



June 18, 2014

William D. Magwood, IV  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
By e-mail to: [William.Magwood@nrc.gov](mailto:William.Magwood@nrc.gov)

SUBJECT: *Demand for Immediate Resignation from the NRC and Other Measures*

Dear Mr. Magwood:

On behalf of 34 environmental organizations and individuals,<sup>1</sup> we are writing to demand your immediate resignation from the U.S. Nuclear Regulatory Commission (“NRC”). You have fatally compromised your role as an independent safety regulator by negotiating for and accepting the position of Director-General with the Organisation for Economic Co-Operation and Development’s (“OECD’s”) Nuclear Energy Agency (“NEA”), an organization (a) that actively promotes “the development of the production and uses of nuclear energy;” and (b) whose policies are set by member governments, including a number that own or sponsor U.S. nuclear licensees and applicants.<sup>2</sup> In appearance and in actuality, you are now committed to an organization whose mandate to promote nuclear energy as well as the economic interests of its members is antithetical to the basic principles of the Energy Reorganization Act of 1974 that safety, not economics, must be the NRC’s paramount consideration and that promotional policies shall be left to the U.S. Department of Energy (“DOE”).<sup>3</sup> It is precisely the blending of

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<sup>1</sup> Alliance to Halt Fermi 3, Beyond Nuclear, Blue Ridge Environmental Defense League, Center for a Sustainable Coast, Citizens Allied for Safe Energy, Citizens Environmental Coalition, Citizens Resistance at Fermi 2, Coalition for a Nuclear Free Great Lakes, Don’t Waste Michigan, Kay Drey, Ecology Party of Florida, Friends of the Coast, Friends of the Earth, Green States Solutions, Hudson River Sloop Clearwater, Indian Point Safe Energy Coalition, Captain Dan Kipnis, Missouri Coalition for the Environment, NC WARN, Nevada Nuclear Waste Task Force, New England Coalition, Northwest Environmental Advocates, Nuclear Energy Information Service, Nuclear Information and Resource Service, Nuclear Watch South, Physicians for Social Responsibility, Public Health and Sustainable Energy, Riverkeeper, San Clemente Green, San Luis Obispo Mothers for Peace, San Onofre Safety, SEED Coalition, Sierra Club Nuclear Free Campaign, and Southern Alliance for Clean Energy. These organizations are active participants in NRC rulemakings, licensing proceedings, and other regulatory proceedings in which you have played or may play a decision-making role.

<sup>2</sup> Statute of the OECD Nuclear Energy Agency, Articles 1 and 8 (as amended on 13 July 1995), <https://www.oecd-nea.org/nea/statute.html>. Countries that own or sponsor U.S. nuclear licensees or applicants include, for example, France (MOX Fuel Fabrication Facility through AREVA; Nine Mile Point Units 1 and 2, Calvert Cliffs Units 1 and 2, and Ginna through Electricité de France) and the Netherlands (Louisiana Enrichment Services through URENCO). NEA also promotes the financial interests of many private nuclear companies doing business in the U.S. and other countries.

<sup>3</sup> As summarized on the NRC’s website:



economic promotion with safety regulation that was a root cause of the regulatory failures that paved the way for the Fukushima disaster in Japan.<sup>4</sup>

Your continued presence on the Commission also violates federal law governing the impartiality of judges. Under 28 U.S.C. § 455, you must recuse yourself from any NRC decision in which your “impartiality might reasonably be questioned.”<sup>5</sup> As noted above, NEA seeks to “further the development of the production and uses of nuclear energy.”<sup>6</sup> Having accepted the position of NEA Director-General, you now appear biased towards the protection of the NEA’s interests. The fact that NEA and others are already identifying you as an NEA employee only aggravates your appearance of bias.<sup>7</sup> Thus, in any NRC proceeding involving proposed safety determinations that are inconsistent with the pronuclear economic mandate of NEA and its members, a reasonable person would question your independence and objectivity in applying NRC safety requirements or judging the significance of safety issues – especially when you are forced to consider a solution to a safety issue that could significantly increase the cost of nuclear power production and thus limit its viability in the marketplace.

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Under the Atomic Energy Act of 1954, a single agency, the Atomic Energy Commission, had responsibility for the development and production of nuclear weapons and for both the development and the safety regulation of the civilian uses of nuclear materials. The Act of 1974 split these functions, assigning to one agency, now the Department of Energy, the responsibility for the development and production of nuclear weapons, promotion of nuclear power, and other energy-related work, and assigning to the NRC the regulatory work, which does not include regulation of defense nuclear facilities.

<http://www.nrc.gov/about-nrc/governing-laws.html>.

<sup>4</sup> For example, the National Diet of Japan’s investigation into the causes of the Fukushima accident concluded that “[t]he regulatory authorities’ supposed independence from the ministries promoting nuclear energy and the nuclear operators was a mere façade.” Introduction to Main Report of the Nuclear Accident Independent Investigation Commission of the Japanese Diet at 16 (July 5, 2012). <http://warp.da.ndl.go.jp/info:ndljp/pid/3856371/naaic.go.jp/en/report/>.

<sup>5</sup> See also *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), CLI-82-9, 15 NRC 1363, 1365-67 (1982).

<sup>6</sup> See note 3.

<sup>7</sup> For instance, the OECD’s 2014 Annual Report posts your photograph with the caption: “William Magwood, Director General” of the NEA. OECD 2014 Annual Report to Ministers at 110, Attachment 1 (excerpt). Only in the small print of a footnote does the Annual Report state that you will not “take up your duties” until September 2014. *Id.* Similarly, in a report of a recent “Summer Institute” sponsored by the World Nuclear University (“WNU”) for the “next generation of nuclear leaders,” the WNU describes you as “US NRC Commissioner and appointed OECD/NEA DG.” World Nuclear Association Blog (April 2014), <http://www.world-nuclear.org/Source/Pages/WNA/Blog.aspx?blogmonth=4&blogday=14&blogyear=2014&blogid=3701&id=36478&LangType=2057>. The purposes of the World Nuclear University include “strengthening the development of a new generation of leaders for the nuclear industry.” <http://www.world-nuclear-university.org/summerinstitute/whythewnu.aspx>.



Your apparent lack of impartiality dates back at least nine months, to the time when you applied for the position of Director-General at the NEA.<sup>8</sup> While your application was pending with the NEA, you had a strong incentive to improve your employment prospects by avoiding safety decisions that would exacerbate nuclear power's ongoing economic difficulties. During that period, you voted against further research by the NRC Staff on two important post-Fukushima issues: the adequacy of the scope of NRC's safety regulations and whether the NRC should order the expedited transfer of spent fuel from high-density storage pools into dry storage.<sup>9</sup> Given that further research on both issues could have led to the imposition of additional costly safety requirements on reactor licensees, in conflict with the NEA's interests in minimizing reactor costs, a reasonable person would question the objectivity of your vote against further inquiry by the Staff.

As you should be aware, the NRC's Office of Inspector General ("OIG") found that former Commissioner Merrifield violated federal ethics rules by soliciting employment with the nuclear industry while serving as an NRC Commissioner, without recusing himself from decisions in which his prospective employer had a financial interest.<sup>10</sup> Like Commissioner Merrifield, you have failed to take measures to ensure that your employment negotiations and acceptance of a position with an organization that promotes the nuclear industry would not create a conflict of interest with your responsibilities as an NRC Commissioner.

