



The Deputy Secretary of Energy
Washington, DC 20585

SEP 12 2013

MEMORANDUM FOR JOHN DEUTSCH
MEMBER
SECRETARY OF ENERGY ADVISORY BOARD

FROM: THE DEPUTY SECRETARY

SUBJECT: Conflict of Interest Waiver Pursuant to 18 U.S.C. § 208(b)(3)

This memorandum grants you a waiver pursuant to 18 U.S.C. § 208(b)(3), to allow your participation as a member of the Secretary of Energy Advisory Board (SEAB), an advisory committee re-established on August 30, 2010, pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. App 2.

Section 208(a), Title 18, United States Code, prohibits you from participating personally and substantially, as a Government employee, in any particular matter in which, to your knowledge, you or your spouse, minor child, general partner, or any person or organization in which you are serving as officer, director, trustee, general partner, or employee, or any person or organization with whom you are negotiating or have any arrangement concerning prospective employment, has a financial interest. This prohibition applies equally to special Government employees (SGEs).¹ Section 208(b)(3) provides that subsection (a) shall not apply if, in the case of a SGE serving on an advisory committee within the meaning of FACA, the official responsible for the SGE's appointment, or his designee, certifies in writing that the need for the employee's service outweighs the potential for a conflict of interest created by the financial interest involved.

The objective of SEAB is to provide advice and recommendations to the Secretary on the Department of Energy's (DOE's) basic and applied research and development activities, economic and national security policy, educational issues, operational issues, and on any other activities and operations of DOE that the Secretary may direct. As part of your duties, you will be responsible for providing your expertise on matters of national intelligence and counter-intelligence.

The Secretary is looking to SEAB to provide advice related to the broad scope of the DOE's mission. Currently, you are an Institute Professor at the Massachusetts Institute of Technology (MIT), where you have been a member of the MIT faculty since 1970, and you serve as a director of Cheniere Energy. You are also a trustee of Resources for the Future. Lastly, you are engaged in consulting entities on matters related to energy, national and international security, and technology.

¹ 18 U.S.C. § 202(a).



Previously, you served as Chairman of the Department of Chemistry, Dean of Science and Provost, and you have published over 140 technical publications in physical chemistry, as well as numerous publications on technology, energy, international security, and public policy issues. You have also served in significant government and academic posts throughout your career. From 1977 to 1980, you served in a number of positions for DOE: as Director of Energy Research, Acting Assistant Secretary for Energy Technology, and Under Secretary of the Department. In May 1995, you were sworn in as Director of Central Intelligence (DCI), and served as DCI until December 1996. In this position, you were the head of the Intelligence Community (all foreign intelligence agencies of the United States) and directed the Central Intelligence Agency. From March 1994 to May 1995, you served as the Deputy Secretary of Defense, and from March 1993 to March 1994, you served as Under Secretary of Defense for Acquisitions and Technology. In addition to holding positions of such significance, you have served on many commissions spanning several presidential administrations.

Having held key positions in the government and academia, you understand the complexities of managing a cabinet-level agency. It is these experiences that uniquely qualify you to serve as a member of SEAB.

You have disclosed numerous investment interests that could potentially be affected by the advice of SEAB. Specifically, you have a stock interest in British Petroleum, Cheniere Energy, Chevron, Cummins, Dow Chemical, Dupont, Exxon Mobil, First Solar, Foro Energy, General Electric, Kinder Morgan, Monsanto, Royal Dutch Shell, Schlumberger, and Solar Catalytix. You are not permitted to participate in particular matters affecting the financial interests of these organizations if your interests exceed the de minimis exemption amounts set forth in 5 C.F.R. § 2640.202, unless you first receive a waiver pursuant to 18 U.S.C. § 208(b)(3). Based on the information you have provided concerning your investment portfolio, your total interests in these assets represents a small percentage relative to the value of your overall investment portfolio and, therefore, is not so substantial as to be deemed likely to affect the integrity of your services to the Government.

Cheniere Energy Board of Directors
In addition, you serve on the Board of Directors of Cheniere Energy, and you serve on the Board of Trustees of the Resources for the Future. You advised DOE officials that you receive board fees and stock options from Raytheon and board fees from Cheniere Energy. As previously mentioned, you are also employed by MIT. Pursuant to 18 U.S.C. § 208, you cannot participate in particular matters that have a direct and predictable effect upon the financial interests of organizations in which you serve as a Board Member or employee, unless you first receive a waiver. There is a special exception in 5 C.F.R. § 2640.203(g), allowing an SGE serving on a Federal advisory committee to participate in any particular matter of general applicability where the disqualifying financial interest arises from his non-Federal employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as a part of a class. This regulatory exemption does not apply if an SGE's non-Federal interest also includes

ownership of stock in his employer. This exemption applies to matters of general applicability in which MIT is part of a class. This waiver, however, shall not apply to any particular matters in which MIT is involved as a specific party.

You have further advised that you serve as a consultant to SION, Sun Catalytix, United Technologies, and Warburg Pincus. It is appropriate to mention these positions because they create covered relationships pursuant to 5 C.F.R. §2635.502, requiring that you be recused from any particular matters involving specific parties in which these companies are parties or represent parties. It is highly unlikely that such matters will arise. In the event such a matter does arise, your service on SEAB outweighs the appearance of a conflict, pursuant to § 2635.502(d).

Balancing the potential for conflict based on the assets represented in your total portfolio and positions against your unique qualifications and extensive knowledge in the areas of technology, energy, international security, and public policy resulting from your experiences in the Federal government, in academia, and providing consulting services, it is appropriate to issue this waiver. Significant to this analysis is the fact that the companies and organizations in which you have a financial interest have different interests with respect to the various issues surrounding the work of SEAB. All of these companies and organizations may not have simultaneous interests in each stage of SEAB's work. Rather, their interests are likely to be limited to various specific inquiries. Therefore, any conflict with respect to a particular matter is unlikely to involve most or all of the positions and assets discussed above.

Federal advisory committees, like SEAB, are also unavoidably composed of persons who have been employed by organizations affected by, or have other financial interests in, the subject matter related to SEAB. The fact that members have financial interests that may be affected is simply unavoidable in view of the work and membership of SEAB. Furthermore, the purpose of a Federal advisory committee is to provide advice and recommendations to the Federal government. Your position is advisory in nature, and you do not, nor does any other member, have the authority to issue a final decision binding the Federal Government. Federal advisory committees are also subject to FACA which requires that the membership of SEAB be balanced in its viewpoints. This balance dilutes the impact any one member has over SEAB. Lastly, FACA requires that SEAB's recommendations be deliberated in public. The requirement that this be a transparent process gives the public the opportunity to participate and comment on positions taken by members and SEAB as a whole.

The expertise you have gained through your past and current positions will be an invaluable asset to SEAB as it addresses issues of national significance. As such, I find that the need for your services outweighs the potential for a conflict of interest created by your financial interests. This waiver shall apply to particular matters of general applicability affecting the companies, organizations, and other financial interests listed above insofar as it creates a conflict of interest with your official duties on SEAB. This

waiver does not apply to any particular matter involving specific parties in which any of the companies, organizations, and other financial interests listed above is a party.

Pursuant to 5 C.F.R. § 2640.303, the Office of Government Ethics has been consulted on this waiver and will be provided with a copy of it.

cc: Susan Beard, Designated Agency Ethics Official