

TO: Charles A. Beamon  
Associate General Counsel  
Designated Agency Ethics Official  
Federal Energy Regulatory Commission

FROM: Scott F. Gast  
Senior Counsel to the President  
Designated Ethics Official  
The White House

DATE: August 29, 2019

SUBJECT: Certification of Limited Waiver of Paragraph 6 of the Ethics Pledge

Official: Commissioner Bernard L. McNamee  
Federal Energy Regulatory Commission

After reviewing the request for a limited waiver of Section 1 (Ethics Pledge) of Executive Order 13770, "Ethics Commitments by Executive Branch Appointees" (January 28, 2017) (Executive Order) made on behalf of Federal Energy Regulatory Commission (FERC) Commissioner Bernard L. McNamee, I hereby grant a Limited Waiver as permitted by Section 3 of the Executive Order.

In addition to other restrictions found in the Ethics Pledge, paragraph 6 establishes certain restrictions related to an appointee's "former employers"<sup>1</sup> and "former clients."<sup>2</sup> In particular, paragraph 6 of the Ethics Pledge prohibits appointees from:

- Participating in any particular matter involving specific parties that is directly and substantially related to a former employer or former client for two years from the date of their appointment; and

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<sup>1</sup> A "former employer" is defined by the Ethics Pledge as "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, except that 'former employer' does not include any executive agency or another entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession." Executive Order at sec. 2(j).

<sup>2</sup> A "former client" is defined by the Ethics Pledge as "any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provide was limited to a speech or similar appearance. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Executive Order at sec. 2(i).

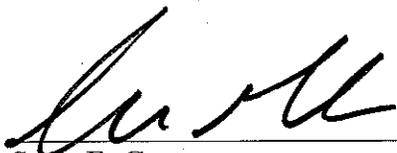
- Participating in any official meeting or communication with a former employer or former client, except where such meeting or communication relates to a particular matter of general applicability and the meeting or other event is open to all interested parties.

This Limited Waiver hereby waives the requirements of paragraph 6 of the Ethics Pledge (as described in the bulleted paragraphs above) to permit Commissioner McNamee to participate in particular matters involving specific parties in which one or more parties is represented by his former employer McGuire Woods, LLP. This shall not include matters in which he participated personally and substantially while serving as an attorney at McGuire Woods, LLP or where he represented a party in the matter.

This Limited Waiver further waives the requirements of paragraph 6 of the Ethics Pledge to permit Commissioner McNamee to participate in particular matters involving specific parties involving three of his former clients and their respective affiliates and subsidiaries: Direct Energy, Dominion Energy, and Duke Energy. This shall not include matters in which he represented these clients or in which he participated personally and substantially on behalf of these clients.<sup>3</sup>

After careful consideration, I find that it is appropriate and in the public interest to grant this Limited Waiver to ensure Commissioner McNamee's participation in significant issues pending before the Commission. His duties cannot be adjusted and his role cannot be performed by another Commission employee. In addition, Commissioner McNamee last worked at McGuire Woods and last provided legal services to these clients over two years ago; were it not for a four month break in federal service, which resulted in the execution of a second Ethics Pledge, the restrictions of paragraph 6 of the Ethics Pledge would have already lapsed.

This Limited Waiver does not affect the application of any other provision of law, including any other provision of the Ethics Pledge; the Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. part 2635); the criminal bribery, graft and conflict of interest statutes (18 U.S.C. §§ 201-209); or the Hatch Act (5 U.S.C. § 7323).



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8/29/19

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<sup>3</sup> Commissioner McNamee has not represented any of the three former clients in any matter before FERC.