Therefore, in order to avoid the reality and the appearance of bias in future decisions, you should resign from your position as NRC Commissioner. In addition, you should disqualify yourself *retroactively* from all safety decisions you made after applying to the NEA for your position.

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<sup>8</sup> A job notice posted on LinkedIn (<http://fr.linkedin.com/jobs2/view/6466687>) states that the deadline for applications for the position closed on September 3, 2013.

<sup>9</sup> See Commission Voting Record, Decision Item: SECY-13-0132, U.S. Nuclear Regulatory Commission Staff Recommendation for the Disposition of Recommendation 1 of the Near-Term Task Force Report (May 19, 2014); Commissioner Vote Sheets on COMSECY-13-0030, Staff Evaluation and Recommendation for Japan Lessons-Learned Tier 3 Issue on Expedited Transfer of Spent Fuel (May 27, 2014). These documents can be found on the NRC's website at <http://www.nrc.gov/reading-rm/doc-collections/commission/recent/2014/>.

<sup>10</sup> Memorandum from Hubert T. Bell, Inspector General, to NRC Chairman Jaczko re: Alleged Conflict of Interest by Former NRC Commissioner (Case No. 07-63) (Sept. 17, 2009), Attachment 2. The OIG concluded that Mr. Merrifield "did not take effective measures to prevent a potential conflict of interest during the last 2 months of his term," because he negotiated for future employment without ensuring that he "disqualified himself from involvement with potential conflict of interest issues." *Id.* at 11. In contrast, in a subsequent investigation of former NRC Chairman Dale Klein, the OIG concluded that Mr. Klein avoided creating a conflict of interest during his term on the NRC by "decid[ing] simply not to address any prospective employment offers while at NRC." Memorandum from [name withheld], Office of Inspector General, to Joseph A. McMillan, Assistant Inspector General for Investigations re: Potential Conflict-of-Interest Violation of Ethics Requirements by Former Commissioner Klein (OIG Case No. 10-39) at 3 (Sept. 28, 2010), Attachment 3.



Finally, we demand that you publicly release your application to the NEA and all related correspondence, including endorsements and recommendations by U.S. officials. Full disclosure of these documents is necessary to clarify your statement that you were “the U.S. Government’s candidate” for the Director-General position at NEA.<sup>11</sup> If there was, indeed, a formal process for your nomination to the NEA by U.S. government officials, the information should be made public as a matter of course under the Freedom of Information Act.

However, we can find no evidence of a formal nomination process for the position of NEA’s Director-General. Instead, a job notice posted on LinkedIn directs applicants to submit a curriculum vita, “motivation letter,” three references, and answers to “a few short questions.”<sup>12</sup> Thus, it appears that senior government U.S. officials wrote recommendation letters to the NEA on your behalf as a personal courtesy.

If senior government officials have used their offices to recommend you for a job so at odds with your responsibilities as an NRC Commissioner, the public deserves to know the basis for their recommendations. The public also deserves to know whether the senior government officials who endorsed your employment by the NEA included officials of the NRC and/or the DOE. If so, they should be called to account for subverting the purposes of the Energy Reorganization Act of 1974 by helping you to obtain a position with the NEA, without insisting on your recusal from safety decisions during the pendency of your application and your resignation from the NRC after your hire.

Sincerely,

*[Electronically signed by]*

Diane Curran

*[Electronically signed by]*

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<sup>11</sup> Statement of Commissioner William D. Magwood, IV, United States Nuclear Regulatory Commission, to the House Committee on Energy and Commerce Subcommittee on Energy and Power (May 7, 2014), Attachment 4. You have also been quoted in the press as giving thanks for the “strong support and encouragement” that you received “from senior officials of the Administration to take on [the NEA] assignment.” “NRC Commissioner Magwood Set to Leave Commission for International Agency,” *Radwaste Monitor*, Vol. 7 No. 11 (Mar. 21, 2014), Attachment 5 (excerpt).

<sup>12</sup> <http://fr.linkedin.com/jobs2/view/6466687>.



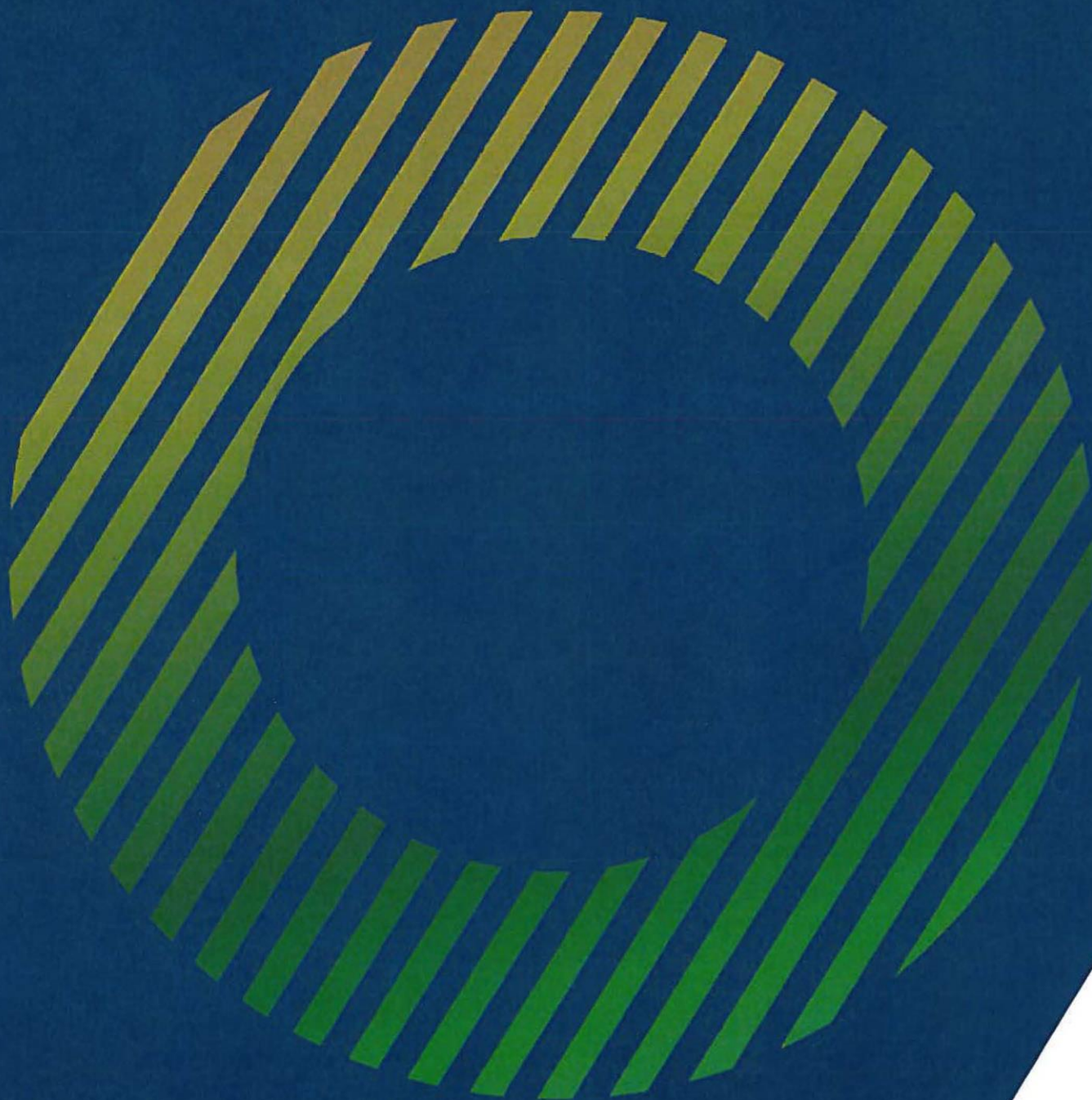
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Sen. Barbara Boxer, Chairman  
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Sen. Sheldon Whitehouse, Chairman  
Subcommittee on Clean Air and Nuclear Energy

