

# Project On Government Oversight

Exposing Corruption Exploring Solutions [www.POGO.org](http://www.POGO.org)

October 28, 2009

President Barack Obama  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Via Facsimile: (202) 456-2461

Dear Mr. 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 are writing to inform you of two pressing issues at the Nuclear Regulatory Commission (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 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

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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. This is especially relevant in view of your admirable ethics reform efforts to limit outside influences over improper government decision-making.

The NRC's conflict of interest problems don't end with Mr. Merrifield's departure: as one nuclear industry insider leaves the Commission, another one is entering via the revolving door. We urge you to re-evaluate your decision to nominate 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.

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

Sincerely,

A handwritten signature in black ink that reads "Danielle Brian". The signature is written in a cursive, flowing style.

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