




**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

September 17, 2009

MEMORANDUM TO: Chairman Jaczko

FROM: 
Hubert T. Bell
Inspector General

SUBJECT: ALLEGED CONFLICT OF INTEREST BY FORMER NRC
COMMISSIONER (CASE NO. 07-63)

This memorandum conveys the results of an Office of the Inspector General (OIG) investigation of former Commissioner Jeffrey Merrifield's employment-seeking activities from October 2006, when he announced he would not seek a third term, until June 30, 2007, his last day as Commissioner. OIG initiated this investigation after the Project on Government Oversight (POGO) alleged that Merrifield's post-NRC employment with The Shaw Group Incorporated (Shaw) constituted a conflict of interest. POGO alleged that in 2007, during his last months as Commissioner, Merrifield was involved with policy initiatives that benefitted Shaw in particular and the nuclear industry in general. Specifically, POGO provided two examples: Merrifield's involvement in the "Limited Work Authorizations" rule and his position as Chair of NRC's Combined License Review Task Force.

I. Ethics Requirements

The criminal conflict-of-interest law 18 U.S.C. 208(a) prohibits Federal employees from participating personally and substantially in any Government matter that the employee knows could have a direct and predictable effect on the financial interest of the employee; the employee's spouse or minor child; an organization which the employee serves as officer, director, employee, general partner, or trustee; or anyone with whom the employee is negotiating or has an arrangement for employment. This law requires employees to disqualify themselves from participating in any Government matter if the matter could affect any of these prohibited interests.

The Ethics in Government Act of 1978, as amended, and Title 5, Code of Federal Regulations, Part 2634, requires that each year, Federal Government employees whose positions are classified as GS-15 or above file a Standard Form (SF) 278. The SF 278 requests information on the employee's assets and liabilities, including non-Government travel-related reimbursements that exceed \$260 from any one source. The form also

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requires individuals to report information on negotiations for future employment from the point at which the employee and potential non-Federal employer have agreed to the employee's future employment by the employer, regardless of whether all terms have been settled.

II. Chronology of Merrifield's Employment-Seeking Activities

On October 20, 2006, Merrifield announced to the White House and to then Chairman Dale Klein that he would not seek a third term as Commissioner and would step down from his position on June 30, 2007.

On October 25, 2006, Merrifield met with George Mulley, Senior Level Assistant for Investigative Operations, OIG, and John Szabo, NRC Ethics Counselor, Office of the General Counsel (OGC), to convey his intent not to seek a third term and describe arrangements he had made with Steve Engelmyer, an attorney and friend of Merrifield, to serve as an intermediary between Merrifield and potential future employers. Under this arrangement, Engelmyer would field all prospective employment offers for Merrifield, and Merrifield would not discuss employment with anyone except Engelmyer until he completed his term. If Engelmyer informed Merrifield about a possible position, Merrifield would consult with OGC staff to take appropriate action to avoid violating the ethics rules. Merrifield requested Mulley's presence at this meeting because he wanted Mulley to understand his job search strategy in case OIG received allegations concerning this arrangement.

Also on October 25, 2006, Merrifield informed his staff via office memorandum that he would not be seeking a third term and that he had retained the services of an outside counsel to handle any employment inquiries. The memorandum instructed his staff that if they received any inquiries, they were to forward them through Spiros Droggitis, Merrifield's Executive Assistant, or John Thoma, Merrifield's Chief of Staff, who would forward the inquiries to the outside counsel. The memorandum also directed that Merrifield should not receive information concerning these inquiries so that he could continue his current duties without an actual or apparent conflict of interest.

