

FERC

Employees negotiate for industry jobs under agency's eye

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Employees at the Federal Energy Regulatory Commission have deep ties to the industry they regulate, according to agency documents detailing their job negotiations and stock holdings.

Ethics records throughout 2014 show agency staff seeking employment with grid operators, law firms and utilities that the agency has jurisdiction over and often meets with as it sets new orders and rules. In addition, FERC employees have held stock in or remain part of pension plans from companies that can be affected by the agency's work. *Greenwire* obtained the 88 ethics documents under the Freedom of Information Act.

The disclosures reflect how FERC, which oversees the interstate transmission of electricity and permitting of gas infrastructure, is regulating an industry that many of its staffers are well-suited for and often courted to work in.

The documents show more than 40 instances last year when FERC employees entered into negotiations for jobs outside the agency. Those interested in hiring agency staff included Van Ness Feldman LLP, Dominion Resources Inc., Xcel Energy Inc., Crowell & Moring, General Electric Co., TransCanada Corp., Florida Power & Light Co., Steptoe & Johnson LLP, FirstEnergy Corp., and American Electric Power Company Inc..

FERC employees' job negotiations were disclosed because they had to give notice to the agency and recuse themselves from matters that could affect their future employers.

Called a "notice of disqualification," the document signed by the agency worker says he or she is "required to disqualify myself from participating personally and substantially in any particular matter that will directly and predictably affect the financial interests" of the company that the employee is talking to for a future job.

Previous employment at a company under FERC's purview can also trigger the requirement for agency staff to file such a notice.

"The purpose of a recusal is to prevent a conflict of interest," a FERC spokeswoman said in an email. "The fact that an employee is recused because he/she previously worked for a prohibited source or is seeking employment with one or is recused for some other reason does not bring into question the impartiality of FERC's work. The purpose of recusal is to ensure impartiality."

Public interest watchdogs, however, warn of close ties between federal agencies and industries they oversee.

Michael Smallberg, an investigator at the Project on Government Oversight, said many federal employees do everything they can to act in the public's interest, but significant movement between a regulator and entities it regulates can damage public trust by creating the perception that the relationship is too "cozy." That, in turn, can cause the public to question the agency's integrity, he said.

Smallberg raised concerns with a large number of former federal workers moving to trade associations, lobbying shops and powerful, regulated companies -- as opposed to consumer advocacy groups -- that try to weaken government regulations, and questioned whether the ethics offices at federal agencies have time and funding to ensure employees are complying with the rules.

"There are concerns when people are going to work for the industry they used to regulate," he said. "It can mean their decisions as a current official might be biased toward that certain industry, or that they're in a position to provide strategy and context and special information to companies facing enforcement, seeking to influence regulations or interact with [FERC]."

"Even if they didn't intend to curry favor, we worry the revolving door can shape how they view issues or affect the mindset of the agency," Smallberg added.

The FERC spokeswoman said the agency "has a robust ethics program" and that all of its staff undergo annual ethics training.

"The training provides explanations of what issues are likely to arise and where to go for assistance," she said. "Supervisors also are trained to help their staffs understand and follow ethics rules and regulations. Senior staff also file annual financial disclosure forms that are reviewed and approved by [General Administrative Law] staff."

'Here's the list I'm looking at right now'

The documents show intense interest by the private sector in hiring FERC staff, with several employees disclosing job talks with prominent energy companies and law firms.

One FERC employee, whose name was redacted in the document, gave notice that he or she was in negotiations with eight different entities.

"Here's the list I'm looking at right now. Please let me know if you have any questions," the person said in an email under the subject line "Recusal Letters," sent in January 2014.

Among those on that list were National Grid U.S., Northeast Utilities and Edison Mission Energy.

Mason Emnett, the deputy director of FERC's Office of Energy Policy and Innovation, also recused himself, according to the documents. He left the agency after almost eight years last May to take a position as a senior attorney for NextEra Energy Inc. Emnett, who declined to comment on the recusal, has served as a senior attorney of federal regulatory affairs at NextEra since June 2014, according to his LinkedIn profile.

Before joining FERC, he was an associate at the law firm Skadden, Arps, Slate, Meagher & Flom LLP for eight years.

In January, Teresina Stasko, a FERC attorney, recused herself from decisions involving the North American Electric Reliability Corp., where she was seeking employment. Stasko is now the senior counsel and manager of enforcement actions at NERC.