Dan Utech, Special Assistant to the President for Energy and Climate Change



**SECRETARY-GENERAL'S  
REPORT TO MINISTERS  
2014**

# Secretary-General's Report to Ministers

## 2014



# Nuclear Energy Agency



**William Magwood\***  
Director-General

The Nuclear Energy Agency (NEA) is a specialised agency within the OECD. Its 31 member countries account for 90% of global nuclear energy generating capacity. Through international co-operation, the NEA helps its member countries maintain and further develop the scientific, technological and legal bases required for a safe, environmentally friendly and economical use of nuclear energy for peaceful purposes. It provides input to government decisions on nuclear energy policy and to broader OECD policy analyses in areas such as energy, green growth and climate change.

NEA activities are carried out in the areas of nuclear safety and regulation, radioactive waste management, radiological protection, nuclear science and data, nuclear development and the fuel cycle, and legal affairs. In addition, the NEA acts as the technical secretariat of two important international initiatives: the Multinational Design Evaluation Programme, which aims to enhance co-operation among regulators on safety design reviews of new reactors, and the Generation IV International Forum, which is co-ordinating members' R&D efforts for the next generation of nuclear energy systems.

In September 2013, the NEA published *The Fukushima Daiichi Nuclear Power Plant Accident: OECD/NEA Nuclear Safety Response and Lessons Learnt*. The report outlines international efforts to strengthen nuclear regulation, safety, research and radiological protection in the post-Fukushima context. It also describes work on new reactors and legal frameworks, and highlights key messages and lessons learnt, notably as related to assurance of safety, shared responsibilities, human and organisational factors, defence-in-depth (DiD), stakeholder engagement, crisis communication and emergency preparedness. International joint projects are being carried out under NEA auspices on related nuclear safety and plant decommissioning issues.

The NEA continued its expansion and outreach in 2013. It pursued in particular the integration of the Russian Federation as its newest member. It also expanded its areas of co-operation with India and signed a Joint Declaration on Co-operation in the Field of Peaceful Uses of Nuclear Energy with the China Atomic Energy Authority. ■

For more information see: [www.oecd-nea.fr](http://www.oecd-nea.fr)

\* Mr. Magwood will take up his duties on 1<sup>st</sup> September 2014.




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INSPECTOR GENERALUNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

September 17, 2009

MEMORANDUM TO: Chairman Jaczko

FROM:

  
Hubert T. Bell  
Inspector GeneralSUBJECT: ALLEGED CONFLICT OF INTEREST BY FORMER NRC  
COMMISSIONER (CASE NO. 07-63)

This memorandum conveys the results of an Office of the Inspector General (OIG) investigation of former Commissioner Jeffrey Merrifield's employment-seeking activities from October 2006, when he announced he would not seek a third term, until June 30, 2007, his last day as Commissioner. OIG initiated this investigation after the Project on Government Oversight (POGO) alleged that Merrifield's post-NRC employment with The Shaw Group Incorporated (Shaw) constituted a conflict of interest. POGO alleged that in 2007, during his last months as Commissioner, Merrifield was involved with policy initiatives that benefitted Shaw in particular and the nuclear industry in general. Specifically, POGO provided two examples: Merrifield's involvement in the "Limited Work Authorizations" rule and his position as Chair of NRC's Combined License Review Task Force.

**I. Ethics Requirements**

The criminal conflict-of-interest law 18 U.S.C. 208(a) prohibits Federal employees from participating personally and substantially in any Government matter that the employee knows could have a direct and predictable effect on the financial interest of the employee; the employee's spouse or minor child; an organization which the employee serves as officer, director, employee, general partner, or trustee; or anyone with whom the employee is negotiating or has an arrangement for employment. This law requires employees to disqualify themselves from participating in any Government matter if the matter could affect any of these prohibited interests.

The Ethics in Government Act of 1978, as amended, and Title 5, Code of Federal Regulations, Part 2634, requires that each year, Federal Government employees whose positions are classified as GS-15 or above file a Standard Form (SF) 278. The SF 278 requests information on the employee's assets and liabilities, including non-Government travel-related reimbursements that exceed \$260 from any one source. The form also

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requires individuals to report information on negotiations for future employment from the point at which the employee and potential non-Federal employer have agreed to the employee's future employment by the employer, regardless of whether all terms have been settled.

## **II. Chronology of Merrifield's Employment-Seeking Activities**

On October 20, 2006, Merrifield announced to the White House and to then Chairman Dale Klein that he would not seek a third term as Commissioner and would step down from his position on June 30, 2007.

On October 25, 2006, Merrifield met with George Mulley, Senior Level Assistant for Investigative Operations, OIG, and John Szabo, NRC Ethics Counselor, Office of the General Counsel (OGC), to convey his intent not to seek a third term and describe arrangements he had made with Steve Engelmyer, an attorney and friend of Merrifield, to serve as an intermediary between Merrifield and potential future employers. Under this arrangement, Engelmyer would field all prospective employment offers for Merrifield, and Merrifield would not discuss employment with anyone except Engelmyer until he completed his term. If Engelmyer informed Merrifield about a possible position, Merrifield would consult with OGC staff to take appropriate action to avoid violating the ethics rules. Merrifield requested Mulley's presence at this meeting because he wanted Mulley to understand his job search strategy in case OIG received allegations concerning this arrangement.

Also on October 25, 2006, Merrifield informed his staff via office memorandum that he would not be seeking a third term and that he had retained the services of an outside counsel to handle any employment inquiries. The memorandum instructed his staff that if they received any inquiries, they were to forward them through Spiros Droggitis, Merrifield's Executive Assistant, or John Thoma, Merrifield's Chief of Staff, who would forward the inquiries to the outside counsel. The memorandum also directed that Merrifield should not receive information concerning these inquiries so that he could continue his current duties without an actual or apparent conflict of interest.

Subpoenaed documents<sup>1</sup> indicate that Engelmyer served as an intermediary between Merrifield and potential employers until spring 2007, at which point Merrifield began communicating directly with companies over potential employment opportunities. OIG learned that in spring 2007, Merrifield contacted a senior Exelon official to discuss employment opportunities in the nuclear industry. The Exelon official later had several conversations with Engelmyer and suggested that Engelmyer contact Westinghouse, General Electric (GE), Areva, Shaw, Bechtel, and possibly Holtec. At one point, Merrifield contacted the Exelon official to ask if he could call Shaw and GE on Merrifield's behalf because these companies were not returning Engelmyer's

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<sup>1</sup> As part of this review, OIG subpoenaed records from Progress Energy, Westinghouse Nuclear International, Shaw, Holtec, Energy Solutions, Exelon Corporation, GE Hitachi Nuclear Energy, GE Energy, and Verizon to ascertain if Merrifield had violated any ethics regulations.

telephone calls. The Exelon official did not recall when Merrifield requested him to contact these companies on his behalf; however, he later telephoned Shaw and GE senior officials to recommend that they consider Merrifield for employment.