Subpoenaed documents¹ indicate that Engelmyer served as an intermediary between Merrifield and potential employers until spring 2007, at which point Merrifield began communicating directly with companies over potential employment opportunities. OIG learned that in spring 2007, Merrifield contacted a senior Exelon official to discuss employment opportunities in the nuclear industry. The Exelon official later had several conversations with Engelmyer and suggested that Engelmyer contact Westinghouse, General Electric (GE), Areva, Shaw, Bechtel, and possibly Holtec. At one point, Merrifield contacted the Exelon official to ask if he could call Shaw and GE on Merrifield's behalf because these companies were not returning Engelmyer's

¹ As part of this review, OIG subpoenaed records from Progress Energy, Westinghouse Nuclear International, Shaw, Holtec, Energy Solutions, Exelon Corporation, GE Hitachi Nuclear Energy, GE Energy, and Verizon to ascertain if Merrifield had violated any ethics regulations.

telephone calls. The Exelon official did not recall when Merrifield requested him to contact these companies on his behalf; however, he later telephoned Shaw and GE senior officials to recommend that they consider Merrifield for employment.

Between April 26 and June 30, 2007, Merrifield had direct communication with four nuclear industry vendors and one reactor licensee to discuss employment opportunities, and he traveled to Pittsburgh, Pennsylvania; Schenectady, New York; and Charlotte, North Carolina, for employment interviews. During this period, Merrifield received job offers from four of the companies. Table 1 indicates the date ranges during which Merrifield negotiated employment with the four companies.

Table 1. Merrifield Employment Negotiation Date Ranges²

| Name of Company | Start Date | End Date |
|-----------------|------------|------------|
| Shaw | 04/26/2007 | 06/25/2007 |
| Westinghouse | 05/16/2007 | 06/20/2007 |
| GE | 05/24/2007 | 06/25/2007 |
| Holtec | 06/06/2007 | 06/20/2007 |

III. Merrifield's Voting Record and Direct Involvement in Employment Negotiations

OIG reviewed Commission Voting Records (VR) and Commission Adjudicatory Orders for January 1 through July 31, 2007, to determine which matters were before the Commissioner for a formal decision and the dates these matters were before the Commissioner.³ Based on this review, OIG identified 27 final decisions which Merrifield participated in that could benefit specific entities or an identifiable class of entities that are either (1) licensees or (2) licensee contractors. These decisions covered a wide range of topics, including design basis threat, fitness for duty, reactor license renewals, and early site permits. OIG identified specific entities and identifiable classes of entities that could potentially benefit, including (1) entities active in or seeking nuclear plant design and construction business, (2) power plant licensees, (3) operators of plants in multiple degraded cornerstone category, (4) entities active in or seeking In-Situ design,

² OIG identified these periods based on its review of subpoenaed documents. OIG considered negotiations to start when Merrifield began communicating directly with a company over potential future employment and to conclude when Merrifield's communication with the companies ended. Although Merrifield accepted Shaw's employment offer on June 21, 2007, he continued to negotiate with Shaw after that date and did not decline GE's offer until June 25, 2007.

³ Commissioners express explicit and binding actions primarily through two mechanisms. Commissioners vote on internal policy proposals from the staff as expressed in SECY papers or as proposed from other Commissioners through COM papers. The other means by which Commissioners express explicit and binding action is through their adjudicatory function as the appellate body for the Atomic Safety and Licensing Board Panel. The NRC Commissioners each express their opinion as part of a majority opinion and they can also express their individual opinions as part of a dissent or agreement with the majority decision with differing views.

construction, and operation business; and (5) entities active in AP 1000 plant design and construction business in the Chinese market.

OIG compared the date ranges of Merrifield's involvement in these Commission decisions with the date ranges in Table 1. OIG noted there were two time periods when Merrifield's employment negotiations with three companies overlapped with his involvement in votes that could affect the financial interest of the companies. Table 2 shows the two periods of overlap. The specifics of the two overlapping time periods and companies are described below.⁴

Table 2. Merrifield Employment Negotiation and SECY Votes

| Name of Company | Description | Initial Date | Vote Date |
|---------------------|---|--------------|------------|
| Shaw | SECY 07-0076, Proposed Plan for Cooperation with China on the AP 1000 | 04/30/2007 | 05/7/2007 |
| GE/ Westinghouse | SECY 07-0082, Rulemaking to Make Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements | 05/16/2007 | 06/19/2007 |

a. SECY 07-0076: Shaw

OIG determined that Merrifield had SECY 07-0076, "Proposed Plan for Cooperation with China on the AP 1000," under consideration while he was directly involved in employment negotiations with Shaw. According to SECY 07-0076, the Chinese government had entered into a memorandum of understanding with the U.S. Department of Energy for the purchase of AP 1000 reactors. To the extent that the government-to-government agreement can improve the foreign or domestic marketing position of the AP 1000, then the AP 1000 consortium – composed of Shaw, Westinghouse, and Mitsubishi⁵ – would benefit.

