

Project On Government Oversight

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October 28, 2009

Vice President Joe Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Via Facsimile: (202) 456-2461

Dear Mr. Vice President:

The Project On Government Oversight (POGO) is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more effective, accountable, open, and ethical federal government. We watched a video of your December 17, 2007, interview with *The Keene Sentinel* Editorial Board, and share your level of confidence in the regulatory capacity of the Nuclear Regulatory Commission (NRC)—“none, none.” We also share your goal to fill the Commission with “watchdogs” instead of “housedogs.” In that light, we are writing to inform you of two pressing issues at the NRC that warrant your action.

POGO has recently obtained hundreds of pages of documents from an NRC Inspector General investigation into then-Commissioner Jeffrey Merrifield. The documents outline, among other things, how he disregarded advice from NRC’s General Counsel and voted on two matters that “could have potentially” financially benefitted three companies—Shaw Group, Westinghouse, and General Electric—during the time he was directly involved in employment negotiations with those companies. The IG investigation found that in the two months before accepting a job created for him at the Shaw Group, Commissioner Merrifield voted both to approve China’s purchase of AP 1000 reactors (in which the Shaw Group had a financial interest) and to change criteria of emergency cooling systems that would directly benefit Westinghouse (of which the Shaw Group owned a 20 percent interest).

The IG investigation shows that months before he left his post, Commissioner Merrifield tore down the firewall, which he said he had set up in order to protect himself from potential conflicts of interest, and started making calls and visits to potential employers while still a voting NRC Commissioner. The documents also show that during the 2007 NRC Regulatory Information Conference (RIC), Commissioner Merrifield asked the CEO of a licensee why the CEO had not contacted him with a job offer, an action that then-Commission Chair Dale Klein found “possibly inappropriate.” The internal NRC documents further show that because Commissioner Merrifield had not received any job offers, he asked the CEO of Exelon, the largest nuclear

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utility, to call the Shaw Group and General Electric to recommend him as a future executive. Commissioner Merrifield later called Exelon's CEO asking for advice on what he should ask for his compensation package.

The IG referred the Merrifield case to the Department of Justice (DOJ). However, the U.S. Attorney's Office in the Southern Division of Maryland declined criminal prosecution, as it has declined all of the 20 referrals for prosecution of 18 U.S.C. § 208 violations from 2004 through 2008. We ask that you recommend the Merrifield case be referred to DOJ's Public Integrity Section for civil action under 18 U.S.C. § 216 to demonstrate that there are consequences for breaching the public trust. Public officials such as Mr. Merrifield should be held accountable for neglecting their public responsibility and potentially misusing their public post for private gain.

The NRC's conflict of interest problems don't end with Mr. Merrifield's departure: as one nuclear industry housedog leaves the Commission, another one is entering via the revolving door. President Obama recently nominated William Magwood to a vacant Democratic seat on the Commission. Attached is a letter we recently sent to the Chair and Ranking Member of the Senate Committee on Environment and Public Works detailing the problems with Mr. Magwood's nomination. Given Mr. Magwood's entire career working for and promoting the nuclear power industry, POGO is concerned that he does not have the independence from the industry sufficient to serve as a regulator of the industry. We ask that you urge President Obama to re-evaluate his decision to appoint Mr. Magwood.

Thank you for your consideration of the matter. Please contact us with any questions at (202) 347-1122. We would be happy to share with you the documents related to the IG investigation of Mr. Merrifield.

Sincerely,

A handwritten signature in cursive script that reads "Danielle Brian".

Danielle Brian
Executive Director

Enclosure

cc:

Senate Environment and Public Works Committee Chair Barbara Boxer
Senate Environment and Public Works Committee Ranking Member James Inhofe
Representative Edward J. Markey