Between April 26 and June 30, 2007, Merrifield had direct communication with four nuclear industry vendors and one reactor licensee to discuss employment opportunities, and he traveled to Pittsburgh, Pennsylvania; Schenectady, New York; and Charlotte, North Carolina, for employment interviews. During this period, Merrifield received job offers from four of the companies. Table 1 indicates the date ranges during which Merrifield negotiated employment with the four companies.

**Table 1. Merrifield Employment Negotiation Date Ranges<sup>2</sup>**

Name of Company	Start Date	End Date
Shaw	04/26/2007	06/25/2007
Westinghouse	05/16/2007	06/20/2007
GE	05/24/2007	06/25/2007
Holtec	06/06/2007	06/20/2007

### **III. Merrifield's Voting Record and Direct Involvement in Employment Negotiations**

OIG reviewed Commission Voting Records (VR) and Commission Adjudicatory Orders for January 1 through July 31, 2007, to determine which matters were before the Commissioner for a formal decision and the dates these matters were before the Commissioner.<sup>3</sup> Based on this review, OIG identified 27 final decisions which Merrifield participated in that could benefit specific entities or an identifiable class of entities that are either (1) licensees or (2) licensee contractors. These decisions covered a wide range of topics, including design basis threat, fitness for duty, reactor license renewals, and early site permits. OIG identified specific entities and identifiable classes of entities that could potentially benefit, including (1) entities active in or seeking nuclear plant design and construction business, (2) power plant licensees, (3) operators of plants in multiple degraded cornerstone category, (4) entities active in or seeking In-Situ design,

<sup>2</sup> OIG identified these periods based on its review of subpoenaed documents. OIG considered negotiations to start when Merrifield began communicating directly with a company over potential future employment and to conclude when Merrifield's communication with the companies ended. Although Merrifield accepted Shaw's employment offer on June 21, 2007, he continued to negotiate with Shaw after that date and did not decline GE's offer until June 25, 2007.

<sup>3</sup> Commissioners express explicit and binding actions primarily through two mechanisms. Commissioners vote on internal policy proposals from the staff as expressed in SECY papers or as proposed from other Commissioners through COM papers. The other means by which Commissioners express explicit and binding action is through their adjudicatory function as the appellate body for the Atomic Safety and Licensing Board Panel. The NRC Commissioners each express their opinion as part of a majority opinion and they can also express their individual opinions as part of a dissent or agreement with the majority decision with differing views.

construction, and operation business; and (5) entities active in AP 1000 plant design and construction business in the Chinese market.

OIG compared the date ranges of Merrifield's involvement in these Commission decisions with the date ranges in Table 1. OIG noted there were two time periods when Merrifield's employment negotiations with three companies overlapped with his involvement in votes that could affect the financial interest of the companies. Table 2 shows the two periods of overlap. The specifics of the two overlapping time periods and companies are described below.<sup>4</sup>

**Table 2. Merrifield Employment Negotiation and SECY Votes**

Name of Company	Description	Initial Date	Vote Date
Shaw	SECY 07-0076, Proposed Plan for Cooperation with China on the AP 1000	04/30/2007	05/7/2007
GE/ Westinghouse	SECY 07-0082, Rulemaking to Make Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements	05/16/2007	06/19/2007

a. SECY 07-0076: Shaw

OIG determined that Merrifield had SECY 07-0076, "Proposed Plan for Cooperation with China on the AP 1000," under consideration while he was directly involved in employment negotiations with Shaw. According to SECY 07-0076, the Chinese government had entered into a memorandum of understanding with the U.S. Department of Energy for the purchase of AP 1000 reactors. To the extent that the government-to-government agreement can improve the foreign or domestic marketing position of the AP 1000, then the AP 1000 consortium – composed of Shaw, Westinghouse, and Mitsubishi<sup>5</sup> – would benefit.

<sup>4</sup> POGO's allegation provided two specific examples of Merrifield's activities that in their view posed a conflict: Merrifield's involvement in the "Limited Work Authorizations" rule and his position as Chair of NRC's Combined License Review Task Force. OIG found that the Commission reached its decision concerning SECY 07-0030, "Final Rulemakings for Limited Work Authorizations," on March 22, 2007, and that Merrifield's involvement in the Combined License Review Task Force covered the time period from November 2006 through April 18, 2007. Based on subpoenaed documents and interviews, OIG did not identify any direct involvement by Merrifield in any employment discussions with any company prior to April 26, 2007; therefore, the examples provided by POGO were outside of the period during which Merrifield was negotiating for employment.

<sup>5</sup> These companies developed the technology and constructed the AP 1000. As part of SECY 07-0076, a Memorandum of Cooperation between the NRC and its Chinese counterpart, established areas of cooperation on the AP 1000, including sharing of all associated regulatory documents; exchange of regulatory and technical personnel for on-the-job training in design review, construction inspection, and inspection on the AP 1000; and access to the majority of the NRC's safety codes.

SECY 07-0076 was issued by the staff to the Commissioners on April 30, 2007, and Merrifield voted on this SECY on May 7, 2007. Merrifield was directly involved in employment discussions with Shaw from April 26 through June 25, 2007. The overlapping time period was April 30 through May 7, 2007.

OIG learned that Shaw expected to benefit from the AP 1000 market in China through an ownership interest in Westinghouse.<sup>6</sup> Shaw's October 2006 10-K<sup>7</sup> filing with the U.S. Securities and Exchange Commission states that Shaw had obtained exclusive rights to perform engineering, procurement, and construction services for AP 1000 nuclear projects. The filing states that Shaw had been working with Westinghouse on four new reactors proposed in China. The filing also states, "Growth in the global nuclear power sector is anticipated, driven in large part by China and India. Our support of existing U.S. utilities coupled with our investment in Westinghouse in collaboration with Toshiba is anticipated to result in increased activity in this sector."

OIG also learned that Merrifield was aware that Shaw and Westinghouse had worked together since at least 2005 to develop the AP 1000 for the Chinese market. On August 26, 2005, the Director of NRC's Office of International Programs transmitted SECY 05-0154, "Proposed 10 CFR Part 810 Authorization for Shaw Group, Inc. to Transfer Nuclear Reactor Technology and Services to the Chinese Civilian Nuclear Power Program," to the NRC Commissioners, including Merrifield. SECY 05-0154 states that Commission approval was sought to allow Shaw and its affiliates to transfer nuclear reactor technology to the People's Republic of China.

SECY 05-0154 states that Commission approval would allow Shaw to provide a full range of services for the AP 1000 in China and to prepare the Chinese to operate the completed reactors. It would also enable Shaw to provide its technology and services to other Chinese nuclear plants and projects. According to SECY 05-0154, Shaw was a member of the Westinghouse-led consortium bidding to build four Westinghouse-designed AP 1000 reactors in China. On August 31, 2005, Merrifield voted on SECY 05-0154, approving without comment Shaw's transfer of nuclear reactor technology to China.

b. SECY 07-0082: General Electric and Westinghouse

Merrifield had SECY 07-0082, "Rulemaking to Make Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements," under consideration while he was directly involved in employment negotiations with Westinghouse and GE. SECY 07-0082 requested Commission guidance regarding risk informed acceptance criteria for emergency core cooling currently in 10 CFR 50.46(a), "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors." Westinghouse and GE are nuclear steam system suppliers and nuclear fuel suppliers. Both companies provide a wide range of engineering consulting services, including

<sup>6</sup> In October 2006, Shaw acquired a 20-percent interest in Westinghouse.