⁴ POGO's allegation provided two specific examples of Merrifield's activities that in their view posed a conflict: Merrifield's involvement in the "Limited Work Authorizations" rule and his position as Chair of NRC's Combined License Review Task Force. OIG found that the Commission reached its decision concerning SECY 07-0030, "Final Rulemakings for Limited Work Authorizations," on March 22, 2007, and that Merrifield's involvement in the Combined License Review Task Force covered the time period from November 2006 through April 18, 2007. Based on subpoenaed documents and interviews, OIG did not identify any direct involvement by Merrifield in any employment discussions with any company prior to April 26, 2007; therefore, the examples provided by POGO were outside of the period during which Merrifield was negotiating for employment.

⁵ These companies developed the technology and constructed the AP 1000. As part of SECY 07-0076, a Memorandum of Cooperation between the NRC and its Chinese counterpart, established areas of cooperation on the AP 1000, including sharing of all associated regulatory documents; exchange of regulatory and technical personnel for on-the-job training in design review, construction inspection, and inspection on the AP 1000; and access to the majority of the NRC's safety codes.

SECY 07-0076 was issued by the staff to the Commissioners on April 30, 2007, and Merrifield voted on this SECY on May 7, 2007. Merrifield was directly involved in employment discussions with Shaw from April 26 through June 25, 2007. The overlapping time period was April 30 through May 7, 2007.

OIG learned that Shaw expected to benefit from the AP 1000 market in China through an ownership interest in Westinghouse.⁶ Shaw's October 2006 10-K⁷ filing with the U.S. Securities and Exchange Commission states that Shaw had obtained exclusive rights to perform engineering, procurement, and construction services for AP 1000 nuclear projects. The filing states that Shaw had been working with Westinghouse on four new reactors proposed in China. The filing also states, "Growth in the global nuclear power sector is anticipated, driven in large part by China and India. Our support of existing U.S. utilities coupled with our investment in Westinghouse in collaboration with Toshiba is anticipated to result in increased activity in this sector."

OIG also learned that Merrifield was aware that Shaw and Westinghouse had worked together since at least 2005 to develop the AP 1000 for the Chinese market. On August 26, 2005, the Director of NRC's Office of International Programs transmitted SECY 05-0154, "Proposed 10 CFR Part 810 Authorization for Shaw Group, Inc. to Transfer Nuclear Reactor Technology and Services to the Chinese Civilian Nuclear Power Program," to the NRC Commissioners, including Merrifield. SECY 05-0154 states that Commission approval was sought to allow Shaw and its affiliates to transfer nuclear reactor technology to the People's Republic of China.

SECY 05-0154 states that Commission approval would allow Shaw to provide a full range of services for the AP 1000 in China and to prepare the Chinese to operate the completed reactors. It would also enable Shaw to provide its technology and services to other Chinese nuclear plants and projects. According to SECY 05-0154, Shaw was a member of the Westinghouse-led consortium bidding to build four Westinghouse-designed AP 1000 reactors in China. On August 31, 2005, Merrifield voted on SECY 05-0154, approving without comment Shaw's transfer of nuclear reactor technology to China.

b. SECY 07-0082: General Electric and Westinghouse

Merrifield had SECY 07-0082, "Rulemaking to Make Risk-Informed Changes to Loss-of-Coolant Accident Technical Requirements," under consideration while he was directly involved in employment negotiations with Westinghouse and GE. SECY 07-0082 requested Commission guidance regarding risk informed acceptance criteria for emergency core cooling currently in 10 CFR 50.46(a), "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors." Westinghouse and GE are nuclear steam system suppliers and nuclear fuel suppliers. Both companies provide a wide range of engineering consulting services, including

⁶ In October 2006, Shaw acquired a 20-percent interest in Westinghouse.

