-by-case analysis and authorizations, a separate waiver of the Ethics Pledge also was required. Based on that guidance, I immediately discontinued the practice of granting section 502 authorizations in

situations also covered by the Ethics Pledge without a separate Ethics Pledge waiver granted by White House Ethics Officials.

As to the instances discussed in this review, the Commissioners acted in good faith by seeking my authorization prior to participating in matters that presented a potential recusal concern. Also, the Ethics Pledge states that it does not create a right of action against the U.S. Government, and it is not statutory in nature. Thus, in these instances where a Commissioner participated in a proceeding based on my authorization that did not account sufficiently for the Ethics Pledge, that development does not affect the validity of the Commission's action.