

OFFICE OF THE INSPECTOR GENERAL
U.S. Nuclear Regulatory Commission

Memorandum of Interview

Case No. 07-63

On July 30, 2009, John SZABO, Senior Attorney, Office of General Counsel (OGC), U.S. Nuclear Regulatory Commission, was interviewed by Special Agent (SA) (b)(7)(c) (b)(7)(c) Office of the Inspector General (OIG), NRC regarding former Commissioner MERRIFIELD's actions between April and June 30, 2007. Specifically, MERRIFIELD's involvement in NRC issues that may have had benefits, financially or otherwise, to companies with whom he was negotiating future job opportunities. SZABO provided essentially the following information.

SZABO stated that he had an opportunity to review copies of SECY 07-0776 and SECY 07-0082 with their respective vote sheets for review as provided to him by OIG. **NOTE: SZABO was given a timeline to refer to (Attachment 1) during the interview.**

SZABO said that recusal means that the Commissioner should "stay away" or "disqualify himself" from anything where a party has a financial interest. The word recusal is technical and it might be better to say disqualification. For a Commissioner, he explained that this means, do not vote and do not direct the staff to do anything on the issue.

SZABO related that Commissioner MERRIFIELD told him that he would tell certain members of his staff when he was recusing himself from a specific company. MERRIFIELD told SZABO that these staff members had instructions to prevent matters affecting companies from which he had recused himself from coming to his attention.

SZABO spoke to MERRIFIELD several times at MERRIFIELD's request so that SZABO could provide advice regarding ethics requirements relating to conflict of interest during MERRIFIELD's search for future employment. He stated, "there was nothing MERRIFIELD didn't understand" regarding this legal advice, noting that MERRIFIELD was an attorney and a member of the bar, although he could not recall which state.

The means by which Commissioner MERRIFIELD decided to recuse himself from issues was his choice and there are no requirements for a particular method of recusal. SZABO added that regardless of the means by which MERRIFIELD chose to have his staff assist with recusing himself, it was MERRIFIELD's personal responsibility to not act on matters that could financially benefit companies with whom he was negotiating employment.

SZABO indicated that it was MERRIFIELD who described to him the method by which he intended to isolate himself from any matters that could be a potential conflict of interest or a perception of a conflict of interest. SZABO understood that MERRIFIELD would instruct his Chief of Staff, John THOMA, to keep all issues away from MERRIFIELD that could result in a conflict of interest.

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SZABO told OIG that he advised (b)(7)c MERRIFIELD's (b)(7)c that MERRIFIELD should not vote on SECY 07-0076, he was puzzled to learn from the time line that MERRIFIELD had voted on SECY 07-0076, on May 7, 2007. SZABO stated that it was not until May 17, 2007, that (b)(7)c contacted him for advice on SECY 07-0076, and that was the date he advised her that MERRIFIELD should not vote on the SECY.

In regards to (b)(7)c OIG interview where she states that "She acknowledged that the action of voting was not a threshold for actions which could pose a conflict of interest," SZABO stated that he disagreed with that statement and he could not understand what (b)(7)c might have been trying to say. Commissioners' votes have to mean something because they direct the NRC staff on what to do on particular issues.

He added that it made no sense for (b)(7)c to contact him about MERRIFIELD's involvement in SECY 07-0076 after MERRIFIELD had already voted. SZABO explained that (b)(7)c comment "That the staff could handle this" mentioned in his Memorandum of Interview (MOI) on May 17, 2009 with OIG, referred to SECY 07-0076. He further explained that he took (b)(7)c to be saying that MERRIFIELD's staff could simply communicate to the other Commissioners' staff that MERRIFIELD was not participating in the SECY vote.

SZABO told OIG that on the face of it, MERRIFIELD's vote on SECY 07-0076, along with MERRIFIELD's interactions with Shaw as shown on Attachment 1 appears to be a conflict of interest. However, SZABO explained that additional information would be needed to definitively reach this conclusion because it is technically complex. Furthermore, MERRIFIELD should have looked to see if Shaw was involved in any other aspects with licensees. SZABO acknowledged that if SECY 07-0076 had an affect on either Westinghouse or Shaw, then MERRIFIELD should have disqualified himself from voting on SECY 07-0076.

SZABO stated he would need to know more details about whether the SECY paper approval would give Shaw any financial advantage. He explained that information from the NRC staff members, who understand what the effects of this SECY could have on Shaw as compared to their competitors, would be the type of details he would want to know before making a judgment. If the facts showed that Shaw would gain a competitive advantage for future business in China because of the approval of SECY 07-0076, then that would be sufficient for a conflict of interest.

SZABO acknowledged that if he assumed that Shaw gained a competitive advantage from the SECY then there would be a conflict of interest because the timeline indicates that MERRIFIELD was negotiating for a position with Shaw while the SECY paper was pending before him for a vote, and he voted affirmative on the SECY while negotiating employment prospects. According to SZABO, the criminal statute for a conflict of interest prevents an individual from negotiating for employment while they decide particular matters that could benefit the future employer. SZABO also explained that "negotiating for employment" is broadly interpreted under this statute.

Negotiating for employment can be as simple as sending in an application for employment. He explained that if a company representative returns a call to someone who he knows is interested in discussing employment with his or her company then that is negotiating. The negotiation continues until a definitive decision is reached. Once a job is accepted then recusal must continue until the individual leaves the agency.

SZABO explained that it was very difficult for a Commissioner to avoid or "stay away" from all issues affecting Shaw. He explained that he had reviewed Shaw's web site and noted that they provide all types of services for reactors and to utilities. This would involve a lot of complexity and contracts with many companies with matters before the NRC. This complexity should have heightened MERRIFIELD's concerns about doing anything more as a Commissioner while negotiating with Shaw.

According to SZABO the timeline for Shaw shows that MERRIFIELD violated the process that MERRIFIELD had established for avoiding conflicts of interest, unless there is something about SECY 07-0076 that SZABO is unaware of. He added that it puzzles him why MERRIFIELD would vote on SECY07-0076, adding that since MERRIFIELD voted he must have known that SECY 07-0076 dealt with the AP1000 and could not believe MERRIFIELD did not know that Shaw had an interest in the AP1000.

Regarding SECY 07-0082 SZABO stated that the activities described in the Attachment 1 timeline for Westinghouse and General Electric constitute MERRIFIELD negotiating for employment with both companies while the SECY was pending before him and that he voted on the SECY during these negotiations. Before making a determination as to whether there was a conflict of interest he would need a lot more information from the staff as to how his vote may have affected the financial interests of each company

Interviewed by: Special Agent

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MOI prepared on:

(b)(7)c

MOI reviewed by/on:

July 31, 2009