<sup>7</sup> A Form 10-K is an annual report required by the U.S. Securities and Exchange Commission that provides a comprehensive summary of a public company's performance.

loss-of-coolant-accident analysis, new reactor emergency core cooling system (ECCS) design, and analytical support for power uprates. Westinghouse and GE would benefit from promulgation of the new risk-informed ECCS criteria if current or future clients requested work to implement the new criteria for operating or new reactors.

On May 16, 2007, the staff submitted SECY 07-0082 to the Commission and on June 19, 2007, Merrifield voted on this SECY. OIG noted that Merrifield was directly involved in employment negotiations with Westinghouse from May 16 through June 20, 2007, and with GE from May 24 through June 25, 2007. The overlapping period for his negotiations with Westinghouse was May 16 through June 19, 2007. The overlapping period for his negotiations with GE was May 24 through June 19, 2007.

#### **IV. Interview of Merrifield**

On September 5, 2007, OIG referred this case to the Department of Justice, U.S. Attorney's Office, Southern Division, State of Maryland. On December 9, 2008, Assistant U.S. Attorney Steven Dunne interviewed Merrifield in the presence of his attorneys and OIG investigators. On December 22, 2008, the U.S. Attorney's Office declined prosecution of this case.

During the December 9<sup>th</sup> interview, Merrifield said that he had known Engelmyer since working for the Senate and that Engelmyer agreed to be his agent because of their friendship. Merrifield said that to avoid the appearance of a conflict of interest, he and Engelmyer discussed establishing a "firewall" to preclude direct negotiations between Merrifield and prospective employers. All employment offers were to be forwarded and screened by Engelmyer. According to Merrifield, he and Engelmyer discussed this arrangement with Szabo and how to handle employment negotiations.

Merrifield stated that after deciding not to seek a third term as Commissioner, he met with his staff to inform them of his planned departure. He also sent a memorandum to his staff instructing them that all potential job offers were to be forwarded and screened by Engelmyer.

Merrifield stated that Engelmyer never told him about potential employers he had communicated with on Merrifield's behalf. He stated that he did not plan to negotiate with any prospective employers while the firewall was in place. However, when Engelmyer's attempts to speak to potential employers on Merrifield's behalf did not succeed, Merrifield began having employment discussions directly with potential employers.

Merrifield said that once he entered into employment discussions with a company, he personally prepared a recusal memorandum for the company.<sup>8</sup> He recalled preparing four separate recusal memoranda for the following companies: Shaw, Westinghouse, Public Service Enterprise Group (PSEG), and Progress Energy. Following the development of the recusal memoranda, Merrifield provided his resume to potential employers. He recalled that each time he entered into employment discussions with a company, he also provided a verbal recusal to his staff. He stated that Szabo, Thoma, and (b)(7)c who served on Merrifield's staff as (b)(7)c knew about his recusals and that he sometimes informed Szabo directly about the recusals, or would have Thoma make notifications to (b)(7)c. According to Merrifield, Szabo, Thoma, and (b)(7)c screened all issues regarding Shaw. He also recalled asking Szabo, Thoma, and (b)(7)c to screen all votes coming before the Commission.

Merrifield also said that he recused himself from any issue and/or rulemaking that may have had an impact on any company with which he was negotiating employment. However, he said that during the 2-month period prior to his departure, there were no major issues before the Commission that affected licensees or vendors.

Merrifield advised that he received employment offers from Shaw, Westinghouse, GE, and Holtec. After considering all offers, he believed that Shaw would be the best fit for him and accepted its offer on June 21, 2007. (Note: Although Merrifield prepared recusal memoranda for Shaw, Westinghouse, and GE, he voted on SECY 07-0076 and 07-0082 while negotiating employment with these companies.)

## V. Interview of Szabo

Szabo told OIG that he first learned of Merrifield's arrangement with Engelmyer on June 1, 2006, when Szabo met with Merrifield and participated in a conference call with Engelmyer. During the conference call, Szabo explained various restrictions on Government employees looking for employment, including conflict-of-interest rules. During the discussion, Szabo also explained to Merrifield that to avoid a conflict, Merrifield could not discuss possible employment with any potential employer if Merrifield was working on a matter at the NRC that could affect that employer.

Szabo provided Merrifield with two options to avoid conflicts: (1) telling any company wishing to discuss employment that could be affected by his NRC activities that he could not discuss employment with them and terminating the discussions, or (2) continuing employment discussions, but recusing himself from participating in any NRC actions or activities that might relate to the company. Szabo told OIG that recusal means the Commissioner should "stay away" or "disqualify himself" from anything where a party has a financial interest. For a Commissioner, Szabo said this means do not vote and do not direct the staff to do anything on the issue. Szabo further stated

<sup>8</sup> Each recusal memorandum generally stated that Merrifield instructed Thoma to preclude his participation in all matters associated with each company, and to work with Szabo to resolve any issues concerning his job search.

<sup>9</sup> Formerly (b)(7)c

that he had several conversations with Merrifield about ethics requirements relating to conflicts of interest and Merrifield's job search. Szabo said it was clear to him that Merrifield understood the legal advice Szabo provided on this issue.

Szabo stated that in March 2007, he provided Merrifield a generic recusal letter that Merrifield could use to document any recusals. At the time, Szabo believed that Merrifield was not having much activity or success in his job search, but that Merrifield wanted to protect himself if and when that changed. However, Szabo said that Merrifield was not required to show his letter of recusal to anyone. He said it was Merrifield's decision to prepare a recusal memo and whether to give a copy of the recusal memo to his staff. Szabo said that regardless of the means by which Merrifield chose to have his staff assist with his recusal, it was Merrifield's personal responsibility not to act on matters that could financially benefit companies with whom he was negotiating employment.

Szabo said that on May 17, 2007, (b)(7)c called him for advice on SECY-07-0076, involving cooperation with China on the AP 1000 reactor design. Szabo provided OIG with a memorandum he had prepared documenting his discussion with (b)(7)c. As reflected in the memorandum, Szabo stated that (b)(7)c told him that Merrifield was discussing employment with Shaw and that (b)(7)c informed him that Shaw owned a portion of Westinghouse. Because Westinghouse had an interest in and involvement with the AP 1000 reactor design, Szabo recommended that Merrifield not make any recommendations or vote on this SECY paper.

OIG informed Szabo that Merrifield had voted on SECY 07-0076 on May 7, 2007, and asked if he and (b)(7)c had discussed the fact that Merrifield had already voted during their May 17, 2007, discussion. Szabo said he was unaware that Merrifield had already voted on the SECY. He said that it made no sense for (b)(7)c to have contacted him about Merrifield's involvement in SECY-07-0076 after Merrifield had already voted on the SECY. Szabo said he did not know that Shaw owned 20 percent of Westinghouse until (b)(7)c advised him of this because Merrifield was discussing employment with Shaw. He recalled that after this conversation with (b)(7)c he confirmed that Shaw did, in fact, have an interest in Westinghouse.