⁷ A Form 10-K is an annual report required by the U.S. Securities and Exchange Commission that provides a comprehensive summary of a public company's performance.

loss-of-coolant-accident analysis, new reactor emergency core cooling system (ECCS) design, and analytical support for power uprates. Westinghouse and GE would benefit from promulgation of the new risk-informed ECCS criteria if current or future clients requested work to implement the new criteria for operating or new reactors.

On May 16, 2007, the staff submitted SECY 07-0082 to the Commission and on June 19, 2007, Merrifield voted on this SECY. OIG noted that Merrifield was directly involved in employment negotiations with Westinghouse from May 16 through June 20, 2007, and with GE from May 24 through June 25, 2007. The overlapping period for his negotiations with Westinghouse was May 16 through June 19, 2007. The overlapping period for his negotiations with GE was May 24 through June 19, 2007.

IV. Interview of Merrifield

On September 5, 2007, OIG referred this case to the Department of Justice, U.S. Attorney's Office, Southern Division, State of Maryland. On December 9, 2008, Assistant U.S. Attorney Steven Dunne interviewed Merrifield in the presence of his attorneys and OIG investigators. On December 22, 2008, the U.S. Attorney's Office declined prosecution of this case.

During the December 9th interview, Merrifield said that he had known Engelmyer since working for the Senate and that Engelmyer agreed to be his agent because of their friendship. Merrifield said that to avoid the appearance of a conflict of interest, he and Engelmyer discussed establishing a "firewall" to preclude direct negotiations between Merrifield and prospective employers. All employment offers were to be forwarded and screened by Engelmyer. According to Merrifield, he and Engelmyer discussed this arrangement with Szabo and how to handle employment negotiations.

Merrifield stated that after deciding not to seek a third term as Commissioner, he met with his staff to inform them of his planned departure. He also sent a memorandum to his staff instructing them that all potential job offers were to be forwarded and screened by Engelmyer.

Merrifield stated that Engelmyer never told him about potential employers he had communicated with on Merrifield's behalf. He stated that he did not plan to negotiate with any prospective employers while the firewall was in place. However, when Engelmyer's attempts to speak to potential employers on Merrifield's behalf did not succeed, Merrifield began having employment discussions directly with potential employers.

Merrifield said that once he entered into employment discussions with a company, he personally prepared a recusal memorandum for the company.⁸ He recalled preparing four separate recusal memoranda for the following companies: Shaw, Westinghouse, Public Service Enterprise Group (PSEG), and Progress Energy. Following the development of the recusal memoranda, Merrifield provided his resume to potential employers. He recalled that each time he entered into employment discussions with a company, he also provided a verbal recusal to his staff. He stated that Szabo, Thoma, and (b)(7)c who served on Merrifield's staff as (b)(7)c knew about his recusals and that he sometimes informed Szabo directly about the recusals, or would have Thoma make notifications to (b)(7)c. According to Merrifield, Szabo, Thoma, and (b)(7)c screened all issues regarding Shaw. He also recalled asking Szabo, Thoma, and (b)(7)c to screen all votes coming before the Commission.

Merrifield also said that he recused himself from any issue and/or rulemaking that may have had an impact on any company with which he was negotiating employment. However, he said that during the 2-month period prior to his departure, there were no major issues before the Commission that affected licensees or vendors.

Merrifield advised that he received employment offers from Shaw, Westinghouse, GE, and Holtec. After considering all offers, he believed that Shaw would be the best fit for him and accepted its offer on June 21, 2007. (Note: Although Merrifield prepared recusal memoranda for Shaw, Westinghouse, and GE, he voted on SECY 07-0076 and 07-0082 while negotiating employment with these companies.)

