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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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OFFICE OF SECRETARY  
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BRANCH

In the Matter of

GENERAL PUBLIC UTILITIES NUCLEAR

(Three Mile Island Nuclear  
Station, Unit No. 1)

Docket No. 50-289 (CH)

SERVED SEP 6 1985

NOTICE OF HEARING

The Appeal Board as part of its decision on management-related issues in the Three Mile Island, Unit 1 (TMI-1) restart proceeding required that "Mr. Husted have no supervisory responsibilities insofar as the training of non-licensed personnel is concerned." ALAB-772, 19 NRC 1193, 1224 (1984).

The Commission upon reviewing that decision decided to offer Mr. Husted "an opportunity to request a hearing on whether the Appeal Board's condition barring him from supervisory responsibilities insofar as the training of non-licensed personnel is concerned should be vacated." CLI-85-2, 21 NRC 282, 317 (1985). The Commission in CLI-85-2 further stated that it would assign the matter to an Administrative Law Judge if Mr. Husted requested a hearing.

On March 25, 1985 Mr. Husted requested a hearing. Mr. Husted also requested that the proffered hearing be expanded to address whether he "is barred by concerns about his attitude or integrity from serving as an NRC licensed operator, or a licensed operator instructor or training supervisor."

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Mr. Husted maintained that the expanded scope he requested would not require additional agency resources because it would involve consideration of the same factual issues as would the proffered hearing. Therefore, Mr. Husted argued, the potential benefit to himself justified such an expanded scope.<sup>1</sup>

Either hearing would focus on whether the following four concerns regarding Mr. Husted are true, and, if so, whether they require that he not be employed in the jobs in question:

- (1) the alleged solicitation of an answer to an exam question from another operator during the April 1, 1981 NRC written examination;
- (2) the lack of forthrightness of his testimony before the Special Master;
- (3) his poor attitude toward the hearing on the cheating incidents; and
- (4) his lack of cooperation with NRC investigators.

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<sup>1</sup>Both the NRC staff and Three Mile Island Alert (TMIA) responded to Mr. Husted's request. The NRC staff opposed the expanded scope of hearing requested by Mr. Husted. For the reasons set forth in this Order, the Commission disagrees with the staff.

TMIA, without specifying exactly what relief it is seeking, argued that Mr. Husted's request is in reality an attempt by licensee to relitigate issues decided in the TMI-1 restart proceeding, and that intervenors in the restart proceeding have a due process interest in finality of decision.

TMIA's claims are without merit. The Commission is instituting this proceeding, to be held separate from the restart proceeding, in fairness to Mr. Husted, who was not given notice and an opportunity to intervene in the restart proceeding. TMIA's claims of an attempt to relitigate issues in the restart proceeding are unfounded. Those issues have been resolved for the purposes of that proceeding. Moreover, TMIA, if it meets the standards for intervention, may intervene in this separate proceeding. This will provide TMIA the opportunity to protect any interests it may have in this matter.

Therefore, the Commission agrees that the expanded scope he has requested should not require additional agency resources.

Mr. Husted also noted the existence of a July 6, 1983 Stipulation between GPU Nuclear and the Commonwealth of Pennsylvania in which GPU Nuclear agreed not to utilize Mr. Husted to operate TMI-1 or to train operating license holders or trainees. Mr. Husted stated that the licensee has no objection to the scope of hearing as requested by Mr. Husted. Mr. Husted further stated his understanding that the Commonwealth "cannot agree in advance of the proceeding that the outcome would control its view as to the continued need for the Stipulation concerning Mr. Husted."

The Commission recognizes the rights of the parties to this Stipulation. Nonetheless, the Stipulation resulted, at least in part, from an NRC proceeding to which Mr. Husted was not a party. Therefore, in fairness to Mr. Husted the Commission has decided to grant Mr. Husted's request for an expanded scope of hearing. This will provide Mr. Husted with an opportunity to demonstrate his fitness for the positions at issue, and, if results of the hearing are favorable to Mr. Husted, he can then take up the Stipulation with GPU Nuclear and the Commonwealth.


Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 2, notice is hereby given that a hearing will be held before an Administrative Law Judge, to be appointed by the Chief Administrative Judge, Atomic Safety and Licensing Board Panel. The Administrative Law Judge will set the time and place for the hearing and shall hold prehearing conferences as necessary. The scope of the hearing will be as set forth above. The hearing will be conducted pursuant to the procedures contained in 10 CFR Part 2, Subpart G. Any petitions to intervene by any interested person shall be filed in

accordance with 10 CFR 2.714 and, to be timely, shall be filed within 45 days of the date of this Notice. The NRC staff is to participate as a full party, and is to ensure that the record is fully developed.<sup>2</sup>

Pursuant to 10 CFR 2.785, the Commission authorizes an Atomic Safety and Licensing Appeal Board to exercise the authority and perform the review functions which would otherwise be exercised and performed by the Commission.



FOR THE NUCLEAR REGULATORY COMMISSION

  
 Samuel J. Chirk  
 , Secretary of the Commission

Dated in Washington, D.C.

this 5<sup>th</sup> day of September 1985.

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<sup>2</sup>The Commonwealth of Pennsylvania on May 28, 1985 moved to disqualify the law firm of Shaw, Pittman, Potts & Trowbridge from representing both Mr. Husted and GPU Nuclear. That motion is hereby referred to the Administrative Law Judge for resolution.