



CHAIRMAN

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

OCT 24 1989

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Advance Copy

ACRS - General

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PDR: per J. Kathy

MEMORANDUM FOR: Ivan Catton
FROM: Kenneth M. Carr
SUBJECT: EXEMPTION UNDER 18 U.S.C. 208(b)(1)

With the concurrence of the other Commissioners, I hereby grant you an exemption under 18 U.S.C. 208(b)(1) permitting you to participate personally and substantially as a member of the Advisory Committee on Reactor Safeguards (ACRS) in any particular matter which will have a direct and predictable effect on the Westinghouse Electric Corporation's commercial nuclear activities. The exemption is effective for the remainder of your current term as a member of the Savannah River Senior Advisory Panel.¹ I understand that this term will expire on or about October 31, 1991.

The exemption is required because of the following facts: You have worked as a consultant at the Department of Energy's Savannah River Reactor Plant (SRRP) for some time. You began work at SRRP when the Plant was under the management of E.I. DuPont de Nemours & Co. You were thus a consultant to Du Pont. However, on April 1 of this year, the management of SRRP was assumed by the Westinghouse Savannah River Corporation (WSRC), a wholly-owned subsidiary of the Westinghouse Electric Corporation. You thus became a Westinghouse consultant on April 1, 1989.

Section 208(a) of Title 18 of the United States Code prohibits a government employee, including a special government employee, from participating in any particular matter which would have a direct and predictable effect on any entity in which he, or an entity by which he is employed, has a financial interest. While section 208(a) thus would prohibit you from taking part as an ACRS member in any particular matter which would have a direct and predictable effect on the Westinghouse Electric Corporation, you are expected to participate, as an ACRS member, in issues involving commercial nuclear reactors, including the review of standard designs for commercial nuclear reactor plants requiring NRC certification. Some of these plants include Westinghouse nuclear steam supply systems.

¹No waiver relating to your service on the Savannah River Senior Advisory Panel will be granted for any period after the expiration of your current term as a member of that panel.

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However, section 208(b)(1) provides that the employee may be exempted from the prohibition of section 208(a) upon a determination by the official responsible for the employee's appointment to his government position that the financial interest in a particular NRC matter affecting that interest is "not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from" the employee. I am granting you an exemption under this provision because I believe that it is important, because of your substantive expertise, that you be permitted to participate, as an ACRS member, in matters involving Westinghouse Electric Corporation.

I understand that you will serve at the Savannah River Reactor Plant for no more than six days a year for the remainder of your current term as a member of the Savannah River Senior Advisory Panel, and that your earnings from that service are expected to be small, both in absolute terms and in relation to your total income. It is my determination that this interest is not so substantial as to be likely to affect the integrity of your services in matters affecting Westinghouse Electric Corporation that come before the ACRS.

In making the determination to grant this exemption, I have also taken into consideration the following: WSRC has its own board of directors, makes its own hiring decisions, and receives its funds from the Department of Energy. The change in management at SRRP was an unexpected event beyond your control. You went to work at SRRP for Du Pont; you did not seek employment with a Westinghouse subsidiary. The ACRS's advice is rendered in a forum governed by the Federal Advisory Committee Act's rules on openness and balance of membership. I further note that in reviewing applications for Commission certification of standard designs, the ACRS will not be advising the Commission on a choice of the best from among a range of competitors, but rather will review all proffered standard designs against the same standards.

This exemption does not permit you to take part, as an ACRS member, in particular matters which have a direct and predictable effect on the WSRC itself during the period in which you are employed by the WSRC.

The Director of the Office of Government Ethics has stated that he does not object to NRC's granting this waiver.

cc: OGC
PDR

Kenneth M. Carr