Szabo stated that on May 23, 2007, (b)(7)c contacted him regarding a fitness-for-duty rule before the Commission. The rule pertained to the firm Progress Energy. (b)(7)c told him that Merrifield had discussed employment with Progress Energy, but these discussions had terminated. Based on this termination, Szabo told (b)(7)c he had no objections to Merrifield's involvement with the fitness-for-duty rule. According to Szabo, he had no other contact with Merrifield or his staff regarding his job search. He never received copies of any recusal letters or indications of other concerns.

Szabo told OIG that Merrifield's vote on SECY 07-0076 while he was negotiating with Shaw appears to have been a conflict of interest. However, he said that additional information would be needed to definitively reach this conclusion because the issue is



technically complex. Szabo acknowledged that if SECY 07-0076 had a financial impact on either Westinghouse or Shaw, then Merrifield should have disqualified himself from voting on SECY 07-0076.

Szabo could not determine whether Merrifield's vote on SECY 07-0082 during the time he was negotiating with Westinghouse and GE was a conflict of interest. He said that to determine whether a conflict of interest had occurred, he would need information from the staff on how Merrifield's vote may have affected the financial interests of each company.

## VI. Interviews of Merrifield's Staff

OIG interviewed former Merrifield staff members, including Thoma, Droggitis, and (b)(7)c who each stated that they were aware of Merrifield's arrangement with Engelmyer and were instructed not to forward information related to potential job opportunities to Merrifield. If such inquiries were received, Thoma or Droggitis were to forward the information to Engelmyer.

Thoma said that in approximately November 2006, he learned that Merrifield was leaving Government service when Merrifield issued a memo to his staff about a job search arrangement he had made with Engelmyer. Thoma said that Merrifield told him that he had been working with Szabo to establish an arrangement that entailed Engelmyer handling all details and offers relating to Merrifield's job search. Thoma recalled that only one letter with a job offer came to the office prior to Christmas 2006. Merrifield told Thoma very little about the details of his job search. However, in the spring of 2007, Merrifield told Thoma he was going to start "reaching out" more to companies about potential jobs. Thoma also stated that Merrifield told him about seven or eight companies with which he was negotiating, including Westinghouse, Shaw, and Holtec.

Droggitis said he had the sense that there was no progress with Merrifield's job search until the last month or two of his term. The only item Merrifield was involved in where Droggitis thought there was the possibility of a conflict of interest involved an agreement with China (SECY 07-0076) that was related to nuclear reactors produced by Westinghouse. The proposed agreement was to exchange safety information with the Chinese Nuclear Regulatory Agency. Droggitis recalled discussing the issue with (b)(7)c and possibly Szabo, who informed him that because Merrifield had already voted, Droggitis could complete the administrative actions necessary to finalize the vote; however, he should not involve Merrifield in any Staff Requirements Memorandum (SRM) developed subsequent to the vote.

(b)(7)c said that Merrifield wanted to serve out his term as an active Commissioner, and that he did not want to generally recuse himself from NRC actions. She said the rationale for Merrifield's meeting with Szabo and OIG was to discuss an arrangement

that prevented the violation of conflict-of-interest regulations, but allowed Merrifield both to remain an active member of the NRC and pursue post-Government employment.

(b)(7)c said that Merrifield's involvement in employment negotiations began in April 2007. She recalled that Merrifield negotiated potential employment with four firms: Shaw, Westinghouse, Progress Energy, and possibly GE. However, (b)(7)c never reviewed any written record of Merrifield's interaction with specific potential employers or any written recusals. She saw no reason to document the recusals. (b)(7)c said that once she learned of Merrifield's active involvement in a job search with a particular firm, she would review upcoming issues to help ensure that Merrifield remained isolated from potential conflicts of interest. However, she said that a formalized process was never established for Merrifield and his staff to identify and evaluate potential conflicts of interest. The communication between Merrifield and his staff on potential conflicts of interest was always verbal and may have come to her from either Thoma or Merrifield.

(b)(7)c recalled having a telephone conversation with Szabo on May 17, 2007. She said she called Szabo to discuss (1) the administrative process for issuing an SRM for SECY 07-0076 and (2) the fitness-for-duty rule before the Commission. (b)(7)c recalled that the fitness-for-duty rule had a direct effect on Progress Energy, a company with which Merrifield had discussed future employment, but had since terminated discussions. (b)(7)c did not recall discussing Merrifield's employment negotiations with Shaw during the May 17 telephone conversation. (b)(7)c did not recall telling Szabo that Shaw owned a 20-percent interest in Westinghouse during the discussion. She said she did not know that Shaw had a 20-percent interest in Westinghouse when Merrifield voted on SECY 07-0076.

According to (b)(7)c she did not tell Szabo that Merrifield had already voted on SECY 07-0076 because she did not make the connection between Shaw and Westinghouse. (b)(7)c stated that if she had thought there were a conflict of interest with Merrifield's vote on SECY 07-0076, she would have brought it to Szabo's attention. She also stated that any benefit to Shaw would have been tenuous. Furthermore, she said SECY 07-0076 was approved by every member of the Commission and would have passed whether Merrifield voted or not.

## VII. Review of Merrifield's SF 278

As part of this investigation, OIG reviewed Merrifield's SF 278 dated July 3, 2007, for the period January 1, 2006, through June 30, 2007, to determine whether he accurately reported information related to his job search. OIG compared subpoenaed records to Merrifield's SF 278 and found that Merrifield did not disclose on his SF 278, Schedule B, Part II, "Gifts, Reimbursements, and Travel Expenses," his travel reimbursement requests totaling \$3,552.47, which he made to GE and Shaw. The first request, for \$636.60, was made to GE, in connection with Merrifield's June 14, 2007, trip to

Schenectady, New York, to meet with company executives to discuss potential post-NRC employment opportunities. The second reimbursement request not reflected on his SF 278 was made to Shaw for \$2,915.87, in connection with Merrifield's June 26-30, 2007, visit to Charlotte, North Carolina, with his family to meet with Shaw executives after he accepted a job offer from the company on June 21, 2007. Although Merrifield submitted a voucher to Westinghouse for reimbursement for travel to Pittsburgh, Pennsylvania, in connection with possible employment, Merrifield was not required to list this on his SF 278 because the amount reimbursed (\$250.80) did not meet the required threshold of \$260 for the SF 278.

OIG also noted that Merrifield did not disclose on his SF 278, Schedule C, Part II, "Agreements or Arrangements," his employment agreement with Shaw even though Merrifield accepted Shaw's job offer on June 21, 2007, which fell within the time period covered by the form.

Merrifield stated that he did not fill out Schedules B and C of the SF 278 regarding reimbursements and agreements because "it just went over my head." The issue concerning the reimbursement for travel expenses did not come to his attention until James Bensfield, his attorney, spoke with Assistant U.S. Attorney Dunne regarding this issue. Merrifield stated that he did not intentionally omit any information from his SF 278.

On August 24, 2009, subsequent to his December 9, 2008, interview with Assistant U.S. Attorney Dunne, Merrifield submitted an amended SF 278, Schedules B and C, to include previously omitted information concerning his non-Government travel-related reimbursements from Shaw and GE and his employment agreement with Shaw.

