

Project On Government Oversight

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October 28, 2009

The Honorable Gregory B. Jaczko
Chairman, U.S. Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, DC 20555-0001

Via Facsimile: (301) 415-3504

Dear Chairman Jaczko:

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).

At the time of Mr. Merrifield's departure from his NRC Commissioner post, POGO publicly questioned his role in championing several major policy initiatives which directly benefitted his future employer, the Shaw Group Inc. POGO also brought this case to the attention of the Inspector General.

The IG investigation shows that months before he left his post, Mr. 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 in the nuclear industry while still a voting Commissioner. The documents also show that during the 2007 NRC Regulatory Information Conference (RIC), Mr. 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 NRC's internal records further show that because Commissioner Merrifield had not received any job offers, he asked the CEO of Exelon, the largest nuclear utility, to call the Shaw Group and General Electric to recommend him as a future executive. Commissioner Merrifield again called Exelon's CEO asking for advice on what he should ask for his compensation package. As you know he signed an employment contract with the Shaw Group while still a Commissioner.

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Equally disturbing is that it was only after the IG subpoenaed his records that Mr. Merrifield disclosed to the NRC and the public his acceptance of the Shaw Group's job offer and his \$3,552.47 in travel gifts from potential employers. Mr. Merrifield had not reported this information when he completed the required SF 278 "Gifts, Reimbursement, and Travel Expenses" form upon leaving the Commission in July 2007.

We are writing to ask that you take swift action to demonstrate that NRC officials such as Mr. Merrifield will be held accountable for violating their public responsibility and potentially misusing their public post for private gain.

- 1) As his trustworthiness and truthfulness has been shown by the IG investigation to be lacking, Mr. Merrifield should be barred from coming before or communicating with the NRC for the maximum period allowable, as per 10 C.F.R. § 50.5, Section 234 of the Atomic Energy Act, and NRC's Enforcement Policy.
- 2) The Merrifield case should be referred to the Department of Justice's Public Integrity Section for civil action under 18 U.S.C. § 216, to demonstrate that there are consequences for breaching the public trust.

The documents of the Merrifield investigation also reveal a number of systemic problems within the NRC. If addressed, these problems could have prevented or identified Commissioner Merrifield's serious ethics violations. We recommend a number of actions that the NRC should take. First, the NRC staff and Commissioners should re-evaluate their troubling stance that vendors and firms which contract and subcontract with licensees should not be subject to conflicts of interest restrictions. Second, Commissioners and staff should submit written recusals to the Chair and the General Counsel's Ethics Counselor. Third, we respectfully suggest you initiate action to make public each Commissioner's vote when they occur to increase public transparency and accountability.

Thank you for your consideration of this matter. Please contact us with any questions at (202) 347-1122.

Sincerely,



Danielle Brian
Executive Director