



The Deputy Secretary of Energy  
Washington, DC 20585

July 2, 2010

MEMORANDUM FOR BOB GRAHAM

CO-CHAIR

NATIONAL COMMISSION ON THE BP DEEPWATER  
HORIZON OIL SPILL AND OFFSHORE DRILLING

FROM:

DANIEL B. PONEMAN

A handwritten signature in black ink, appearing to read "Daniel B. Poneman", written over the printed name.

SUBJECT:

Conflict of Interest Waiver Pursuant to 18 U.S.C. § 208(b)(3)

This memorandum grants you a waiver pursuant to 18 U.S.C. § 208(b)(3), to allow your participation as a member of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (“Commission”), an advisory committee established by Executive Order 13543 on May 22, 2010.

Section 208(a), Title 18, United States Code, prohibits you from participating personally and substantially, as a Government employee, in any particular matter in which, to your knowledge, you or your spouse, minor child, general partner, or any person or organization in which you are serving as officer, director, trustee, general partner, or employee, or any person or organization with whom you are negotiating or have any arrangement concerning prospective employment, has a financial interest. This prohibition applies equally to special Government employees (SGEs).<sup>1</sup> Section 208(b)(3) provides that subsection (a) shall not apply if, in the case of a SGE serving on an advisory committee within the meaning of the Federal Advisory Committee Act (FACA), the official responsible for the SGE’s appointment, or his designee, certifies in writing that the need for the employee’s service outweighs the potential for a conflict of interest created by the financial interest involved.<sup>2</sup>

The objective of the Commission is to examine the relevant facts and circumstances concerning the root causes of the Deepwater Horizon explosion, fire, and oil spill, and to develop options to guard against and mitigate the impact of any oil spills associated with offshore drilling in the future. In developing such options, the Commission must consider the environmental, public health, and economic effects of such options, including those options that involve: improvements to Federal laws, regulations, and industry practices applicable to offshore drilling that would ensure effective oversight,

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<sup>1</sup> 18 U.S.C. § 202(a).

<sup>2</sup> Pursuant to Executive Order 12674 and a delegation from the Secretary of Energy, I have the authority to issue conflict-of-interest waivers for SGEs serving on advisory committees.



monitoring, and response capabilities; protecting public health and safety, occupational health and safety, and the environment and natural resources; addressing affected communities; and organizational or other reforms of Federal agencies or processes necessary to ensure such improvements are implemented and maintained.

As part of your duties, you will be responsible for providing your expertise to the President in addressing how to prevent – and mitigate the impact of – any future spills that result from offshore drilling. Specifically, the Commission will work to determine the causes of this catastrophe and the safety and environmental protections we need to prevent a similar disaster from happening again. In order to fulfill this mission in such a short timeframe, individuals with a deep understanding of the technology and operation of offshore drilling platforms, environmental standards, health standards, industry practices, and the economic impacts of such disasters on the Nation are needed.

The President is looking to the Commission to assist in the United States' efforts in determining the root causes of this national disaster and prevent a repeat of such catastrophe. You served two terms as Florida's governor, and represented Florida as a United States Senator for almost twenty years. During that time, you earned a reputation as a champion of the environment, leading the most extensive environmental protection effort in the state's history. Following your retirement from the U.S. Senate, you served as Chairman of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism whose mandate was to build on the work of the 9/11 Commission. Recently, you were also appointed to serve as a Commissioner on the Financial Crisis Inquiry Commission, established by Congress to examine the global and domestic causes of the recent financial crisis. That Commission will provide its findings and conclusions in a final report due to Congress on December 15, 2010. Lastly, you have been recognized by national and Florida organizations for your public service including The Woodrow Wilson Institute award for Public Service, The National Park Trust Public Service award and The Everglades Coalition Hall of Fame. It is this experience that uniquely qualifies you to serve as a Co-Chair of this Commission.