V. Interview of Szabo

Szabo told OIG that he first learned of Merrifield's arrangement with Engelmeyer on June 1, 2006, when Szabo met with Merrifield and participated in a conference call with Engelmeyer. During the conference call, Szabo explained various restrictions on Government employees looking for employment, including conflict-of-interest rules. During the discussion, Szabo also explained to Merrifield that to avoid a conflict, Merrifield could not discuss possible employment with any potential employer if Merrifield was working on a matter at the NRC that could affect that employer.

Szabo provided Merrifield with two options to avoid conflicts: (1) telling any company wishing to discuss employment that could be affected by his NRC activities that he could not discuss employment with them and terminating the discussions, or (2) continuing employment discussions, but recusing himself from participating in any NRC actions or activities that might relate to the company. Szabo told OIG that recusal means the Commissioner should "stay away" or "disqualify himself" from anything where a party has a financial interest. For a Commissioner, Szabo said this means do not vote and do not direct the staff to do anything on the issue. Szabo further stated

⁸ Each recusal memorandum generally stated that Merrifield instructed Thoma to preclude his participation in all matters associated with each company, and to work with Szabo to resolve any issues concerning his job search.

⁹ Formerly (b)(7)c

that he had several conversations with Merrifield about ethics requirements relating to conflicts of interest and Merrifield's job search. Szabo said it was clear to him that Merrifield understood the legal advice Szabo provided on this issue.

Szabo stated that in March 2007, he provided Merrifield a generic recusal letter that Merrifield could use to document any recusals. At the time, Szabo believed that Merrifield was not having much activity or success in his job search, but that Merrifield wanted to protect himself if and when that changed. However, Szabo said that Merrifield was not required to show his letter of recusal to anyone. He said it was Merrifield's decision to prepare a recusal memo and whether to give a copy of the recusal memo to his staff. Szabo said that regardless of the means by which Merrifield chose to have his staff assist with his recusal, it was Merrifield's personal responsibility not to act on matters that could financially benefit companies with whom he was negotiating employment.

Szabo said that on May 17, 2007, (b)(7)(c) called him for advice on SECY-07-0076, involving cooperation with China on the AP 1000 reactor design. Szabo provided OIG with a memorandum he had prepared documenting his discussion with (b)(7)(c). As reflected in the memorandum, Szabo stated that (b)(7)(c) told him that Merrifield was discussing employment with Shaw and that (b)(7)(c) informed him that Shaw owned a portion of Westinghouse. Because Westinghouse had an interest in and involvement with the AP 1000 reactor design, Szabo recommended that Merrifield not make any recommendations or vote on this SECY paper.

OIG informed Szabo that Merrifield had voted on SECY 07-0076 on May 7, 2007, and asked if he and (b)(7)(c) had discussed the fact that Merrifield had already voted during their May 17, 2007, discussion. Szabo said he was unaware that Merrifield had already voted on the SECY. He said that it made no sense for (b)(7)(c) to have contacted him about Merrifield's involvement in SECY-07-0076 after Merrifield had already voted on the SECY. Szabo said he did not know that Shaw owned 20 percent of Westinghouse until (b)(7)(c) advised him of this because Merrifield was discussing employment with Shaw. He recalled that after this conversation with (b)(7)(c) he confirmed that Shaw did, in fact, have an interest in Westinghouse.

Szabo stated that on May 23, 2007, (b)(7)(c) contacted him regarding a fitness-for-duty rule before the Commission. The rule pertained to the firm Progress Energy. (b)(7)(c) told him that Merrifield had discussed employment with Progress Energy, but these discussions had terminated. Based on this termination, Szabo told (b)(7)(c) he had no objections to Merrifield's involvement with the fitness-for-duty rule. According to Szabo, he had no other contact with Merrifield or his staff regarding his job search. He never received copies of any recusal letters or indications of other concerns.

Szabo told OIG that Merrifield's vote on SECY 07-0076 while he was negotiating with Shaw appears to have been a conflict of interest. However, he said that additional information would be needed to definitively reach this conclusion because the issue is

technically complex. Szabo acknowledged that if SECY 07-0076 had a financial impact on either Westinghouse or Shaw, then Merrifield should have disqualified himself from voting on SECY 07-0076.

