



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

July 14, 2014

COMMISSIONER

Diane Curran
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street NW, Suite 600
Washington, DC 20036-4523

Dear Ms Curran:

I am writing in response to the letter dated June 18, 2014, from you and Mindy Goldstein, on behalf of 34 organizations, regarding my acceptance of an offer to serve as the Director-General of the Organisation for Economic Co-Operation and Development's Nuclear Energy Agency (NEA). Your letter requested my immediate resignation from the Nuclear Regulatory Commission (NRC), as well as my retroactive disqualification from all safety decisions made by the Commission since I became a candidate for the NEA position. I have carefully reviewed each of the points raised in your letter and have determined that no retroactive recusal is necessary and I will continue to fulfill all of my responsibilities as a Commissioner until I leave the agency.

In your letter, you argue that my resignation and retroactive recusal are necessary because, having accepted an offer of future employment from the NEA, I am "committed to an organization whose mandate to promote nuclear energy as well as the economic interests of its members is antithetical to the basic principles...that safety, not economics, must be the NRC's paramount consideration." You further argue that my current presence on the Commission is counter to the requirement that Federal judges must recuse themselves from a matter where their "impartiality might reasonably be questioned."

Although your request does not pertain explicitly to my adjudicatory duties as a Commissioner, there is a great deal of precedent regarding prior requests for the recusal of one or more Commissioners from particular adjudicatory matters.¹ I found that this precedent was useful in my consideration of your request.

In Commission practice, each individual Commissioner is charged with personally responding to the requests for his or her own recusal, and such decisions are not appealable to the entire Commission.² Individual Commissioners traditionally do look to the standards applied to Federal judges when considering recusal requests.³ Federal courts have held that "an agency official should be disqualified only where 'a disinterested observer may conclude' that the official

¹ I note after receiving your letter, two motions requesting that I recuse myself from matters pending before the Commission in the Fermi Unit 3 Combined Operating License and Ft. Calhoun License Renewal proceedings were filed. I am responding to each of those motions separately.

² See *Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-80-6, 11 NRC 411 (1980).

³ *In re Joseph Macktal*, CLI-89-14, 30 NRC 85, 91 (1989). See also, *Decision on the Motion of Nye County, Nevada, for Recusal/Disqualification of NRC Chairman Allison M. Macfarlane* (Sept. 9, 2013).

'has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.'"⁴ Similarly, the NRC recognizes that a Commissioner should disqualify him or herself only if "a reasonable man, cognizant of all the circumstances, would harbor doubts about the judge's impartiality."⁵

I do not believe that a reasonable individual with a full understanding of the breadth and purpose of the activities at the NEA, which are all focused on information exchange and policy, would harbor doubts about my ability to continue to fulfill my responsibilities as a Commissioner in an impartial manner.

NEA is an agency within the Organisation for Economic Co-operation and Development (OECD), which was founded in 1961 with the mission "to promote policies that will improve the economic and social well-being of people around the world."⁶ This mission is accomplished through the cooperation of OECD's 34 member nations from Europe, North and South America, and Asia.⁷ The organization operates under a set of core values that include: objective, independent, and evidence-based analyses; encouraging open debate and a shared understanding of issues; challenging conventional wisdom; identifying and addressing long-term issues; and building credibility through trust, integrity, and transparency.⁸

The NEA's mission, as stated in its Strategic Plan, is:

To assist its member countries in maintaining and further developing, through international co-operation, the scientific, technological and legal bases required for a safe, environmentally friendly and economical use of nuclear energy for peaceful purposes. To provide authoritative assessments and to forge common understandings on key issues as input to government decisions on nuclear energy policy and to broader OECD policy analyses in areas such as energy and sustainable development.⁹

This mission is overseen by NEA's 31 member countries. Membership includes countries with robust, mature nuclear energy programs (for example, the United States, Japan, and France); countries that are starting or expanding their nuclear energy programs (for example, Turkey and the Czech Republic); countries that are halting or reducing their nuclear energy programs (for example, Germany), and countries that do not have and are not developing commercial nuclear power programs (for example, Ireland and Italy). The NEA does not advocate any particular outcome, but, with the support of its member countries, focuses on facilitating policy analyses, sharing information and experience amongst its members, developing cooperative research projects, and developing consensus positions on technical issues, including those relevant to nuclear safety regulators around the world.¹⁰

The policy and technical decisions in which I have participated in the last few months—and in which I intend to participate fully through the end of my service as a Commissioner—have had and will have no impact on the NEA's financial health or even its future research or policy

⁴ *Nuclear Info. & Res. Serv. (NIRS) v. NRC*, 509 F.3d 562, 571 (D.C. Cir. 2007) (quoting *Cinderella Career & Finishing Sch., Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970)).

⁵ *Macktal*, 30 NRC at 91.

⁶ <http://www.oecd.org/about/>. Last accessed July 14, 2014.

⁷ *Id.*

⁸ *Id.*

⁹ The Strategic Plan of the Nuclear Energy Agency, 2011-2016 (Strategic Plan), at 15.

¹⁰ *Id.*

activities. Similarly, future activities by the NEA will only affect future NRC licensing and safety activities if the NRC decides to adopt future NEA policy recommendations. Such a decision would be based on the NRC's usual regulatory procedures, including any necessary public input and interaction.

Courts have long held that "[a]dministrative officers are presumed objective and 'capable of judging a particular controversy fairly on the basis of its own circumstances.'"¹¹ It has been my duty since I began my tenure at the Commission to meet my quasi-adjudicatory duties by weighing the evidence and arguments impartially and basing each decision on the adjudicatory record and applicable law. So long as I remain an administrative officer of the NRC, I fully intend to continue to fully discharge my duties in a fair and impartial manner.

In your letter you also raised concerns regarding whether I was the U.S. Government's candidate for the position of Director-General and whether other Federal officials advocated for my appointment. It is true that I was the U.S. Government's candidate for the position at the NEA. Advocacy for candidates for positions in international organizations is handled by the Executive Branch. While generally aware of this process, I was not directly involved beyond completing the required application materials.

I have considered carefully both the arguments presented in your letter and the applicable legal standards. I find no basis for either my immediate resignation or my retroactive recusal and respectfully decline to do so. I remain fully committed to meeting my responsibilities as an NRC Commissioner for the remainder of my tenure.

Sincerely,



William D. Magwood, IV

¹¹ *NIRS*, 509 F3d at 572 (quoting *United States v. Morgan*, 313 U.S. 409, 421 (1941)).