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June 13, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )  
CHARLES HUSTED )

DOCKETED  
USNRC  
Docket No. 50-289-CH  
'85 JUN 14 A11:51

NRC STAFF RESPONSE TO CHARLES HUSTED'S  
MOTION TO DEFER CONSIDERATION OF THE  
COMMONWEALTH OF PENNSYLVANIA'S MOTION TO  
DISQUALIFY MR. HUSTED'S LEGAL COUNSEL

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BRANCH

I. INTRODUCTION

In a "Motion by Charles Husted to Refer Consideration of the Commonwealth of Pennsylvania's Motion to Disqualify the Law Firm of Shaw, Pittman, Potts & Trowbridge," dated May 28, 1985, Mr. Husted requests that the Commission defer ruling on the Commonwealth's motion to disqualify the law firm representing Mr. