

May 14, 1979

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

SECY-78-682-A

CONSENT CALENDAR ITEM

For: The Commissioners

From: James A. Fitzgerald  
Acting Assistant General Counsel

Subject: Revision of NRC Regulations Governing the  
Ownership of Stocks, Bonds, and Other  
Security Interests by NRC Employees

Purpose: To gain Commission approval of a final rule

Discussion: In SECY 78-682 the Office of General  
Counsel proposed several amendments to the  
Commission's regulations pertaining to the  
ownership of stocks, bonds, and other  
security interests by NRC employees. The  
Commission provided tentative views to OGC,  
and OGC revised its proposal to reflect  
these views. OGC then solicited comments  
from NRC employees and the National  
Treasury Employees Union (NTEU) on the  
revised proposal (Announcement No. 35,  
April 2, 1979).

The proposal that NRC employees and the  
NTEU were asked to comment upon can be  
summarized as follows:

1. All NRC employees would be covered by  
the Commission's security ownership prohibi-  
tions, except for clerical and most  
administrative personnel. The prohibition  
would apply to all employees GS-13 and  
above regardless of function, and also those  
below the GS-13 level who provide input into  
the decision-making process. Those indi-  
viduals will be designated by occupational  
code. The only special government employees  
(employees who work for the Commission less

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than 130 days per year) who would be subject to the prohibition would be members of the ACRS, ASLBP, and ASLAP.

2. The security ownership prohibition would extend to the NRC employee, the employee's spouse, minor children, and any other member of the employee's household.

3. NRC employees subject to the security ownership prohibition would be prohibited from owning stocks, bonds, or other securities issued by:

- (a) publicly or privately owned utilities which have filed an application with the Commission seeking authorization to construct or operate a facility which generates electric energy by means of a nuclear reactor, and those utilities which have received a construction permit or an operating license from the Commission. Employees would also be prohibited from owning bonds issued by state or local governmental entities to finance the construction or operation of a nuclear reactor.
- (b) companies manufacturing or selling nuclear power or test reactors;
- (c) architectural-engineering companies that have been engaged to provide services relating to a nuclear facility by an applicant for a construction permit, a holder of a construction permit, or an applicant for an operating license, and architectural-engineering companies which have filed a standard reference design that is under Commission review or has been approved by the Commission and is currently effective;
- (d) fuel cycle applicants or licensees (companies engaged in milling, converting, fabricating, or reprocessing source material or special nuclear material); and

(e) any company or firm which serves as a consultant on activities licensed or regulated by the NRC.

4. NRC would publish a list of prohibited securities twice a year and distribute it to employees.\* Once a company appears on the list, employees would have 180 days to divest themselves of prohibited interests. Until the employee divested himself of the interest, he could not work on matters affecting that entity. Employees commencing employment would be given 30 days to divest themselves of prohibited security interests.

5. Annually employees would be required to certify compliance with the security ownership prohibitions. Employees would also be required to certify compliance within 30 days after commencement of NRC employment.

6. With respect to entities not covered by the security ownership prohibitions, NRC employees would be prohibited from providing advice to the NRC on matters affecting the entity if the individual or members of his immediate household held security interests exceeding \$1000 in current value in that entity. Presently employees may work on matters if the interest does not exceed \$7500 in value.

Twenty-eight NRC employees and the NTEU submitted written comments on the proposal. An OGC attorney also met with an NTEU representative. During the course of that meeting the NTEU informed OGC that it received more than 70 phone calls from NRC employees on the proposal. Enclosure 1 is a summary of employee

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\* Enclosure 3 consists of a list of proposed prohibited securities that was sent to employees for comment, plus a list by occupational code indicating which employees would be covered by the ownership restrictions.

comments and includes copies of a representative sample of these comments. OGC will provide individual Commissioners copies of the other comments upon request.