### **VIII. Conclusions**

OIG determined that Merrifield did not take effective measures to prevent a potential conflict of interest during the last 2 months of his term. Although Merrifield set up an arrangement to pursue post-Government employment via a third party while serving as Commissioner, Merrifield stopped following this arrangement prior to the end of his term and began negotiating directly with potential employers. At this point, Merrifield did not establish a process to ensure a thorough screening of and recusal from matters before the Commission. Although Merrifield was ultimately responsible for exercising his recusal, he also relied on his staff to screen matters that involved potential employers with whom he was negotiating employment. However, Merrifield did not provide his staff with necessary details of his job search or establish a process for evaluating matters before the Commission to ensure he disqualified himself from involvement with potential conflict of interest issues. Moreover, his staff did not effectively screen matters to assist him in exercising his recusal option.

OIG determined that from April 2007 until June 2007, Merrifield was directly involved in employment negotiations with three companies – Shaw, Westinghouse, and GE – that could have potentially benefitted financially from his votes on SECY 07-0076, involving the AP 1000 China agreement and SECY 07-0082, pertaining to loss-of-coolant accident rulemaking. These votes occurred during the specific timeframes in which Merrifield was negotiating with the three companies.

OIG found that Merrifield did not report on his July 2007 SF 278 required information related to his acceptance of Shaw's job offer and his non-Government travel-related reimbursements totaling \$3,552.47 from Shaw and GE.

This memorandum is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action, if any, you take based on the memorandum.

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(b)(7)c		R.Raspa	J. McMillan	D.Lee	H.Bell
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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

*[Handwritten signature]*

September 28, 2010

OFFICE OF THE  
INSPECTOR GENERAL

*9/28/10*

*[Handwritten signature]*

MEMORANDUM TO: Concur: Case Closed  
Joseph A. McMillan  
Assistant Inspector General  
for Investigations

(b)(7)(C)  
[Redacted area]

*7C*

*7C*

THRU:

FROM:

SUBJECT: POTENTIAL CONFLICT-OF-INTEREST VIOLATION OF  
ETHICS REQUIREMENTS BY FORMER COMMISSIONER  
KLEIN (OIG CASE NO. 10-39)

**Allegation**

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based upon a news article in the *Energy Daily* that reflected former NRC Commissioner Klein had accepted appointments to the board of directors for Pinnacle West Capital Corporation and its subsidiary, Arizona Public Service Company, the owners of Palo Verde Nuclear Generating Station.

During the investigation, OIG learned that Klein had also joined the board of directors for Southern Company, the owner of Farley, Hatch, and Vogtle nuclear power plants, which are regulated by the NRC. Klein joined the board of directors within 1 year of resigning from Federal Government employment with the NRC and in so doing may have violated Federal post-employment regulations and conflict-of-interest statutes.

**Findings**

OIG found that Klein's acceptance of board-of-director appointments did not violate Federal post-employment regulations. Furthermore, OIG did not identify any evidence that Klein violated conflict-of-interest statutes by considering post-employment offers made to him by private companies while still employed at NRC.

*B/1*

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## Basis of Findings

In accordance with 18 United States Code (U.S.C.), Section 207, "Restrictions on former officers, employees, and elected officials of the executive and legislative branches," all former NRC employees, including special governmental employees (SGE) and supervisors, are subject to Federal post-employment restrictions. These restrictions prohibit NRC employees, SGE, and supervisors from ever representing, with intent to influence, a non-Federal party to a Federal agency or court on any "particular matter involving specific parties" in which the former employee personally and substantially participated as a Government employee. The law also restricts former supervisors for 2 years from representing, with intent to influence, a non-Federal party to a Federal agency or court on any "particular matter involving specific parties" that was pending under their official responsibility during their last year of Government service. The law further restricts former senior employees for 1 year after termination of Federal service from representing, with intent to influence, a non-Federal party before their former agency on any matter on which official action is sought, even on matters that were not under the former official's responsibility.

NRC's post-employment restrictions mirror 18 U.S.C. 207 Federal prohibitions. According to the OGC Web site, 18 U.S.C. 207 is not intended to prevent private sector employment after an individual terminates Federal service. Instead, it restricts an individual from engaging in representational activities before NRC, after the individual has terminated Federal service.

Klein resigned from NRC on March 29, 2010, and returned to the College of Engineering, University of Texas, Austin (his previous employer), as the associate director of the university's energy institute, based upon having "return employment rights" with the university. In early June 2010, Klein joined the board of directors for Pinnacle West Capital Corporation and the board of its subsidiary, Arizona Public Service Company. In mid-July 2010, Klein joined the board of directors for Southern Company.

Roger Davis, Klein's former NRC legal advisor, told OIG that Klein had planned to return to the University of Texas after resigning from NRC and that Klein was very cognizant of conflict-of-interest issues. Klein wanted to return to the university to avoid any conflict of interest. Davis told OIG that Klein would not consider offers of employment that he received while employed as a Government employee so as not to violate or be perceived in violation of any regulations or statutes. He said that he arranged for Klein to receive training on post-employment restrictions from John L. Szabo, Senior Attorney, Ethics Counselor, Office of the General Counsel, NRC.

OIG reviewed e-mail correspondence between Klein and Szabo, which confirmed that Szabo provided guidance concerning post-employment stipulations and conflict-of-interest issues. OIG did not identify any correspondence that indicated Klein was potentially in violation of Federal regulations or statutes.

7E

(b)(7)(E)

OIG interviewed the NRC Project Managers responsible for Palo Verde, Farley, and Hatch nuclear power plants about whether Klein had any dealings with either of the Project Managers since his resignation from NRC. Both Project Managers related that they had not had any dealings with or had received correspondence from Klein or representatives from the utilities regarding matters regulated by NRC since Klein was appointed to board of directors for the respective utilities.

Szabo told OIG that he personally counseled Klein about Federal post-employment and conflict-of-interest regulations and statutes. Szabo advised that Klein had not violated any Federal regulations or statutes by accepting positions on the board of directors for the aforementioned utilities.

Klein, now Vice President for Research, Energy Institute, Department of Mechanical Engineering, Corkrell School of Engineering, University of Texas, told OIG that based on his knowledge of potential violations of conflict-of-interest statutes by former NRC Commissioners, he decided simply not to address any prospective employment offers while at NRC. He said his decision was based on advice and counsel he received from Davis and Szabo and that he thought it best to return to the University of Texas before addressing prospective employment offers.

Because OIG did not identify any information that Klein may have violated Federal post-employment regulations or conflict-of-interest statutes, it is recommended that this investigation be closed to the files of this office.



**STATEMENT OF COMMISSIONER WILLIAM D. MAGWOOD, IV  
UNITED STATES NUCLEAR REGULATORY COMMISSION  
TO THE HOUSE COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON ENERGY AND POWER  
MAY 7, 2014**

Good morning Chairman Upton, Ranking Member Waxman, Chairman Whitfield, Congressman Green, and distinguished members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss the U.S. Nuclear Regulatory Commission's Fiscal Year 2015 budget request and related policy issues.

As the Chairman's statement has already highlighted important aspects of our budget request and many of our ongoing activities, I will add only a few brief comments.

First, I note that in the three years since the Fukushima Daiichi accident in Japan, I have seen nothing that would make me question the safety of U.S. nuclear power plants. Since March 2011, we have analyzed a vast array of technical issues, debated numerous complex regulatory policies, and engaged in an open, public discussion about the lessons learned from the accident. After all that, the central conclusion reached by our Near-Term Task Force in the months after the accident remains inviolate: U.S. nuclear power plants are safe.