You have disclosed a number of investment interests that could potentially be affected by the advice of the Commission. Specifically, you have a stock interest in the following companies: Apache Corporation, Chevron Corporation, Devon Energy Corporation, ENI SPA SPONS ADR, Gazprom OAO Spons ADR, Helmerich & Payne Inc., Hess Corporation, Occidental Petroleum Corporation, Petroleo Brasileiro SA ADR, Repsol SA Sponsored ADR, Royal Dutch Shell PLC ADR, Statoilhydro ASA SPONS, Talisman Energy, Inc., Total SA SPONS ADR, XTO Energy Inc., National Grid PLC, EON AG ADS, GDF Suez SP ADR, and Ishares Trust of Dow Jones US Energy Sector. The assets you own qualify, individually, as de minimis holdings under section 5 C.F.R. § 2640, Subpart B. In the unlikely event, however, that a specific party matter affects some or all of the companies in which you have an interest, the aggregate value of your interests may exceed the de minimis limits set forth in regulation. As a cautionary measure, this waiver

is being issued to allow you to participate in any particular matter that has a direct and predictable affect upon the financial interests of these entities.

Moreover, you have informed Department officials that you voluntarily sold your stock interest in BP and Transocean in order to remedy an actual conflict of interest. This action will mitigate any real or apparent conflict of interest.

You have also advised that you serve on the Board of Directors of the Graham Companies, Bok Tower Gardens, Wellcare Health Plans, American Institute of Certified Public Accountants, and ACT, Inc. Pursuant to 18 U.S.C. 208, you cannot participate in particular matters that have a direct and predictable effect upon the financial interests of organizations in which you serve as a member of the Board of Directors, unless you first obtain a written waiver or qualify for a regulatory exemption. Therefore, in the unlikely event that such matter arises, this waiver shall apply to any particular matters that have a direct and predictable effect upon the financial interests of Graham Companies, Bok Tower Gardens, Wellcare Health Plans, American Institute of Certified Public Accountants, and ACT, Inc.

You have further advised Department officials you serve on advisory boards of the H. Lee Moffitt Cancer Center & Research Institute. Although this position does not create a conflict of interest within the meaning of 18 U.S.C. §208, it is appropriate to mention it because it creates a covered relationship pursuant to 5 C.F.R. §2635.502. As a result, you are required to be recused from a particular matter involving specific parties in which H. Lee Moffitt Cancer Center & Research Institute is a party or represents a party, unless authorized. It is highly unlikely that such matter will arise; however, in the event it does, I authorize your participation because your service on the Commission outweighs the appearance of a conflict, pursuant to 5 C.F.R. § 2635.502(d).

Balancing the potential for conflict based on the assets represented in your total portfolio and positions, against your unique qualifications, extensive knowledge of the oil and gas industry gained through your experiences in the Federal government, non-profit organizations, and private industry, and your availability to serve on this committee, it is appropriate to issue this waiver. Significant to this analysis is that fact that the companies and organizations in which you have a financial interest have different interests with respect to the various issues surrounding the work of the Commission. All of these companies and organizations may not have simultaneous interests in each stage of the Commission's study; rather, their interests may be limited to various specific inquiries, meaning that the conflict is likely to be more limited than all of assets listed above

Federal advisory committees, like the Commission, are also unavoidably composed of persons who have been employed by or have other interests in the subject matter related to Commission. The fact that a member may have a financial interest that may be affected is simply unavoidable in view of the work and membership of the Commission. Furthermore, the purpose of a Federal advisory committee is to provide advice and

recommendations to the Federal government. Your position is advisory in nature, and you do not, nor does any other Commissioner, have the authority to issue a final decision binding the Federal government. Federal advisory committees are also subject to FACA which requires that the membership of the Commission be balanced in its viewpoints. This balance dilutes the impact any one member has over the Commission. Lastly, FACA requires that Commission recommendations be deliberated in public. The requirement that this be a transparent process gives the public the opportunity to participate and comment on positions taken by Commissioners and the Commission as a whole.

The President chose you to lead this unprecedented effort because of the expertise you have gained through your past and current positions which will be an invaluable asset to the Commission as it addresses this national emergency. As such, I find that the need for your services outweighs the potential for a conflict of interest created by your financial interests. This waiver shall apply to particular matters of general applicability and specific party matters affecting the companies, organizations, and other financial interests listed above insofar as it creates a conflict of interest with your official duties on the Commission.

Pursuant to 5 C.F.R. § 2640.303, the Office of Government Ethics has been consulted on this waiver, has no objection to its issuance, and will be provided with a copy of it.

cc: Susan Beard, Designated Agency Ethics Official