Lauren O'Donnell also filed a recusal, which she wouldn't comment on. She spent 35 years at FERC and was the agency's director of its Division of Gas-Environment and Engineering before joining TRC Companies Inc. as its vice president for oil and gas last July.

Brett White filed a notice with FERC last June when he began negotiating with his new employer.

White currently represents electric utility and natural gas companies at the law firm Wright & Talisman PC before FERC and the federal courts.

Before joining the law firm in October, White worked more than two years at FERC advising the commission on issues critical to the power and gas sector, including federal audits and applications by power marketers for market-based rate authority, according to his LinkedIn profile.

Stocks and conflicts of interest

It isn't just job negotiations that would require FERC employees to file notices with their supervisors. Their stocks could trigger disclosures, too. Agency staff noted that they had holdings in Bank of America Corp., Exelon Corp. and PPL Corp., as well as Berkshire Hathaway Inc.

One FERC staffer was warned that if he or she purchased more shares in JPMorgan Chase & Co. or another prohibited company, the individual would be required to divest from those stocks.

"If you make future purchases of securities that are listed on the prohibited securities list, you will be required to divest those purchases," Charles Beamon, FERC's designated agency ethics official, wrote in a waiver for the employee on prohibited stocks, issued last May.

FERC employees also maintained ties to energy interests -- such as Pepco Holdings Inc., Consolidated Edison Inc. and the Tennessee Valley Authority -- through retirement and pension plans.

"I have an ongoing arrangement with a former employer, Pepco Holdings, Inc., in the form of a defined benefit pension plan," said one agency staffer, noting that "Pepco Holdings, Inc. is regulated by the Commission and regularly participates in Commission proceedings."

That led to the employee recusing him or herself from matters involving Pepco.

"In accordance 18 U.S.C. 208, I will not participate in any particular matter in which Pepco Holdings, Inc. is a party if the matter could result in the dissolution of Pepco Holdings, Inc. or render it unable or unwilling to pay my defined benefit pension."

There were several instances when agency employees gave no reason why they were recusing themselves from interacting with certain companies or groups.

"This is to confirm that I will not participate in any matter at the Federal Energy Regulatory Commission involving Chevron or any affiliates thereof, either as applicant or intervenor," read one [document](#).

Another [notice](#) said, "This is to confirm that I will not participate in any particular matter at the Federal Energy Regulatory Commission in which the Environmental Defense Fund is a party or represents a party."

The FERC spokeswoman said agency staff members only have to give notice when a conflict of interest arises, not provide the reason why, in the documents.

"Employees are only required to provide notice to avoid a conflict; frequently, employees have discussed the reason for their recusal with agency ethics staff or it is otherwise known to agency ethics staff even if it is not noted in their formal recusal," she said.

In addition, FERC staffers' names were often blacked out in the documents that *Greenwire* received under FOIA. The few names that were released were due to those employees ultimately accepting employment from the companies that they were in talks with; others had their names redacted in order to protect their privacy.

'Someone fresh out of FERC is extra valuable'

Former FERC employees, with their understanding of the agency, can be valuable assets for their new employers.

Although many government ethics rules prevent employees from contacting their former colleagues, Smallberg said workers in many cases can join firms and provide "behind-the-scenes" advice to help design lobbying strategies.

FERC could further enhance public confidence by posting their employees' recusals online, Smallberg added.

"Ideally, people shouldn't have to go through FOIA," he said.

But Travis Fisher, who worked as an economist at FERC from June 2006 to May 2013, said he has the impression that the commission took ethics issues very seriously.

Although Fisher never held stocks of companies the agency regulated, he said it was clear to employees that they needed to recuse themselves from specific cases if they did. Fisher said it was a "topic of conversation" at FERC and something workers cared about.

He also said former FERC staffers, with intimate knowledge of the agency's inner workings, are attractive to the private sector, noting that one of his former colleagues now works on FERC compliance issues for Exelon. Fisher now serves as an economist for the Institute for Energy Research, a free-market think tank based in Washington, D.C.

"It's a certain level of expertise, the sweet spot is somewhere in that four-to-five-year mark," he said. Fisher said he, like his former colleagues, gained a keen understanding of which draft orders would compel commissioners and what language would have to be scrapped or rewritten -- valuable insight for utilities seeking to comply with the FERC regulation.

"Your job at FERC was to read those pleadings, from the utility side you're writing those pleadings," Fisher said. "Someone fresh out of FERC is extra valuable because of their knowledge of the politics of the organization."

[Click here](#) to read FERC's ethics documents.

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