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UNITED STATES OF AMERICA
Nuclear Regulatory Commission

Before Administrative Law Judge
Morton B. Margulies

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In the Matter of
General Public Utilities Nuclear
(Three Mile Island Nuclear
Station, Unit No. 1)

Docket No. 50-289(CH)

December 6, 1985

MEMORANDUM AND ORDER

This proceeding pertains to Charles Husted, who was a licensed operator training instructor at Three Mile Island Nuclear Station, Unit No. 1, and to alleged cheating and other matters relating to the April 1981 reactor operator examinations that the Commission had ordered for the facility.

By Notice of Hearing, issued September 5, 1985, the Commission ordered that a hearing be instituted to determine: (a) whether the Appeal Board's condition barring Charles Husted from supervisory responsibilities insofar as the training of non-licensed personnel is concerned should be vacated, ALAB-772, 19 NRC 1193, 1224 (1984); and (b) 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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The hearing is to 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 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.

It was further ordered that the hearing is to be held before an Administrative Law Judge pursuant to the Atomic Energy Act of 1954, as amended, and 10 CFR Part 2 and be conducted pursuant to the procedures contained in 10 CFR Part 2, Subpart G. The Administrative Law Judge is to set the time and place of hearing and shall hold prehearing conferences as necessary. Petitions to intervene by any interested party were to be filed in accordance with 10 CFR 2.714, within 45 days of the date of the Notice. The NRC Staff was directed to participate as a full party, and to ensure that the record is fully developed.

The Commission referred to the Administrative Law Judge for resolution a motion by the Commonwealth of Pennsylvania, of May 28, 1985, to disqualify the law firm of Shaw, Pittman, Potts & Trowbridge, of Washington, D.C. from representing both Mr. Husted and General Public Utilities Nuclear Corporation (GPU).

On September 12, 1985 the Chief Administrative Judge designated this Administrative Law Judge to preside at the proceeding.

Shaw, Pittman, Potts & Trowbridge withdrew its appearance on behalf of Charles Husted effective October 15, 1985. The Commonwealth of Pennsylvania, on October 21, 1985 filed a notice that it did not intend to participate in the hearing. The matter of the law firm representing Mr. Husted and GPU is no longer at issue. The motion as been rendered moot and shall be dismissed.

Pursuant to the Notice of Hearing, Three Mile Island Alert, Inc. (TMIA) filed a timely request for leave to intervene. Petitioner had established its standing to intervene in the TMI-1 Restart proceeding from which the subject proceeding evolved. Its current interest pertains to whether the public (including TMIA members residing in the vicinity of the plant) will have reasonable assurance of safety if Mr. Husted is returned to his former position within the training department and is allowed to resume his responsibilities as a licensed operator at TMI. TMIA additionally seeks to bar any result in the subject proceeding that would be inconsistent with the findings before the Licensing Board (in LBP-82-56) and Appeal Board (in ALAB-772) to which Petitioner was a party, on the issue of Mr. Husted's attitude and integrity. Further, it wants to participate in any other related issue that continues in controversy, i.e., whether or not Mr. Husted made an unsuccessful attempt to cheat on a NRC licensing examination.

GPU also filed a timely petition to intervene in the proceeding. Its interest is that the outcome of the proceeding will affect Petitioner's perspective as an employer and may affect individuals in its employ in addition to Mr. Husted. GPU expects that employees may be

identified as witnesses, or may otherwise become involved in the proceeding.

Charles Husted, in answers filed November 1, 1985, concluded that TMIA has an interest in the proceeding and adequately set forth how that interest may be affected by the results of the proceeding. He further concluded Petitioner had adequately set forth the specific aspects of the proceeding as to which it seeks to intervene. As to GPU, Mr. Husted found it had adequately set forth its interest in the proceeding and how that interest may be affected. He also found that the specific aspects of the proceeding as to which Petitioner seeks to intervene were adequately set forth.

In responses filed November 12, 1985, NRC Staff did not oppose TMIA's and GPU's petitions to intervene subject to petitioners satisfying the further requirements of 10 CFR 2.714(b), which requires the filing of a litigable contention in order for one to participate as a party.

Petitioners, TMIA and GPU, have made the necessary showing as to standing and interest to participate as parties in the proceeding, as is prescribed by 10 CFR 2.714(a) and (d). Each has yet to file a contention and have it accepted as provided for in 10 CFR 2.714(b). Petitioners shall be afforded a specific opportunity to make such filings. Sufficient time will be given for TMIA and GPU to file contentions, and for the filing of answers, all in advance of the holding of an initial prehearing conference. This will permit everyone to be fully prepared to participate at the conference and to enable

meaningful consideration of the issues on the agenda. The matters to be reviewed will go beyond those normally addressed at an initial prehearing conference because this is not typical of the proceedings that are generally heard before the agency. It does not fit a usual format. Participants in the proceeding will be given the opportunity to present their views, prior to holding the hearing, on such matters as the nature of the proceeding, the issues encompassed, the expected extent of their participation and what shall constitute the record. Where possible, the participants should be prepared to support their positions with authorities, preferably in writing. In implementing the foregoing, the following procedure shall be adhered to.

Petitioners shall file contentions which they seek to have litigated by January 13, 1986. Answers, from other than Staff, are due January 27, 1986. Staff's answers shall be filed by February 3, 1986. Filings are to be made so that the documents are received by recipients on the dates given.

The initial prehearing conference will be held at Harrisburg, Pennsylvania on February 19, 1986, and on the following day if necessary. The time and place will be set by subsequent notice. Participants in the proceeding or their counsel are directed to appear at the initial prehearing conference.

Matters to be considered shall include:

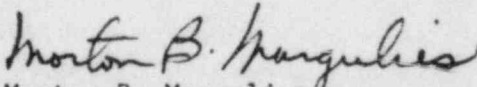
- (1) the litigability of the proposed contentions;
- (2) the identification of the key factual and legal issues;
- (3) determining the parties to the proceeding;

- (4) defining the nature of the proceeding and the relief that can be granted;
- (5) establishing who has the burdens of proof and of going forward;
- (6) establishing the extent of participation of each of the parties and the remedy sought;
- (7) determining what the record shall consist of;
- (8) determining whether discovery is necessary; and
- (9) establishing a schedule for further actions in the proceeding.

The conference will be reported verbatim.

Petitioners, Staff and Mr. Husted are encouraged to meet and confer prior to the conference in order to attempt to narrow and simplify the issues.

It is so Ordered.


Morton B. Margulies
Administrative Law Judge

Dated at Bethesda, Maryland
this 6th day of December, 1985.