March 4, 2011

Ms. Danielle Brian
Executive Director
Project on Government Oversight
1100 G Street, NW - Suite 900
Washington, D.C. 20005

Dear Ms. Brian:

This is in response to your letter of October 28, 2009, regarding the investigative report of the Office of Inspector General (OIG) of the Nuclear Regulatory Commission (NRC), entitled "Alleged Conflict of Interest by Former NRC Commissioner" (September 17, 2009).

The NRC takes the OIG report very seriously. The NRC has always emphasized to employees the importance of complying with all the requirements of the ethics laws and regulations and maintaining high standards of ethical conduct. As a result of the OIG report, the NRC General Counsel has reviewed the ethics program and has taken steps to improve the program by addressing the issues raised in the OIG report.

With respect to your specific requests:

1. Barring the former Commissioner from coming before or communicating with the NRC for the maximum period allowable under 10 C.F.R. § 50.5, section 234 of the Atomic Energy Act, and the NRC Enforcement Policy.

The former Commissioner did not violate 10 C.F.R. § 50.5. This regulation only pertains to deliberate misconduct by power reactor licensees, applicants, or employees or contractors of licensees or applicants. The events described in the OIG report took place at the time he served as an NRC Commissioner. There is also no basis for NRC action against the former Commissioner under section 234 of the Atomic Energy Act or the NRC Enforcement Policy. The NRC has no authority to take administrative action in these circumstances.

2. Referring this case to the Department of Justice's Public Integrity Section for civil action under 18 U.S.C. § 216.

The Office of the Inspector General referred this case to the Department of Justice for possible civil action. The United States Attorney's Office recently informed the Inspector General that, after a thorough investigation and careful consideration of the facts, it declined to proceed with a civil action. As you know, this case had also been presented to the United States Attorney's Office for criminal prosecution, but such prosecution was declined.

You also questioned the application of conflict of interest restrictions to vendors and firms that contract and subcontract with licensees. Contractors, subcontractors, licensees, or others who are not employees of the United States government are not subject to the conflict of interest requirements governing the conduct of Federal employees. However, contractors are subject to personal and organizational conflict of interest rules in the NRC procurement regulations. 48 C.F.R. Subparts 2003.2 and 2009.5.

You also recommend that Commissioners and staff submit written recusals to the Chairman and the General Counsel's Ethics Counselor. The government-wide standards of conduct regulations require employees to disqualify themselves from personal and substantial participation in a particular matter they know has a direct and predictable effect on the financial interest of a prospective employer with whom they are seeking employment. The regulations do not require such employees to file a written disqualification unless they are specifically asked by an agency ethics official or the person responsible for their assignment. 5 C.F.R. 2635.604(c).

The NRC does not require that employees provide any written notification of their recusals to their management or the Office of the General Counsel (OGC). Obviously, if an employee has to be removed from working on a matter that he or she is currently working on, it is imperative that the employee inform the supervisor. On the other hand, if the employee has no responsibilities for matters pertaining to the potential employer, there is no compelling justification for requiring the employee to disclose the employment negotiations. Ethics counselors in OGC encourage employees to prepare written documentation for themselves when employment discussions began and ended, so that a contemporaneously prepared record exists should questions arise. Ethics counselors document discussions with employees on outside employment. These memoranda are retained in the OGC ethics files.

Based on a general survey of other agencies and our own experience, the Commission has decided that NRC will not require employees to file recusals with either their management or the ethics office. The failure of employees to disqualify themselves has not previously been an issue at the NRC. Absent evidence of a wider problem, the NRC does not believe that additional reporting requirements are warranted. Ethics counselors will continue to document in writing advice provided to employees about seeking employment. Ethics counselors will also continue to recommend that employees document their employment discussions and inform their supervisor if they must be removed from matters to which they have been assigned.

The agency has enhanced its ethics training not only to remind employees of their obligation to inform their supervisor if they must recuse themselves from an assigned matter, but also to specifically recommend that employees document their requests for seeking employment. In a December 22, 2009 announcement to all NRC employees, the General Counsel recommended that employees, "at a minimum, retain a written document of their disqualification. . . and consider providing the written disqualification to their supervisor or key co-workers." Articles on the NRC ethics website, such as the summaries of major ethics rules, have, and will continue to, include such a recommendation.

Additionally, you suggest requiring the public release of each Commissioner's vote as soon as it is filed. As a general policy, individual Commissioner's votes are released to the public along with the final Commission decision, unless they contain limited types of information that warrant

protection, such as information that is classified or sensitive, adjudicatory, security-related, safeguards-related, proprietary, or personnel-related. Under internal Commission procedures, each NRC Commissioner has sole discretion to disclose his or her vote at an earlier time.

Finally, you were also concerned about the public financial disclosure reporting process, citing the apparent failure by the former Commissioner to fully report his travel reimbursement. In response to this OIG report, the NRC has taken a number of actions, such as those mentioned above, to further remind employees who must file public or confidential reports of reporting requirements.

We appreciate your providing your views on this matter.

Sincerely,

/RA/

Gregory B. Jaczko