

OFFICE OF THE INSPECTOR GENERAL
U.S. Nuclear Regulatory Commission
Memorandum of Interview

Case No: 07-63

On December 9, 2008, AUSA Steven DUNNE conducted an interview with Jeffrey MERRIFIELD, former U.S. Nuclear Regulatory Commission (NRC) Commissioner. Present during the interview were SA's (b)(7)c and (b)(7)c, NRC, Office of the Inspector General (OIG), and James BENSFIELD and Mary Lou SOLLER, Miller and Chevalier Chartered Law Firm, MERRIFIELD's attorneys concerning a potential conflict of interest by MERRIFIELD. MERRIFIELD provided essentially the following information.

MERRIFIELD provided a brief overview of his educational background and his work history prior to becoming an NRC Commissioner. MERRIFIELD explained that he worked for Senator Bob SMITH until 1992. In July/August 1998 timeframe, MERRIFIELD was nominated for the position of an NRC Commissioner and in October 1998, MERRIFIELD was confirmed. MERRIFIELD worked approximately 3-1/2 years as a Commissioner and was reappointed by President BUSH. MERRIFIELD was reconfirmed on August 1, 2002. MERRIFIELD stated that the Commissioner's role is to make policy for the Agency. The Commissioners also serve in an adjudicatory function serving on an internal board that makes decisions on issues that come before the Agency. MERRIFIELD said that the Executive Director of Operations functions as the Chief Operations Officer (COO) who reports to the Commission. MERRIFIELD explained that once a rulemaking has been drafted it is forwarded to the EDO, the Office of the Secretary and then delivered to the Commission who must vote.

MERRIFIELD told AUSA Steven DUNNE that each Commissioner has a staff. MERRIFIELD said that he had seven staff members, which consisted of two office assistants, an attorney, chief of staff and a technical staff member. Each Commissioner operates their staff differently. MERRIFIELD related that he met one on one with Commissioners weekly, the EDO weekly, bi-weekly with other staff, monthly meetings with the Regional Administrators, and quarterly meetings with the Inspector General for briefings on investigative and audit activities. Furthermore, he met with stakeholders regarding policy and rulemaking.

MERRIFIELD stated that Staff Requirement Memorandums (SRM) were policy guidelines to staff. He stated that the staff informs the Office of the Secretary on agreement of policies or rulemaking. He also stated that the Secretary gathers the view of the Commission as a whole.

MERRIFIELD's staff included (b)(7)c who was responsible for filing, answering phones, administrative functions, and typing MERRIFIELD's annual financial disclosure forms; (b)(7)c who was responsible for keeping MERRIFIELD's calendar and travel arrangements; John THOMA, Chief of Staff, who had oversight over all administrative functions, and technical assistant for material issues; Spiro DRIGGOTIS, Executive Assistant, who was the principal negotiator with other offices, and handled state and stakeholder issues; (b)(7)c who handled all legal issues and issues regarding to the Atomic Safety Licensing Board (ASLB); (b)(7)c

(b)(7)c

MERRIFIELD related that one of the last issues he worked on, as Commissioner was the Combined License Task Force. MERRIFIELD stated that Chairman Dale KLEIN asked him to lead the task force to improve the combined license process. He looked at the Office of Public Affairs to see what security issues there were with materials. He also wanted to pick his own people that could think outside the box and understood that there was no time limit on this task force.

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MERRIFIELD related to DUNN that in January 2007, there were a series of meetings to discuss procedures for accepting licensee applications, and that he had an external meeting with former Commissioner James CURTISS regarding this issue. MERRIFIELD stated that the task force produced a Draft Report in late February or early March 2007. Furthermore, on April 18, 2007, this report was converted to a Commission Memorandum.

MERRIFIELD said that he had discuss his separation from the NRC with his wife and realized that his opportunity to be Chairman closed when KLEIN was selected. He stated that he did many things for the NRC as Commissioner and had been the only Commissioner to travel to most of the nuclear power plants around the world. He thought about working in academia, corporate and non-profit organizations. He saw from experience that the phone does not necessarily ring at the end of one's term.

According to MERRIFIELD, he met Steven ENGLEMYER, his agent, through one of ENGLEMYER's client who served on the Senate. He stated that he and ENGLEMYER have been friend since then and that ENGLEMYER had agreed to be his agent out of friendship.

MERRIFIELD told DUNNE that when he decided that he was not seeking a third term as a NRC Commissioner, he had a meeting with his staff to inform them of his departure. MERRIFIELD explained that to avoid the appearance of a conflict of interest, he and ENGLEMYER discussed establishing a firewall to exclude him from any employment negotiations, and notified the appropriate individuals within the NRC. MERRIFIELD stated that all employment offers were to be and forwarded and screened to ENGLEMYER. Furthermore, MERRIFIELD and ENGLEMYER met with John SZABO, General Counsel, sometime in August or October 2006, to discuss the firewall, and to discuss how to handle employment negotiations. He was instructed by SZABO on how to comport himself when talking to potential employers. SZABO further told him that he could not accept a position with a licensee until he left the NRC.

MERRIFIELD said that he also contacted George MULLEY, Senior Level Assistant for Investigative Operations to inform him of the firewall and that MULLEY had no objection to the firewall and that they discussed how he (MERRIFIELD) would handle recusals and future votes. He also contacted Jeanie WILEY with "Inside NRC," to let the industry know about his firewall because he wanted to avoid any issues of conflict of interest.

MERRIFIELD stated that he sent out a memorandum to his staff, and held a meeting with them to announce his departure and to instruct them that all potential job offers were to be forward and screened by his agent.

MERRIFIELD related that ENGLEMYER did not tell him with whom he was speaking to as far as potential employers but that the firewall was not working. Furthermore, ENGLEMYER told him to recuse himself from all NRC matters. MERRIFIELD related that the two months prior to his departure, there were no major issues before the Commission that affected licensees or vendors. He stated that he provided his resume to potential employers after his April 2007 recusal.

MERRIFIELD said that his intentions were not to negotiate any employment until the firewall was removed. ENGLEMYER was responsible for contacting potential employers to discuss employment for MERRIFIELD. MERRIFIELD provided ENGLEMYER a copy of his resume and names of individuals in the nuclear industry, to include Christopher CRANE, Chief Operating Officer (COO), Exelon. Although ENGLEMYER tried to speak to employers on MERRIFIELD's behalf, nothing came to fruition. MERRIFIELD stated that he did not ask CRANE to call any particular company on his behalf. MERRIFIELD took the firewall down and decided to recuse himself from any issue and/or rulemaking that may have had an impact on any company that he was negotiating employment opportunities.

MERRIFIELD explained that he discussed with SZABO, Freedom of Information Act (FOIA) requests concerning his employment searches and recusals for specific companies. MERRIFIELD said that he was sensitized to FOIA issues because of an article published during his first term as Commissioner. MERRIFIELD said that he was told by SZABO that he was not required to show anyone his recusal memorandum as long as he kept a copy in his personal file. MERRIFIELD said that he had recusal memorandums for Shaw, Westinghouse, PSEG, and Progress Energy. MERRIFIELD explained that once he entered into employment discussions with a company, he personally typed up a recusal memorandum on his personal computer for each of these occasions and then gave oral recusals to his staff. Furthermore, he does not recall recusing himself regarding other companies.

MERRIFIELD related that he typed his recusals the same day that he spoke with potential employers, and per SZABO, he did not have to recuse unless his conversations had to do with employment. He stated that SZABO, THOMA and (b)(7)c knew about his recusals. Furthermore, MERRIFIELD would sometimes inform SZABO directly about recusals or have THOMA make notifications to (b)(7)c and SZABO. He also recalled asking SZABO, THOMA and (b)(7)c to scrub all votes in front of the Commission.

He stated that Shaw is the lead contractor for the AP1000 and that Shaw owned 20 per cent of Westinghouse. He stated that the AP1000 SECY was a regulator-to-regulator agreement between the United States and China. MERRIFIELD stated that the Chinese wanted to take advantage of NRC's review process for licensee applications. According to MERRIFIELD; SZABO, THOMA and (b)(7)c screened all issues regarding Shaw. He advised that the license for the AP1000 was granted when Nils DIAZ was Chairman of the Commission.

MERRIFIELD stated that after he removed the firewall, he had a meeting with Steve CREAMER, Energy Solutions, a nuclear waste disposal company, regarding general job search. He also spoke with Pierre ONIED, Senior Vice President, Nuclear Division, Holtec International regarding job search ideas during a lunch. He also stated that he asked ONIED to call ENGLEMYER. He stated that he received a formal job offer from Holtec after the Nuclear Energy Assembly (NEA) conference in Miami, FL.

MERRIFIELD said that he had lunch with Bill JOHNSON, CEO, Progress Energy to discuss possible job opportunity with Progress Energy. He had also called Ralph IZZO, Chief Operating Officer, Public Service Enterprise Group (PSEG), to inform him that he was interested in coming aboard and that he was told by IZZO that he would be a good addition to the Board but later withdrew his interest in PSEG. He continued to state that after he removed the wall he also had lunch with Bill JOHNSON, CEO, Progress Energy but he was not seeking a position with Progress Energy.

MERRIFIELD told DUNN that at some point prior to any General Electric recusal he had similar conversations with Andy WHITE, President and CEO, New Energy Ventures, GE Energy, regarding his job search. MERRIFIELD stated that WHITE said he had some ideas. MERRIFIELD related that he subsequently saw WHITE at the NEA Conference and did speak to him about a job prospect within the GE Corporation. He stated that prior to GE's job offer; he had another meeting with Mark LEWIS, General Manager, GE Energy at Reagan National Airport to discuss a position for him at GE. MERRIFIELD said that GE had a position in Mergers & Acquisitions. Furthermore, MERRIFIELD stated that after the firewall, he spoke with Stephen R. TRITCH, President and Chief Executive Office, Westinghouse Electric Company, about being part of the Westinghouse team. He stated that he traveled to Pittsburgh, PA, where he met with senior executives.

MERRIFIELD related he received four employment offers from the following companies: Shaw, Westinghouse, General Electric, and Holtec International. MERRIFIELD stated that after considering all offers, he believed that Shaw would be the better fit for him and accepted their offer on June 21, 2007. He said that it was plausible that he may have told THOMA or Spiros DROGGITIS, his

Executive Assistant, on June 22, 2007, that he accepted a job offer with Shaw. He stated that he told the other companies that offered him positions that he had accepted a job with Shaw.

MERRIFIELD stated that he was not focused on waiting to the end of his term before accepting a position with Shaw. He stated that it did not occur to him that this would be a conflict of interest since other former Commissioners had accepted offers before the end of their terms. MERRIFIELD recollected telling the Commission first that he had accepted a position with Shaw before Shaw announced it publicly. He stated that he called members of Congress and family members before Shaw's announcement. Furthermore, he stated that Shaw was concerned with how the market would be affected with the announcement of his appointment.

MERRIFIELD said that his last day of work was June 16, 2007, because he went on vacation and returned to the NRC on July 3, 2007.

MERRIFIELD related that he had a discussion with SZABO regarding travel reimbursements but was not certain if (b)(7)c was in the room when this discussion occurred with SZABO. He stated that he had no memo regarding reimbursement. As for his travels to interview with GE and Westinghouse, MERRIFIELD stated that he could not recall if he paid for his expenses up front and then was reimburse by Westinghouse. He stated that he paid for his travel to GE up front and later submitted an expense reimbursement voucher to GE.

Prior to June 21, 2007, MERRIFIELD and his staff were given an extension to prepare the SF-278 (Public Financial Disclosure) by SZABO. MERRIFIELD explained that when he prepared the SF-278, he only modified the form from previous years, usually making sure that he provided all necessary information concerning his stocks. MERRIFIELD had asked (b)(7)c to type the revised form, but not to include the date until his return to the office on July 3, 2007. When MERRIFIELD returned to the NRC, he signed and dated the SF-278 on July 3, 2007.

MERRIFIELD explained that prior to June 21, 2007; he did not have any employment arrangements. MERRIFIELD acknowledged that he should have filled out the reimbursement section on the SF-278, but he stated, "It just went over his head". MERRIFIELD said that he could have done a better job of having clarity with his post employment. However, the issue concerning the reimbursement for travel expenses did not come to his attention until BENSFIELD spoke to DUNNE concerning this issue. MERRIFIELD stated that he did not intentionally leave any information off the SF-278.

(b)(7)c

Interviewed by Special Agent: (b)(7)c

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MOI Prepared on: February 18, 2007 (b)(7)c

MOI Reviewed on/by: (b)(7)c (b)(7)c