Szabo could not determine whether Merrifield's vote on SECY 07-0082 during the time he was negotiating with Westinghouse and GE was a conflict of interest. He said that to determine whether a conflict of interest had occurred, he would need information from the staff on how Merrifield's vote may have affected the financial interests of each company.

VI. Interviews of Merrifield's Staff

OIG interviewed former Merrifield staff members, including Thoma, Droggitis, and (b)(7)c who each stated that they were aware of Merrifield's arrangement with Engelmyer and were instructed not to forward information related to potential job opportunities to Merrifield. If such inquiries were received, Thoma or Droggitis were to forward the information to Engelmyer.

Thoma said that in approximately November 2006, he learned that Merrifield was leaving Government service when Merrifield issued a memo to his staff about a job search arrangement he had made with Engelmyer. Thoma said that Merrifield told him that he had been working with Szabo to establish an arrangement that entailed Engelmyer handling all details and offers relating to Merrifield's job search. Thoma recalled that only one letter with a job offer came to the office prior to Christmas 2006. Merrifield told Thoma very little about the details of his job search. However, in the spring of 2007, Merrifield told Thoma he was going to start "reaching out" more to companies about potential jobs. Thoma also stated that Merrifield told him about seven or eight companies with which he was negotiating, including Westinghouse, Shaw, and Holtec.

Droggitis said he had the sense that there was no progress with Merrifield's job search until the last month or two of his term. The only item Merrifield was involved in where Droggitis thought there was the possibility of a conflict of interest involved an agreement with China (SECY 07-0076) that was related to nuclear reactors produced by Westinghouse. The proposed agreement was to exchange safety information with the Chinese Nuclear Regulatory Agency. Droggitis recalled discussing the issue with (b)(7)c and possibly Szabo, who informed him that because Merrifield had already voted, Droggitis could complete the administrative actions necessary to finalize the vote; however, he should not involve Merrifield in any Staff Requirements Memorandum (SRM) developed subsequent to the vote.

(b)(7)c said that Merrifield wanted to serve out his term as an active Commissioner, and that he did not want to generally recuse himself from NRC actions. She said the rationale for Merrifield's meeting with Szabo and OIG was to discuss an arrangement

that prevented the violation of conflict-of-interest regulations, but allowed Merrifield both to remain an active member of the NRC and pursue post-Government employment.

(b)(7)c said that Merrifield's involvement in employment negotiations began in April 2007. She recalled that Merrifield negotiated potential employment with four firms: Shaw, Westinghouse, Progress Energy, and possibly GE. However, (b)(7)c never reviewed any written record of Merrifield's interaction with specific potential employers or any written recusals. She saw no reason to document the recusals. (b)(7)c said that once she learned of Merrifield's active involvement in a job search with a particular firm, she would review upcoming issues to help ensure that Merrifield remained isolated from potential conflicts of interest. However, she said that a formalized process was never established for Merrifield and his staff to identify and evaluate potential conflicts of interest. The communication between Merrifield and his staff on potential conflicts of interest was always verbal and may have come to her from either Thoma or Merrifield.

(b)(7)c recalled having a telephone conversation with Szabo on May 17, 2007. She said she called Szabo to discuss (1) the administrative process for issuing an SRM for SECY 07-0076 and (2) the fitness-for-duty rule before the Commission. (b)(7)c recalled that the fitness-for-duty rule had a direct effect on Progress Energy, a company with which Merrifield had discussed future employment, but had since terminated discussions. (b)(7)c did not recall discussing Merrifield's employment negotiations with Shaw during the May 17 telephone conversation. (b)(7)c did not recall telling Szabo that Shaw owned a 20-percent interest in Westinghouse during the discussion. She said she did not know that Shaw had a 20-percent interest in Westinghouse when Merrifield voted on SECY 07-0076.