But I think it important to emphasize that the reason that our plants are safe is that we in the United States—both the regulator and the licensee community—place very high value on responding to operating experience. U.S. plants are safe because we learned from six decades of light water reactor operations and because we learned from Three Mile Island and 9/11. We could do no less in the case of the Fukushima experience.

We have taken clear, specific actions based on the lessons learned. I believe the changes we have made thus far are appropriate and balanced. I believe that steps we and our licensees have taken have already made U.S. plants more resilient and further enhancements will be completed over the next few years.

But the true challenges, I think, still lay ahead. We must respond to the lessons of Fukushima without allowing the tragedy of Fukushima to change what has made us successful in past. We must keep our balance. We must keep to the strong regulatory practices that have made the NRC the "gold standard" among the world's nuclear safety regulators. We must continue to apply quantitative analyses to guide our decision-making. We must ensure that we focus our attention and resources on matters of true safety significance and hazards that reflect realistic, though extreme, scenarios. In the post-Fukushima environment, with so much attention on regulatory issues that were once esoteric and obscure, this is harder than you might believe. I believe it will prove even more difficult in the future.

The best way to keep our balance is to integrate fully the management and implementation of post-Fukushima activities into our normal work as quickly as possible. We must also proceed aggressively with the staff's very important Risk Prioritization Initiative. This initiative, which grew from a concept originally proposed by Commissioner Apostolakis and me, holds the promise of a better, more effective and more efficient strategy of nuclear regulation.

I look forward to watching NRC's progress on these issues. As I think you know, I was the U.S. Government's candidate to serve as the next Director General of the OECD Nuclear Energy Agency, and I was selected formally for that position in March. I will take up that new post in September and will, therefore, step down from the Commission this summer.

Since this is most likely my final appearance as an NRC Commissioner before this Committee, I take the opportunity to thank you for the serious and thoughtful manner in which this panel has overseen the NRC's work during my tenure. I very much appreciate the fact that you care so deeply about the important issues under NRC's jurisdiction and that you have always engaged us with fairness and balance. We are a better regulator because of your oversight.

Thank you for the opportunity to appear before you today. I look forward to any questions you may have.

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**DOE PROVIDES MORE DETAILS OF FY 2015 NUKE ENERGY BUDGET REQUEST**

Jeremy L. Dillon  
*RW Monitor*  
 3/21/2014

The Department of Energy's Fiscal Year 2015 budget request includes \$30 million to support DOE's nuclear waste management program, of which \$24 million would come from the Nuclear Waste Fund, according to detailed budget documents released late last week. The Obama Administration is seeking to access the funds in the Nuclear Waste Fund to help off-set some off the costs of implementing pilot interim waste storage facilities. The request includes a proposal to 'reform' how the fund is used as a way to tap into the NWF's resources. The fund currently stands at approximately \$36 billion, but can only be used for activities related to the construction of a repository at Yucca Mountain, as outlined in the Nuclear Waste Policy Act. "In FY 2015 Department is requesting \$30 million, including \$24 million from the Nuclear Waste Fund, to support preliminary generic process development and other non-R&D activities related to storage, transportation, disposal, and consent-based siting," the justification said. "Mandatory appropriations in addition to the discretionary funding are proposed to be provided annually beginning in 2018 to fund the balance of the annual program costs."

DOE's efforts to implement some of the major strategies outlined in its 'Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Waste' are limited due to the NWPA's strict adherence to only allowing movement towards Yucca Mountain. In an effort to circumvent these restrictions, DOE's FY15 waste management plans under the \$30 million request include "continue developing plans for a consent-based siting process; maintain and expand the unified and integrated UNF database and analysis system to characterize the input to the waste management system; prepare for large-scale transportation of UNF and high-level radioactive waste to a pilot interim storage facility with focus on UNF at shutdown reactor sites; evaluate integrated approaches to storage, transportation, and disposal in the waste management system with an emphasis on

also warned against dis-incentivizing the proper disposal of disused sources. "However, the long-term solution to the disused source problem is to hold the licensees who have purchased and obtained the economic benefit from the sources responsible for the proper reuse, recycling, or disposal of the sources when they become disused," the report says. "To this end, the NNSA should ensure that its programs do not provide a disincentive for licensees to properly reuse, recycle, or dispose of disused sources in a timely manner."

The working group also recommended that new regulations from the Nuclear Regulatory Commission should go into effect to help aid the economic side of the problem. This new regulations would limit the storage of disused sources for two years before movement must occur. "The NRC and the Agreement States should develop a comprehensive regulation to limit the storage of disused sources to two years and authorize regulators to require the disposition of sources in storage for more than two years unless there is a demonstrated future use," the report says. "The inventories of disused sources at sealed source manufacturers, suppliers, and waste brokers should be reduced. The NRC should reconsider its decision to allow foreign sources that may not have a commercial disposal pathway to be imported. The financial needs of the Agreement States should also be addressed."

### **Need for More Type-B Casks**

A lack of transportation options for the disused sources also contributed to the problem, the working group said. Type-B casks are in short supply, which also makes them more expensive to use due to their low supply. The NNSA should help ease this demand through steps to encourage the production of more casks, the group said. "NNSA should undertake a market analysis of the demand for Type B shipping containers and take additional steps to encourage the private sector to increase the supply of commercially available Type B shipping containers," the report says. "NNSA should identify several internationally-certified Type B shipping containers that would have widespread applicability to disused sources in the U.S. and submit applications to have these packages certified by NRC for domestic use. The NRC should continue to expeditiously review applications for Type B shipping containers. The NRC should aggressively notify licensees and the Agreement States well in advance of the expiration of shipping container certifications."

## **NRC COMMISSIONER MAGWOOD SET TO LEAVE COMMISSION FOR INTERNATIONAL AGENCY**

Jeremy L. Dillon  
*RW Monitor*  
3/21/2014

Nuclear Regulatory Commission Commissioner William Magwood is leaving the NRC to serve as Director General of the Paris-based Organization for Economic Co-operation and Development's Nuclear Energy Agency. Magwood will be taking over the position in September, but according to the NRC, he has not yet set a departure date due to previous commissioner commitments in the coming months he would like to fulfill before leaving the NRC. "It is a tremendous honor to have been the U.S. Government's candidate for this position and to have been selected as the seventh Director General to lead the NEA since it was formed in 1958," Magwood said in a statement this week. "I have especially appreciated the strong support and encouragement I received from senior officials of the Administration to take on this assignment. When I join the NEA in September, I will take with me the vital lessons I have learned from my time at the finest safety regulator in the world—the U.S. Nuclear Regulatory Commission. I look forward to sharing those lessons with the international community and to continuing my service to the public in a new venue."

The OECD Nuclear Energy Agency, established in 1958, is an international organization with 31 member countries that organizes cooperation between the nations in areas like nuclear safety, waste management, and technology. According to a NEA internal announcement, Magwood will report to the Secretary-General in order to "advance his strategic orientations in the area of nuclear energy whilst providing leadership and direction to leverage the NEA's comparative advantage, and increase its visibility and relevance both within the OECD/NEA area and beyond." His responsibilities would also include "promoting horizontal work and fostering coordination between the NEA and other areas of the Organization as well as providing support for corporate priorities," the announcement said.

## **FORMER OPG EMPLOYEE ALLEGES CALCULATIONS OFF FOR POTENTIAL**