



Department of Energy

Washington, DC 20585

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MEMORANDUM FOR: JOHN F. KOTEK
PRINCIPAL DEPUTY ASSISTANT SECRETARY
OFFICE OF NUCLEAR ENERGY

FROM: SUSAN F. BEARD *Susan F. Beard*
ASSISTANT GENERAL COUNSEL FOR GENERAL LAW
AND DESIGNATED AGENCY ETHICS OFFICIAL
OFFICE OF THE GENERAL COUNSEL

SUBJECT: Waiver of Paragraph 2 of the Ethics Pledge for
specific party matters involving Battelle Energy Alliance, LLC and
Battelle

Pursuant to the authority delegated under Section 3 of Executive Order 13490 "Ethics Commitments by Executive Branch Personnel" (January 21, 2009) and after consultation with the Counsel to the President, I hereby certify, for the reasons stated below, that it is in the public interest for you to receive a waiver of the restrictions in Paragraph 2 of the Ethics Pledge as the Principal Deputy Assistant Secretary, Office of Nuclear Energy, Office of the Under Secretary for Science & Energy, Department of Energy (DOE).

Background

The Principal Deputy Assistant Secretary (PDAS), Office of Nuclear Energy (NE), in collaboration with the Assistant Secretary for NE, is responsible for establishing policy and providing leadership for managing the government's investment in nuclear science and technology to address critical nuclear issues, contribute to energy supply diversity, and advance U.S. competitiveness and security. The PDAS provides executive direction to programs that provide nuclear products and services to meet the needs of the United States and the world community in a safe, environmentally sound, and economical manner; encourages public involvement in NE programs; and provides information to increase public knowledge.

Prior to your appointment as PDAS you served as a Managing Partner of the Idaho Office of Gallatin Public Affairs, Idaho Falls and Boise Idaho. While serving in that position, you provided communications counseling services to Battelle Energy Alliance LLC on matters related to the Idaho National Laboratory (INL) from 2007, until you left Gallatin Public Affairs.

INL is a DOE national laboratory and Battelle Energy Alliance LLC is the management and operating (M&O) contractor. Battelle Memorial Institute (Battelle) is the member of the LLC. The majority of NE supported research and development is conducted at INL. The mission of INL, is to lead and integrate U.S. nuclear energy research, development, demonstration and deployment efforts; ensure the nation's energy security with safe, competitive and sustainable energy systems and unique national and homeland security capabilities. INL areas of research



include: nuclear science and engineering; nuclear reactor design, development, operations and safety; national security research and testing; development of sustainable energy and environmental solutions.

In addition, Battelle has a number of large contracts with DOE and operates facilities dedicated to critical DOE programs. Battelle is a partner in the M&O contracts for five other DOE national laboratories (i.e., Brookhaven National Laboratory, Lawrence Livermore National Laboratory, National Renewable Energy Laboratory, Oak Ridge National Laboratory, and Pacific Northwest National Laboratory).

In light of the critical services Battelle provides to the Department with respect to research and development supported by NE, it is necessary that you participate in matters in which Battelle is a party or represents a party, in order for you to perform your duties as PDAS.

Waiver Pursuant to Executive Order 13490

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge provides that a covered appointee may not for a period of two years from the date of appointment participate in any particular matter involving specific parties that is directly and substantially related to a former employer or client. For purposes of applying this restriction, the term "particular matter" includes "meetings or other communications relating to the performance of one's official duties with a former employer or client." E.O. 13490, Sec. 2(h).

The Executive Order provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Section 3 waiver authority, in writing, and in consultation with the Counsel to the President. A waiver of the restrictions contained in paragraph 2 of the Ethics Pledge may be granted upon a 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. *Id.*, Sec. 3(b).

Absent a waiver, you would be prohibited by paragraph 2 of the Ethics Pledge from participating in any particular matter involving specific parties in which Battelle is or represents a party. As discussed above, it is necessary that you participate in matters in which Battelle is a party or represents a party in order for you to perform your duties as PDAS. After consultation with the Office of the Counsel to the President, I have determined that it is in the public interest for you to participate in matters relating to Battelle. In order to meet the substantial challenge of providing nuclear energy products and services to meet the needs of the United States and the world community in a safe, environmentally sound, and economical manner, your expertise and judgment is necessary for the leadership of the Department's nuclear energy program, which will involve Battelle.

Your extensive knowledge of and experience in nuclear energy matters is critical to the success of DOE and in particular the Office of Nuclear Energy. Prior to your appointment as PDAS, you served in numerous positions focused on nuclear energy. In 2010, you served as the Staff

Director of the Blue Ribbon Commission on America's Nuclear Future, which conducted a comprehensive review of policies for managing the back end of the nuclear fuel cycle and recommended a new management plan. You also served in numerous senior positions at DOE, at various times in your career, for a total of 11 years, including as an Associate Director and Chief of Staff, in the Office of Nuclear Energy, Science and Technology, where you coordinated nuclear energy matters with Congressional staff, national laboratories, academia, and other key stakeholders in the nuclear energy community. Your most recent position at DOE was Deputy Manager of the Idaho Operations Office, where you were responsible for management of the INL contract, and helped transform INL into the nation's leading nuclear energy research and development laboratory. With regard to the consulting services you provided to Battelle, you have advised that the services were limited to approximately ten percent of the work you performed and billed for the years 2012 -2014, and were less than that for the years 2010 - 2011.

Accordingly, I hereby waive the requirements of paragraph 2 of the Ethics Pledge as it pertains to your future involvement in particular matters involving Battelle or any of its divisions or subsidiaries. This waiver does not authorize you to participate in any decision related to matters pertaining to raising the regional relevance of national laboratories. Nor may you participate in any communications plan that Battelle may submit regarding nuclear fuel siting, transportation, storage and disposal matters. (These were the two main areas for which you provided consulting services to Battelle Energy Alliance. Notably, you have advised me that in performing those duties you did not represent Battelle Energy Alliance to the Federal government.) Further, this waiver does not authorize you to participate in any decision related to the fee award for Battelle as it pertains to INL. A separate determination has been made under 5 C.F.R. § 2635.502 that the Department's interest in your ability to participate in these matters, given the critical responsibilities associated with your position, outweighs any possible concern that a reasonable person may question the integrity of DOE programs and operations.

This waiver does not affect your obligation to comply with other provisions of the Ethics Pledge and all other applicable government ethics rules.¹

¹ Importantly, this waiver does not address or effect the applicability of the Pledge to services you provided to Fluor Corporation, another Gallatin Public Affairs client.