According to (b)(7)c she did not tell Szabo that Merrifield had already voted on SECY 07-0076 because she did not make the connection between Shaw and Westinghouse. (b)(7)c stated that if she had thought there were a conflict of interest with Merrifield's vote on SECY 07-0076, she would have brought it to Szabo's attention. She also stated that any benefit to Shaw would have been tenuous. Furthermore, she said SECY 07-0076 was approved by every member of the Commission and would have passed whether Merrifield voted or not.

VII. Review of Merrifield's SF 278

As part of this investigation, OIG reviewed Merrifield's SF 278 dated July 3, 2007, for the period January 1, 2006, through June 30, 2007, to determine whether he accurately reported information related to his job search. OIG compared subpoenaed records to Merrifield's SF 278 and found that Merrifield did not disclose on his SF 278, Schedule B, Part II, "Gifts, Reimbursements, and Travel Expenses," his travel reimbursement requests totaling \$3,552.47, which he made to GE and Shaw. The first request, for \$636.60, was made to GE, in connection with Merrifield's June 14, 2007, trip to

Schenectady, New York, to meet with company executives to discuss potential post-NRC employment opportunities. The second reimbursement request not reflected on his SF 278 was made to Shaw for \$2,915.87, in connection with Merrifield's June 26-30, 2007, visit to Charlotte, North Carolina, with his family to meet with Shaw executives after he accepted a job offer from the company on June 21, 2007. Although Merrifield submitted a voucher to Westinghouse for reimbursement for travel to Pittsburgh, Pennsylvania, in connection with possible employment, Merrifield was not required to list this on his SF 278 because the amount reimbursed (\$250.80) did not meet the required threshold of \$260 for the SF 278.

OIG also noted that Merrifield did not disclose on his SF 278, Schedule C, Part II, "Agreements or Arrangements," his employment agreement with Shaw even though Merrifield accepted Shaw's job offer on June 21, 2007, which fell within the time period covered by the form.

Merrifield stated that he did not fill out Schedules B and C of the SF 278 regarding reimbursements and agreements because "it just went over my head." The issue concerning the reimbursement for travel expenses did not come to his attention until James Bensfield, his attorney, spoke with Assistant U.S. Attorney Dunne regarding this issue. Merrifield stated that he did not intentionally omit any information from his SF 278.

On August 24, 2009, subsequent to his December 9, 2008, interview with Assistant U.S. Attorney Dunne, Merrifield submitted an amended SF 278, Schedules B and C, to include previously omitted information concerning his non-Government travel-related reimbursements from Shaw and GE and his employment agreement with Shaw.

VIII. Conclusions

OIG determined that Merrifield did not take effective measures to prevent a potential conflict of interest during the last 2 months of his term. Although Merrifield set up an arrangement to pursue post-Government employment via a third party while serving as Commissioner, Merrifield stopped following this arrangement prior to the end of his term and began negotiating directly with potential employers. At this point, Merrifield did not establish a process to ensure a thorough screening of and recusal from matters before the Commission. Although Merrifield was ultimately responsible for exercising his recusal, he also relied on his staff to screen matters that involved potential employers with whom he was negotiating employment. However, Merrifield did not provide his staff with necessary details of his job search or establish a process for evaluating matters before the Commission to ensure he disqualified himself from involvement with potential conflict of interest issues. Moreover, his staff did not effectively screen matters to assist him in exercising his recusal option.

OIG determined that from April 2007 until June 2007, Merrifield was directly involved in employment negotiations with three companies – Shaw, Westinghouse, and GE – that could have potentially benefitted financially from his votes on SECY 07-0076, involving the AP 1000 China agreement and SECY 07-0082, pertaining to loss-of-coolant accident rulemaking. These votes occurred during the specific timeframes in which Merrifield was negotiating with the three companies.

OIG found that Merrifield did not report on his July 2007 SF 278 required information related to his acceptance of Shaw's job offer and his non-Government travel-related reimbursements totaling \$3,552.47 from Shaw and GE.

This memorandum is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action, if any, you take based on the memorandum.

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