



## BACKGROUND

OECD was founded in 1961 with the mission “to promote policies that will improve the economic and social well-being of people around the world.”<sup>2</sup> This mission is accomplished through the cooperation of its 34 member nations from Europe, North and South America, and the Asia-Pacific region.<sup>3</sup> 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.<sup>4</sup>

The NEA is an agency within the OECD. Its 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.<sup>5</sup>

This mission is carried out 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, with the support of its member countries, focuses on facilitating policy analyses, sharing information and experience amongst

---

<sup>2</sup> <http://www.oecd.org/about/>. Last accessed July 14, 2014.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> The Strategic Plan of the Nuclear Energy Agency, 2011-2016 (Strategic Plan), at 15.

its members, developing cooperative research projects, and developing consensus positions on technical issues, including those relevant to nuclear safety regulators around the world.<sup>6</sup>

Following the announcement of his planned retirement by former NEA Director-General Luis Echevaria, I became a candidate for the position of Director-General. In March 2014, it was announced that I would succeed Mr. Echevaria, and that I would begin my service at the NEA on September 1, 2014. In the meantime, I have continued to serve as a Commissioner at the NRC and have observed all applicable ethics guidelines.<sup>7</sup>

The Motion arises in the context of a hearing request filed by the Petitioners related to operations at Fort Calhoun Station, Unit 1. The hearing request, which is currently before the Commission for action, asks that the Commission either clarify that pending Confirmatory Action Letter and Inspection Manual Chapter 0350 processes are license amendment proceedings requiring an adjudicatory proceeding or use its inherent supervisory authority to institute an adjudicatory proceeding.<sup>8</sup> The Motion requests my recusal from consideration of the hearing request on the grounds that my future service with the NEA is inconsistent with my present duties and reveals a bias or prejudice in favor of nuclear power.<sup>9</sup>

#### DISCUSSION

The primary argument presented in the Motion for the need for my recusal is that my ability to be impartial is in question. Upon consideration of all the relevant facts and

---

<sup>6</sup> *Id.*

<sup>7</sup> The Motion states “Commissioner Magwood holds employment outside the Commission” with the NEA. I feel it is important to clarify that, although I have accepted an offer of future employment with the NEA, I am not currently employed by the NEA. While I am still employed by the NRC, I am prohibited by Federal ethics law and regulations from carrying out any duties on behalf of NEA.

<sup>8</sup> *Petition to Intervene and Request for Adjudicatory Hearing by Sierra Club* (April 23, 2014) (Petition) at 43.

<sup>9</sup> Motion at 5-6.

circumstances, I conclude that a reasonable observer would not question my ability to act as an impartial adjudicator when considering the Petitioners' appeal.

In Commission practice, each individual Commissioner is charged with personally responding to requests for his or her own recusal, and such decisions are not appealable to the entire Commission.<sup>10</sup> Individual Commissioners traditionally look to the standards applied to Federal judges when considering recusal requests.<sup>11</sup> Federal courts have held that "an agency official should be disqualified only where 'a disinterested observer may conclude' that the official 'has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.'"<sup>12</sup> 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."<sup>13</sup>

The Petitioners argue that my future employment with NEA marks a change from "safety regulator to that of an institutional advocate for expanded use of nuclear power."<sup>14</sup> This concern seems to be based on the portion of NEA's Mission Statement which says that the NEA "assist[s] its member countries in maintaining and further *developing*, through international cooperation, the scientific, technological and legal bases required for a safe, environmentally friendly and economical *use of nuclear energy* for peaceful purposes."<sup>15</sup> The Petitioners' focus

---

<sup>10</sup> See *Pacific Gas & Elec. Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-80-6, 11 NRC 411 (1980).

<sup>11</sup> *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 Chariman Allison M. Macfarlane* (September 9, 2013).

<sup>12</sup> *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)).

<sup>13</sup> *Macktal*, 30 NRC at 91.

<sup>14</sup> Motion at 5.

<sup>15</sup> Strategic Plan at 15 (emphasis added).

on the NEA's role in encouraging maintenance and development of nuclear power signals a misunderstanding of NEA's purpose, role, and governance structure.

A clearer picture of NEA's purpose and role—which focuses not on the “development and maintenance of . . . nuclear power,” as intervenors appear to contend, but upon the development and maintenance of the scientific, technical, and legal basis for ensuring that nuclear power, where it is used, is used in a safe, environmentally friendly, and economical manner—can be gleaned from the second portion of NEA's Mission Statement: “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.”<sup>16</sup> The NEA is primarily a research and policy agency. Working with governmental agencies from its member countries—including the NRC<sup>17</sup>—NEA works in six key areas: (1) nuclear safety and regulation activities, which “assist member countries in their efforts to develop high standards of safety . . . by supporting the development of effective and efficient regulation and oversight . . . and by helping to maintain and advance the scientific and technical knowledge base;” (2) radioactive waste management activities, which “assist . . . in the development of safe, sustainable and broadly acceptable strategies for the long-term management of all types of radioactive waste;” (3) radiological protection and public health activities, which “assist member countries in the regulation and implementation and further development of the system of radiological protection by identifying and effectively addressing conceptual, scientific, policy, regulatory, operational and societal issues;” (4) nuclear science activities, which help to “identify, collate, develop and disseminate the basic scientific and technical knowledge required to ensure the safe, reliable and economic operation of current and next-generation” technology; (5) activities related to the development