OGC surmises that the Commission received relatively few comments because most employees either do not own security interests, or did not strongly object to the proposed changes. Although the proposal submitted to employees deviated in some respects from that recommended by OGC in SECY 78-682, OGC believes that with certain exceptions discussed below, the tentative Commission consensus response to that paper serves as a basis for a fair and just rule. In this paper we will not discuss all the issues raised in SECY 78-682. Instead, we will focus on those issues which elicited substantial employee comment or where OGC believes the Commission should consider modifications to its earlier tentative consensus position.

#### Fuel Cycle Securities

Surprisingly, there were few employees who complained about the proposal to prohibit NRC employees from owning security interests issued by fuel cycle applicants or licensees. Because several major oil companies would be included, we anticipated more of a response. The one major complaint here comes from the Atomic Safety and Licensing Board Panel.

Four part-time members of the Licensing Board own Union Carbide stock. Union Carbide falls within the proposed prohibition because it is licensed by the Commission to operate a uranium mill. One of these members is currently employed by Union Carbide, and three are former Union Carbide employees. Union Carbide stock is part of these employees' retirement program and Chairman Yore states that adoption of the proposed rule would create an unnecessary

hardship for these employees. Chairman Yore argues that these members should not be forced to choose between selling the stock or resigning from the panel simply because Union Carbide operates one uranium mill. OGC agrees and believes that if the Commission adopts a fuel cycle security prohibition these four Licensing Board members should be given an exemption which will permit them to retain the Union Carbide stock. Union Carbide is not a participant in Licensing Board proceedings so allowing these members to continue to hold the stock would not seem to create an appearance of impropriety. Furthermore, with respect to the current Union Carbide employee, it does not make sense to permit an employee to work for a company, but not permit the individual to own stock in it.

#### Nuclear Consulting Firms

This is the only portion of the Commission's proposed rule that has sparked vehement and widescale employee complaints. OGC received approximately 13 comments on that portion of the rule and the NTEU reports approximately fifty telephone calls complaining about this portion of the proposed rule.

OGC recognizes that there are some consulting firms, such as NUS, that derive a substantial portion of their income from providing consulting services to the commercial nuclear industry. However, many companies covered by the proposed prohibition provide consulting services in many disciplines and nuclear is only a small portion of their business. Ideally, the Commission would prohibit its employees from owning security interests in companies which are "substantially engaged in providing consulting services to the nuclear industry". That is the present rule, but unfortunately it cannot be effectively administered. It is

impossible to determine which companies fall within the prohibition. We are unable to gather sufficient information on the dollar volume of nuclear consulting services provided by a company or the percentage of income derived from nuclear consulting. Many firms will not make that information publicly available. Thus, we could not provide employees with a list of those consulting firms whose security interests they could not own. OGC believes that the Commission should not adopt a rule if it cannot identify the companies covered by it.

This leaves the Commission with three possible options. It could (a) prohibit employees from owning security interests in all known nuclear consulting firms; (b) permit employees to own security interests issued by nuclear consulting firms, or (c) attempt to make an informed designation, based on what information is available, of these consulting firms considered to have a significant enough interest in the commercial nuclear industry to warrant prohibiting NRC employees from owning securities issued by these companies. Of these options, OGC recommends alternative (c), but also finds alternative (b) acceptable.

OGC believes that the list we gave NRC employees of all known consulting firms demonstrated the problem of prohibiting employees from owning securities issued by all nuclear consultants. OGC provided employees with a list prepared by the EDO staff of all known consultants. This list included everything from insurance companies, to trucking companies, to locksmiths that provided advice to NRC licenses on which kinds of locks should be used in the licensee's physical security plan. Many employees noted that many of the companies derived only a small portion of their assets from these companies. Other employees found the list to be grossly incomplete, and provided lists of companies which should be added to the list. It seems to OGC that including all firms within the rule is

unjust as it is overbroad and would include many firms whose interest in the nuclear field is minimal. There are other companies, such as component suppliers, that have a far greater financial interest in the nuclear field, yet whose securities NRC employees are free to purchase.

