Decision of Commissioner Anthony J. O’Donnell

On October 12, 2017, eighteen individuals and six organizations sent a letter to me requesting I recuse myself from “any matters related to Dominion Energy’s Application on Case No. 9318.”\(^1\) Presently pending before the Maryland Public Service Commission (“Commission”) is Dominion Energy Cove Point LNG, LP’s (“DECP”) Motion to Amend Certain Conditions of Its Certificate of Public Convenience and Necessity (“CPCN”) which is scheduled to be considered at the Commission’s Administrative Meeting on November 15, 2017. In Maryland, the question of recusal ordinarily is decided by the official whose recusal is sought. *Doering v Fader*, 316 Md. 351, 358 (1989); *Tidler v. Tidler*, 50 Md. App. 1, 12 (1981). The Letter asserts two bases for my recusal: first, in my prior public service as an elected Delegate to the Maryland General Assembly, Dominion Energy’s Political Action Committee made approximately

\(^1\) Letter, p. 1 (ML 217658).
$3,000 in contributions to my campaigns for re-election; and second, that I have a record of speaking out in favor of DECP’s original application for a CPCN for the LNG export facility. The Letter notes under State ethics law public officials should avoid even the appearance of improper influence. GP 5-102(a)(2). I will address each of these in this decision.

DISCUSSION

Although most of the law of recusal has developed in the judicial context, this discussion attempts to consider the full body of recusal law. There is a strong presumption that administrators who perform adjudicative functions are unbiased, neutral, and honest and that they will perform their responsibilities properly and dispassionately. U.S. v. Morgan, 313 U.S. 409 (1941). Maryland also recognizes that there is a strong presumption that judges are impartial. In re Elrich S., 416 Md. 15, 33 (2010); Jefferson-El v State, 330 Md. 99, 107 (1993). A party seeking recusal bears a heavy burden to overcome the presumption of impartiality. Attorney Grievance Comm’n v. Blum, 373 Md. 275, 297 (2003); Bishop v. State, 218 Md. App. 472, 491, cert. den. 441 Md. 218 (2014). An adjudicator should not recuse himself or herself on unsupported, irrational, or highly tenuous speculation. In re United States, 666 F.2d 690, 694 (1st Cir. 1981). The appearance of a judge’s disinterestedness or impartiality is determined by examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge. Coleman v. Anne Arundel County Police Dept., 136 Md. App. 419, 439, cert. granted, 364 Md. 461, aff’m’d. 369 Md. 108 (2001); Scott v. State, 110 Md. App. 464, 487 (1996).
Officials determine whether there is an appearance of impropriety not by what a straw poll of the only partly informed people-on-the-street would show, but by examining the record facts and the law, and deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the official. *Boyd v. State*, 321 Md. 69, 86 (1990); *Goldman, Skee & Wadler, P.A. v. Cooper, Beckman & Tuerk, L.L.P.*, 122 Md. App. 29, 59 (1998).

A. **Campaign Contributions**

I served as a Delegate in the Maryland General Assembly for over 21 years, and during that time I was a candidate in six primary and six general election cycles, each costing my campaign committee significant money to wage modern, viable, and successful races. I am proud that hundreds of individuals and businesses have made financial donations to support my multiple re-elections. Donations from DECP’s political action committee amounting to $3,000 (subject to verification), while appreciated, are well within the election law limitations in Maryland and are certainly not extravagant when compared to the total amounts raised and spent by my campaign committee on my campaigns over the years. DECP’s political action committee’s donations would comprise only a small fraction of the total monies raised by my campaign committee in aggregate total as a candidate for the Maryland House of Delegates.

When I was sworn in to the office of Commissioner I took an oath under the Maryland Constitution that “... I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of Commissioner,
according to the Constitution and Laws of this State. . .”2 As I have throughout my career in public service, I take that oath seriously. The relatively small donations to my multiple re-election campaigns by DECP’s political action committee are not sufficient to be grounds for my recusal. I cannot be bought.

B. Prior Statements

The second ground urged for recusal is public statements I have previously made in support of DECP’s original proposed LNG export facility. Simply because an administrator may have some earlier knowledge of a matter does not mean that he or she is precluded from rendering a fair decision on the evidence presented. Regan v Chiropractic Examiners, 355 Md. 397, 412 (1999). The fact that a member of an adjudicatory body has previously taken a position on a matter does not mean that he or she is incapable of fairly judging the matter. Maryland Reclamation Associates, Inc. v. Harford County, 342 Md. 476, 496, appeal after remand 382 Md. 348, appeal after remand 414 Md. 1, reconsideration denied (1996).

The matter before the Commission on the Motion to Amend the conditions of the DECP CPCN involve the issue of whether, as built, the LNG export facility will emit volatile organic compounds in an amount that will constitute a hazard to the health of our citizens or endanger our environment. This is a matter that is entirely distinct from the issue of whether to authorize the construction of the facility in the first place. I can fairly and impartially consider the facts and opinions introduced at the Administrative Meeting on this question. My prior statements do not form the basis for recusal or rise to the level of an appearance of impropriety.

2 Constitution, Art. 1, Sec. 9 (emphasis added).
CONCLUSION

For the reasons set forth above, I decline to recuse myself. However, I am mindful of the fact that our system of representative government is dependent on maintaining the highest trust by the people in their government and its officials. The Commission’s credibility with all our constituencies – the public, the utilities, the financial community, other agencies and commissions, and elected officials – is dependent on that trust. I would not want my participation in this matter to be either misconstrued or to detract from that trust, or be an unfounded basis of an appeal from any party in these proceedings. Therefore, I voluntarily will not participate in the decision of the Commission on DECP’s Motion to Amend Certain Conditions of the Certificate of Public Convenience and Necessity.

[Signature]
Commissioner