

To: WPP Board
From: WPP Staff
Date: November 29, 2023
Meeting Date: December 6, 2023

Subject: Conflicts of Interest

Recommended Action:

Staff recommends the Board of Directors (1) approve the attached Conflict of Interest policy for inclusion in the Board Governance Manual; and (2) direct Staff to take steps to require annual disclosures to the Finance and Audit Committee related to both the WPP's conflict of interest and independence policies.

Background

In connection with FERC's approval of the Western Resource Adequacy Program (WRAP) and the introduction of the new Board in early 2023, the Northwest Power Pool, dba Western Power Pool adopted an independence policy and incorporated the independence requirements into its bylaws. That independence policy centers largely on criteria that have been deemed appropriate for ensuring that Independent System Operators and Regional Transmission Organizations remain independent from FERC-jurisdictional program participants.

In addition to WRAP independence requirements, however, which apply specifically in the context of WRAP, the WPP has long had a more general conflicts and business ethics policy. This policy addresses more general scenarios where the personal interests of a director could affect the ability of the director to act in the best interest of WPP and is rooted in both general corporate policy and Oregon law.

Although this policy is currently in effect, Staff has modified the policy slightly to reflect the fact that the prior Finance Committee is now the Finance and Audit Committee. Staff recommends that the Board of Directors formally adopt the company's conflict of interest policy for inclusion in the WPP Governance Manual, and recommends that the Board direct Staff to take steps necessary to require annual disclosures to the Finance and Audit Committee related to both the conflict of interest and independence policies.

Conflict of Interest and Business Ethics Policy

Conflicts of interest arise when a director's position or responsibilities present an opportunity for personal gain (beyond the director's compensation for serving on the Board), or when personal interests conflict with the interests of the Northwest Power Pool, dba Western Power Pool ("WPP").

Directors must avoid any business, financial, or other relationship where personal interests conflict with, or appear to conflict with, the interests of the WPP. Potential or actual conflicts of interest must be promptly and fully reported to the Finance and Audit Committee. A director who is in doubt about whether a given circumstance may present a conflict of interest should disclose the circumstances in question to the Finance and Audit Committee. The Finance and Audit Committee will discuss the potential conflict of interest with General Counsel and provide guidance to the director.

In general, a conflict of interest exists when the personal interests of a director could affect the ability of the director to act in the best interest of, and with good faith and loyalty to the WPP. A conflict of interest may be considered to exist in any instance where the actions or activities of any individual on behalf of the WPP also involves:

- Obtaining direct or indirect personal gain or advantage; or
- An adverse or potentially adverse effect on the interests of the NWPP; or
- A transaction in which the WPP is a party, and in which a director has (1) a direct or indirect financial interest or (2) a conflicting fiduciary duty to another party involved in the transaction that, in either case, could influence his or her action on the matter while acting on behalf of the WPP.

Conflicts of interest may also arise in other instances. Although it is impossible to list every circumstance giving rise to a conflict of interest, several of the possible types of activities that might present potential or actual conflicts of interest are detailed below:

Outside Interests and Activities

The personal interests of a director may conflict with the interests of the WPP if he or she, or any member of his or her immediate family, by blood, adoption, or marriage (each an Immediate Family Member) is a person:

- a) Who solicits bids, contracts, or supplies goods or services (including consulting or professional services) to the WPP;
- b) From whom or to whom the WPP leases property or equipment;
- c) With whom the WPP is dealing or is planning to deal in connection with the purchase or sale of real property, investment securities, or other property;
- d) Who is an employee, officer, serves as a director, participates in management or is otherwise employed or compensated by an entity that competes with the WPP;
- e) Who is an employee, officer, serves as a director, participates in management, or is otherwise employed or compensated by a person or entity that is engaging in transactions with the WPP;
- f) Who has a material financial interest through ownership of stock or other type of equity interest in an entity that is engaging in transactions or competes with the WPP of the type listed in subsections (d) and (e), above. For purposes of the Policy, a material financial interest shall mean a 10% or more equity interest in such an entity described above and shall be calculated by aggregating the equity interests of the director and immediate family members; or
- g) Who is a creditor of any entity that is engaging in transactions or competes with the WPP of the type listed in subsections (a) through (d), above.

Corporate Opportunity

Generally, a director breaches the duty of loyalty if the director seizes a business opportunity that the corporation was financially capable of undertaking or in which the director had a reasonable interest or expectancy. Moreover, a director's loyalty will be called into question even if the director simply takes personal advantage of a business opportunity that was in line with the company's business. This type of conflict is referred to as a "Corporate Opportunity."

A conflict of interest may occur when a director fails to inform the WPP of a Corporate Opportunity and instead diverts it to himself or herself, or to an Immediate Family Member, or to any entity with respect to which he or she (or an Immediate Family Member) is an employee, officer, director, holder of an equity interest, or creditor.

Non-public Inside Information

It is a conflict of interest to disclose non-public inside information relating to the WPP or gained through the director's relationship with the WPP, or to use such information for the personal profit or advantage of any director, any of his or her Immediate Family, or any entity with respect to which the director (or an Immediate Family Member) is an employee, officer, director, holder of an equity interest, or creditor.

Gifts, Gratuities, and Entertainment

It may be a conflict of interest for a director (or an Immediate Family Member) to accept gifts, excessive entertainment, unsecured loans, or other favors from any outside party that does, or is seeking to do, business with, or is a competitor of the WPP under circumstances from which it might be inferred that such action was intended to influence or possibly would influence the director in the performance of his or her duties. Though there are exceptions to the general rule, generally it is the WPP's policy that neither the organization, nor any of its directors shall accept gifts or discounted goods or services from the WPP's vendors. Token gifts of limited value received on a limited basis are acceptable (gifts with a combined value no greater than \$100 received during a 12-month period).

Other Areas of Conflicting Interest

Other circumstances may arise which could result in a conflict between a director's personal interests and the interests of the WPP. The descriptions above are not inclusive of all potential conflict of interest situations. In general, any circumstance that may give rise to reasonable questions of possible favoritism, self-dealing, or undue influence may be a potential conflict of interest, even if no actual conflict exists. It should be noted that a personal bias against a third party may result in a conflict of interest even if the director is of the belief that he/she is not acting contrary to the fiduciary duties owed to the WPP.