One alternative (Alternative (b)) would be to permit employees to own securities in consulting firms. It can be argued that an absolute prohibition is unnecessary because many of the companies found on the list submitted to employees do not issue securities. Further, if the Commission lowers the de minimis rule to \$1000 (as recommended by OGC), employees will not be permitted to participate in matters affecting a consulting firm if the employee and members of his immediate household own security interests exceeding \$1000 in value. Finally, as noted earlier, most of the consulting firms only derive a small portion of their income from nuclear consultantships. Thus, it can be argued that permitting employees to own stock in consulting firms would not create a public perception that Commission employees have significant financial ties to the commercial nuclear industry that could affect their judgment..

The alternative recommended by OGC (Alternative C) would be to adopt a prohibition against owning "securities issued by consulting firms designated by the Commission". OGC in conjunction with the EDO could recommend to the Commission that NRC employees be prohibited from owning security interests in certain consulting firms. Because financial information is not available in many cases, recommendations would not be based on firm criteria such as \$20 million dollars or more derived annually from nuclear consulting, or that nuclear activities provide the firm with 20 percent or more of the firm's annual income. Instead, it will be based on staff judgments, derived from experience, on what are the major nuclear consulting firms. This process would necessarily be somewhat arbitrary. However, it has the

overriding benefit of prohibiting employees from owning security interests in the major consulting firms.

#### Nuclear Utilities

Under the proposal submitted to employees for comment, employees would be prohibited from owning stocks in a utility from the time the utility filed an application for a construction permit until the plant was decommissioned. In drawing up our proposal, we forgot about the possibility that a utility might file an application seeking an early site review prior to filing an application for a construction permit. Because of the substantial staff efforts that would be devoted to the early site review and because filing such an application would be such a strong indication that the utility is contemplating entering into the commercial nuclear field, OGC is recommending that the security ownership prohibition be extended to utilities who file applications for early site reviews.

#### Time to Divest Securities

OGC believes NRC employees should be given 365 days rather than the proposed 180 days to divest themselves of securities interests from the time they first appear on the prohibited list. We believe employees should be given two tax years so that the employee has the opportunity to mitigate to some extent the tax consequences of the forced divestiture. This recommended approach is supportable because under one of our other recommendations employees would not be permitted to work on matters affecting an entity on the proscribed list until the employee had sold the prohibited security interest. OGC believes that the Commission gains little from a conflict of interest perspective by



limiting the divestiture period to 180 days, but gains much in affording many employees who have accepted government employment at a financial sacrifice the opportunity to minimize adverse tax consequences.

Reduce the \$7500 de minimis rule to \$1000

As OGC noted in SECY 78-682, ADM, NRR, OSD, and CON all believe that the \$7500 de minimis rule should be retained. Their main argument is that in inflationary times \$7500 is a limited sum. Several employees submitted comments supporting that view. OGC continues to believe that a \$1000 rule is justified. Under the Ethics in Government Act a \$1000 or \$5000 rule is required for the effective administrative enforcement of the Commission's regulations. Of these two figures, we believe \$1000 should be adopted because \$5000 to some employees may represent a substantial portion of their stock portfolio or liquid assets. This full argumentation behind this recommendation is set forth in great length in SECY 78-682 and will not be repeated here.

Open Commission Meeting to Discuss This Proposal

Several employees, in addition to the NTEU, have requested that the Commission hold an open meeting to discuss these security ownership proposals with employees before adopting a final rule. OGC believes that there is some merit in this proposal if the Commission desires to prohibit employees from owning securities in all consulting firms. As noted earlier, there is strong opposition to that proposal and the Commission may wish an opportunity to receive first-hand employee comments on the proposed approach. However, if the Commission decides to delete that part of the proposed rule or modify it to include only those firms

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designated by the Commission, OGC does not believe an open meeting is required (except for an affirmation vote) because virtually all of the major employee complaints would have been resolved.