---

<sup>16</sup> *Id.*

<sup>17</sup> NRC staff participate in NEA working groups, committees, and meetings. The NRC's strategic cooperation with NEA “complements and expands NRC's research program.” <http://www.nrc.gov/about-nrc/ip/intl-organizations.html>. Last accessed July 14, 2014.

and use of nuclear energy, which focus on providing governments and other users “with authoritative, reliable information on a broad range of factors relevant to the current performance and future viability of nuclear power generation . . . for use in policy analysis and decision-making;” (6) legal affairs activities, which focus on “creat[ing] sound national and international legal regimes required for the peaceful uses of nuclear energy;” (7) data bank services, which create an “international center of reference for . . . member countries with respect to basic nuclear tools . . . used for the analysis and prediction of phenomena in the nuclear field;” and (8) information and communication activities.<sup>18</sup> These activities are funded by the NEA and OECD membership as a whole. No one country or company benefits from these activities. Moreover, the NEA has no regulatory authority; although it issues analyses and recommends actions for its member countries, it cannot impose requirements on its members. It is up to the government of each member country, and, in particular, its regulators, to decide whether to adopt NEA policy recommendations.

With a full understanding of the breadth and purpose of the activities at the NEA, which are all focused on information exchange and policy, it is clear to me that no reasonable individual would harbor doubts about my impartiality in the present proceeding. The Commission’s decision to grant or deny the Petitioners’ hearing request will have no impact on the NEA’s financial health or even its future research or policy activities. Similarly, future activities by the NEA will only affect any NRC licensing 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.’”<sup>19</sup> It has been my duty since I began my tenure at the Commission to meet my quasi-adjudicatory duties by

---

<sup>18</sup> Strategic Plan at 17-25.

<sup>19</sup> *NIRS*, 509 F3d at 572 (quoting *United States v. Morgan*, 313 U.S. 409, 421 (1941)).

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 discharge my duties in a fair and impartial manner.

CONCLUSION

I have considered carefully both the arguments presented in the Motion and the applicable legal standards. I find no basis for my recusal and respectfully decline to recuse myself from review of the hearing request.

/RA/

William D. Magwood, IV  
NRC Commissioner

Dated at Rockville, Maryland  
this 14th day of July, 2014

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
OMAHA PUBLIC POWER DISTRICT )  
 )  
 ) Docket No. 50-285  
(Fort Calhoun Station, Unit 1) )  
 )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **DECISION ON THE MOTION OF SIERRA CLUB FOR RECUSAL FROM PARTICIPATION IN DELIBERATIONS ON PETITION TO INTERVENE AND REQUEST FOR A HEARING** have been served upon the following persons by Electronic Information Exchange.

Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop - T-3 F23  
Washington, DC 20555-0001

E. Roy Hawkens  
Chief Administrative Judge  
E-mail: [roy.hawkens@nrc.gov](mailto:roy.hawkens@nrc.gov)

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [ocaamail@nrc.gov](mailto:ocaamail@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the General Counsel  
Mail Stop - O-15 D21  
Washington, DC 20555-0001  
Edward Williamson, Esq.  
Mitzi Young, Esq.  
David Roth, Esq.  
Anita Ghosh, Esq.  
John Tibbets, Paralegal  
Email: [edward.williamson@nrc.gov](mailto:edward.williamson@nrc.gov)  
[mitzi.young@nrc.gov](mailto:mitzi.young@nrc.gov)  
[david.roth@nrc.gov](mailto:david.roth@nrc.gov)  
[anita.ghosh@nrc.gov](mailto:anita.ghosh@nrc.gov)  
[john.tibbets@nrc.gov](mailto:john.tibbets@nrc.gov)

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Mail Stop O-16C1  
Washington, DC 20555-0001  
Hearing Docket  
E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Counsel for Licensee  
Winston & Strawn, LLP  
1700 K Street, NW  
Washington, D.C. 20006  
Darani M. Reddick, Esq.  
David A. Repka, Esq.  
Carlos Sisco, Paralegal  
E-mail: [dreddick@winston.com](mailto:dreddick@winston.com)  
[drepka@winston.com](mailto:drepka@winston.com)  
[csisco@winston.com](mailto:csisco@winston.com)

Winston & Strawn, LLP  
101 California St.  
San Francisco, CA 94111  
Tyson R. Smith, Esq.  
E-mail: [trsmith@winston.com](mailto:trsmith@winston.com)

Counsel for Sierra Club  
Law Offices of Wallace L. Taylor  
118 3<sup>rd</sup> Ave., S.E., Suite 326  
Cedar Rapids, IA 52401  
Wallace L. Taylor, Esq.  
Email: [wtaylorlaw@aol.com](mailto:wtaylorlaw@aol.com)

[Original signed by Herald M. Speiser ]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 14<sup>th</sup> day of July, 2014