



Department of Energy
Washington, DC 20585

May 21, 2013

MEMORANDUM FOR THE SECRETARY

FROM: SUSAN F. BEARD *Susan F. Beard*
DESIGNATED AGENCY ETHICS OFFICIAL

SUBJECT: Determination to Grant a Limited Waiver of Ethics Pledge Restriction and Authorization pursuant to 5 C.F.R. § 2635.502(d)

Pursuant to Section 3 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009), and after consultation with the Counsel to the President, I hereby waive the restrictions in Paragraph 2 of the Ethics Pledge, solely with respect to your former client, General Electric. I have determined that this limited waiver is necessary because it is in the public interest for you, when representing the interests of the Department of Energy and the United States, to be able to participate in certain official matters that involve General Electric ("GE").

Executive Order 13490 requires all covered appointees to abide by certain commitments. One of those commitments provides that a covered appointee may not, for a period of two years from the date of his appointment, participate in any particular matter involving specific parties that is directly and substantially related to his former employer or former client. "Former client" includes anyone for whom the appointee has served personally as a consultant within two years prior to his appointment. GE meets the definition of "former client" because of your prior position as a member of the GE Ecomagination Advisory Board. The restrictions contained in Paragraph 2 of the Ethics Pledge may be waived upon a determination that it is in the public interest to grant a waiver.

Secretary of the Department of Energy

As Secretary of the Department of Energy, you will be responsible for directing the Department in its stated mission to: catalyze the timely, material, and efficient transformation of the nation's energy system and secure U.S. leadership in clean energy technologies; maintain a vibrant U.S. effort in science and engineering as a cornerstone of our economic prosperity with clear leadership in strategic areas; enhance nuclear security through defense, nonproliferation, and environmental efforts; and establish an operational and adaptable framework that combines the best wisdom of all Department stakeholders to maximize mission success.

General Electric

In the two year period prior to your appointment as Secretary, you served as a member of the Advisory Board of Ecomagination – a clean technology research and development initiative of



GE – providing advice on a roughly one-day per year basis. This limited relationship with GE did not include the provision of advice on nuclear matters. Your compensation was not so significant that it would cause a reasonable person to question your ability to be impartial with respect to official matters involving GE.

GE is active in industries aligned with the Department's broad mission in solar, wind, nuclear, natural gas, and smart grid technologies. Further, GE is subject to regulation by the Department. At present, the Department has a number of pending rulemaking proceedings to establish energy conservation standards for certain residential products and commercial equipment. These rulemakings include particular matters involving specific parties (including GE), in which the Secretary would be expected to have significant involvement in the underlying substantive policy decisions.

GE is also one of two primary U.S. designers and suppliers of nuclear reactors and reactor components. The Department and the Secretary are key advocates for advancing U.S.-constructed nuclear power plants abroad. The Secretary is expected to encourage other nations to join the Convention on Supplementary Compensation for Nuclear Damage ("CSC"), which would strengthen the ability of U.S. nuclear suppliers – including GE – to compete for the sale of commercial power plants overseas.

In addition, pursuant to section 57b of the Atomic Energy Act of 1954, as amended, the Secretary is required to make a determination regarding the export of unclassified nuclear technology. The responsibility to make these determinations is nondelegable. This statutory provision includes implementing regulations at 10 C.F.R. Part 810. Historically, GE has frequently applied for Part 810 export applications, and it is anticipated that GE will continue to do so.

GE Nuclear designed and constructed the Fukushima Daiichi Nuclear Power Plant reactors affected by the 2011 tsunami. The Department and its national laboratories continue to be involved in the aftermath of the Fukushima disaster. Secretary Chu has been actively involved in discussions with the government of Japan since the tsunami, and it is expected that you would be the Department's representative and technical expert to the Japanese government on this matter.

In the area of renewable energy technology, it is anticipated that the Secretary will play an instrumental role in a number of current and proposed tax credits that will directly affect industries which, in some cases, are made up of a small number of producers, including GE.

Because GE's business lines overlap with portions of the Department's portfolio, it is anticipated that in order to effectively lead the Department, you will need to be involved in several matters and initiatives in which GE is a party or will be directly affected as part of a small group of entities.

Waiver of Paragraph 2 of the Ethics Pledge

Absent a waiver, you would be prohibited by Paragraph 2 of the Ethics Pledge from participating in any particular matter involving specific parties in which GE is or represents a party. I have

determined that it is in the public interest to waive this restriction as it pertains to GE for the following reasons:

Your knowledge of theoretical nuclear physics, energy technology, and policy studies are essential to the United States energy program;

Your prior service as Under Secretary of the Department of Energy, from 1997 to January 2001, and as Associate Director for Science in the Office of Science and Technology Policy in the Executive Office of the President, from 1995 to 1997, uniquely qualify you to lead the Department in its broad-based mission;

Your technical and subject-matter expertise, and your unrestricted personal involvement, is crucial to carrying out the Department's core missions, in furtherance of the public interest;

In your role as Secretary, you will be expected to represent the Department and the United States in discussions with the government of Japan concerning the Fukushima Daiichi Nuclear Power Plant and with other foreign governments regarding the CSC;

Your prior affiliation with GE was limited to service as a member of the GE Ecomagination Advisory Board, a roughly once-a-year commitment. Your compensation was not so significant that it would cause a reasonable person to question your ability to be impartial; and

Your advisory duties were limited to GE – Ecomagination – and did not include the provision of advice on nuclear energy matters.

Accordingly, you are provided a limited waiver of Paragraph 2 of the Ethics Pledge, permitting you – when representing the interests of the Department of Energy and the United States as Secretary – to be involved in non-monetary, specific party matters involving GE. This waiver also serves as an authorization pursuant to 5 C.F.R. § 2635.502(d) to participate in particular matters in which GE is or represents a party with the same restrictions outlined below.

This limited waiver does not permit you to participate in: (1) the evaluation of any application for funding or decision to award, extend or modify any contract; grant; or other financial agreement between the Department and GE; or (2) any matter in which you have participated as a member of the GE Ecomagination Advisory Board.

This waiver does not affect your obligation to comply with other provisions of the Ethics Pledge or with all other pre-existing government ethics rules.