Recommendation:

That the Commission approve the enclosed Federal Register notice which contains the text of a final rule. Public comment is not required under the Administrative Procedure Act because this is an internal personnel matter. Prompt Commission action is requested because OGC would like to have the rule in effect by July 1, the date NRC employees GS-13 to 15 are requested to fill out their annual confidential statement of employment and financial interests. Because we are recommending the lowering of the de minimis rule to \$1000, it is important that the rule be in effect by then so that employees can be requested to list all security interests exceeding \$1000. Presently, only those above \$7500 are listed. Thus, OGC could inform employees what matters they may not work on based on the new rule. It makes little sense to have employees list only those interests exceeding \$7500 and then shortly thereafter reduce that limit to \$1000. Under the Ethics in Government Act, after the Commission approves the final rule, we must also send it to the Office of Government Ethics, OPM, for approval. It will take OPM approximately one week to review our proposal. Commission action on this paper is requested by June 15 at the very latest.



James A. Fitzgerald  
Acting Assistant General Counsel

Enclosures:

1. Summary of Employee comments
2. Draft Federal Register Notice
3. List of Prohibited Securities & Employee Coverage

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Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, May 25, 1979.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT May 18, 1979, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of June 4, 1979. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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ENCLOSURE 1

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Enclosure 1

Summary of Employee Comments and OGC Response Thereto

- Four employees argued that the Commission lacks legal authority to prohibit its employees from owning certain securities. OGC believes that Section 161(p) of the Atomic Energy Act, which authorizes the Commission to enact such regulations as may be necessary to carry out the purposes of the Act, provides sufficient legal authority.
- One employee supported the concept of providing employees with a list of prohibited securities, and also exempting many Commission employees below the GS-13 level from the security ownership restrictions.
- Three employees did not believe the Commission should include spouses and other members of the employee's household from owning certain securities. OGC believes that if spouses and other members of the household are not covered, the employee will transfer prohibited security interests to those individuals, making the rule a sham.
- Two employees argued that the Commission should not prohibit its employees from owning security interests in fuel cycle licenses. This issue is addressed in the cover memorandum and also in SECY 78-682.
- Four employees objected to the inclusion of Union Carbide on the prohibited list arguing that operation of a uranium mill constituted a small fraction of the corporations activities. The Chairman of the ASLBP stated that a Union Carbide prohibition would have an adverse affect upon four part-time members of the Licensing Board. Mr. Yore's letter is included in this enclosure. This issue is discussed in the cover memorandum.
- Thirteen employees had comments on the proposed list of consulting firms that NRC employees would be prohibited from owning. This issue is addressed in the cover memorandum and SECY 78-682.
- Three employees requested that the Commission schedule an open meeting to discuss the issues raised by the proposed final rule before the Commission acts upon the OGC recommendations. These employees would like to address the Commission. The NTEU also orally informed OGC that it would like an open meeting. This issue is discussed in the cover memorandum.

- Six employees, plus the NTEU, disagreed with the proposal to lower the \$7500 de minimis rule to \$1000. This issue is briefly discussed in the cover memorandum and at length in SECY 78-682.
- Four employees, plus the NTEU, believe that employees should be given more than 180 days to divest themselves of prohibited securities. This issue is addressed in the cover memorandum and in SECY 78-682.
- One employee argued that new employees should be given more than 30 days after commencement of NRC employment to sell prohibited security interests. OGC believes that employees have sufficient time as employees are notified of the security ownership prohibition before they accept employment. It frequently takes employees several months to obtain a security clearance and this added to the thirty days should be a sufficient divestiture period.
- One employee, plus the NTEU, complained about the tax consequences that may arise from a forced divestiture. OGC has discussed this matter with the Internal Revenue Service and, unfortunately, there is little the Commission can do to mitigate the tax consequences.