

Apparent Conflict of Interest Violation by David Gutierrez, Deputy Director for DOGGR

David Gutierrez is the Deputy Director and the top civil service official for the Division of Oil, Gas, and Geothermal Resources (DOGGR). According to his Form 700 Statement of Economic Interest he holds stock worth up to \$100,000 in Exxon Mobil, a parent company of Aera Energy. Aera is a major oil company operating under the purview of DOGGR and Mr. Gutierrez, who is in charge of several regulatory aspects that affect Aera's profitability.

Government Code section 87100 provides that a public official may not make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a "financial interest." Government Code section 87103, subdivision (a) provides that a public official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect on any business entity in which the public official has a direct or indirect investment worth more than \$2000. A financial effect is presumed to be reasonably foreseeable "if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency." (Cal. Code Regs., tit. 2 § 18701). This includes a decision involving "the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest." (*Id.*)

According to DOGGR's organizational chart, Mr. Gutierrez oversees three supervising oil and gas engineers who head programs, the senior oil and gas engineer in charge of monitoring and compliance of wells, and the supervising oil and gas engineer in charge of pipelines and facilities. Mr. Gutierrez also manages the well-stimulation program, which includes hydraulic fracturing. All of these functions directly impact Aera's holdings in the state.

Moreover, according to Gutierrez's job description he has significant decision-making power over matters that impact Aera's profits:

The incumbent will have direct program management responsibility of the Division's Statewide Programs which include but are not limited to Underground Injection Control (UIC), SB 4 Well Stimulation, Orphan and Idle Wells, Enforcement, California Environmental Quality Act (CEQA), and Underground Gas Storage.

Apply the laws regulating oil, gas, and geothermal operations to specific proposals and form valid conclusions regarding safety, adequacy, and effectiveness of the Divisions operations.

Formulate/Revise and implement statewide policies in support of achieving the Division's mission to prevent damage to life, health, property and natural resources, while also encouraging the wise development of oil, gas and geothermal resources to increase the ultimate recovery of these natural resources.

Aera has received 149 of the 191 hydraulic fracturing permits issued by DOGGR thus far in 2019. Decisions on whether Aera would be approved for the other 448 drilling permits it has received this year were also partially dependent on the compliance efforts Mr. Gutierrez oversees, as are the continuation of Aera's other wells in the state.

Aera's profits, determined by its success with drilling, reworking, and fracking oil wells and shipping that oil to processing facilities is entirely dependent upon permits issued and enforcement conducted by DOGGR departments over which Mr. Gutierrez has "direct program management responsibility." Mr. Gutierrez appears to be in violation of Government Code section 87100 because he cannot carry out those responsibilities without having a material financial impact on Aera, which in turn impacts his own financial interests as a stockholder in Aera's parent company.

While a public official might choose to recuse himself from a decision impacting his financial interests, recusal would be almost impossible in this case given Mr. Gutierrez's duties.

Attachments: Job Description, 700 Form

Apparent Conflict of Interest Violation by Thomas Goeres, Senior District Pipeline Engineer (Supervisor) for DOGGR's Coastal District

Thomas Goeres is a Senior Oil and Gas Engineer Supervisor in the Coastal District for DOGGR. Mr. Goeres has up to \$100,000 invested in Chevron and up to \$10,000 in Exxon Mobil, parent of Aera Energy as noted above.

His job description states that he "will serve as the lead auditor for pipeline management plans, oil and gas facility pipelines, tank and equipment maintenance records, audits, inspections, and tests." In addition, "[t]he position carries key responsibility for ensuring the oil and gas operators are properly maintaining their oil and gas pipelines and in-plant piping, to minimize risk." In his position, Mr. Goeres must also "inspect and audit oil and gas production facilities and equipment such as tanks or pressure vessels, review maintenance and inspection records, review Oil Spill Contingency Plans, and handle various compliance issues."

Chevron has received 616 new oil well drilling and reworking permits from DOGGR this year and operates many oil wells and at least one pipeline located in the Coastal district. Aera also operates many wells in addition to processing facilities in the district.

Government Code section 87100 provides that a public official may not make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a "financial interest." Government Code section 87103, subdivision (a) provides that a public official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect on any business entity in which the public official has a direct or indirect investment worth more than \$2000. A financial effect

is presumed to be reasonably foreseeable “if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency.” (Cal. Code Regs., tit. 2 § 18701). This includes a decision involving “the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest.” (*Id.*)

As a senior regulator on the ground in the Coastal district, and “lead auditor for pipeline management plans, oil and gas facility pipeline, tank and equipment maintenance records, audits, inspections, and tests,” Mr. Goeres must constantly make decisions about Chevron’s and Aera’s regulatory compliance. Mr. Goeres could not ensure “oil and gas operators are properly maintaining their oil and gas pipelines and in-plant piping” without making decisions that directly impact the profitability of Chevron’s pipeline, or Aera’s operations, in the Coastal district.

Each decision about Chevron or Aera’s compliance with state regulations has an impact on its profitability. Mr. Goeres likely made numerous decisions about Chevron and Aera that had a reasonably foreseeable impact on his financial interests, his stockholdings, in apparent violation of Sec. 87100.