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CP06-54-000

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

March 14, 2006

The Honorable Hillary Rodham Clinton
United States Senate
Washington, D.C. 20510

Dear Senator Clinton:

I am writing in response to your letter of March 9, 2006, regarding my participation in Commission deliberations on the proposed Broadwater liquefied natural gas (LNG) project.

As you note, I once worked for the law firm LeBoeuf, Lamb, Greene and MacRae. However, my paid employment with the firm lasted little more than two months, from October until December 2000, and I left the firm more than a half-decade ago.

In response to your letter, I asked the Commission's Designated Agency Ethics Official for a formal opinion on my participation in the Broadwater proceeding. A copy of his opinion is attached. Based on my brief employment with LeBoeuf, Lamb, Greene and MacRae, and the length of time that has passed since my brief employment, the Designated Agency Ethics Official concluded "I do not believe a reasonable person would question your ability to act impartially in performing your duties as relates to the Broadwater matters. More importantly, the [Office of Government Ethics] regulations clearly do not require you to recuse yourself from participation in the Broadwater matters."

When I was confirmed by the Senate to the Commission, I committed to follow the advice of the Designated Agency Ethics Official. I will do so in this regard as I have in all other matters in which the Designated Agency Ethics Official has rendered an opinion since I joined the Commission.

I recognize the importance of the Commission's role in reviewing proposed LNG projects. Our primary responsibility in this area is as a safety regulator. We apply high safety standards to proposed LNG projects. When they fail to meet our standards, we reject them. We proved that in our recent decision regarding the Keyspan LNG import project in Providence, Rhode Island. Notwithstanding the fact that New England was suffering from high natural gas prices this winter and confronting the prospect of supply curtailments, I voted to reject the Keyspan project, because it failed to meet our high safety standards. We have a duty to assure the safety of proposed LNG projects, and I will fulfill that charge.

2006-00083

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I appreciate your interest in this matter.

Sincerely

Joseph T. Kelliher
Chairman

Attachment

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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF THE GENERAL COUNSEL MAR 13 2006

MEMORANDUM TO: Joseph T. Kelliher
Chairman

FROM: Lawrence D. Crocker, III LDC
Designated Agency Ethics Official
Associate General Counsel
General and Administrative Law

SUBJECT: Recusal Advice

You have requested advice on whether you must recuse yourself from participating in the proceedings on the applications of Broadwater Energy, LLC and Broadwater Pipeline, LLC (collectively "Broadwater") seeking approval to site a floating liquefied natural gas terminal and construct a connecting pipeline, based upon your having been briefly employed with the law firm of LeBoeuf, Lamb, Green & MacRae, LLP ("LeBoeuf"), many years ago. As discussed below, the Office of Government Ethics' ("OGE") regulations do not require you to recuse yourself from participating in the Broadwater proceedings.

You informed me that in 2000, you were employed as an "Of Counsel" attorney for less than a year by LeBoeuf. You were a paid employee for a little more than two months, and on unpaid leave for the remainder of this period. During this time, you did not represent any natural gas clients. You also stated that you do not have any financial interest that can be impacted by LeBoeuf's involvement in the Broadwater matters.

The OGE regulations pertaining to impartiality in performing official duties provide:

> [w]here an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of all the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee . . . .

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5 C.F.R. § 2635.502(a) (2005). The regulations further state that an employee has a "covered relationship" with, *inter alia,* "[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee . . . ." 5 C.F.R. § 2635.502(b)(1)(iv) (2005).

You do not have a "covered relationship" with LeBoeuf since that your employment with the firm ended more than a year ago (in fact, more than five-years ago). A review of your Public Financial Disclosure Form confirms that no member of your household has a financial interest that would be impacted by LeBoeuf's participation in the Broadwater matters. Given these facts, I do not believe that a reasonable person would question your ability to act impartially in performing your duties as relates to the Broadwater matters. More importantly, the OGE regulations clearly do not require you to recuse yourself from participating in the Broadwater matters.

Cc: John S. Moot
General Counsel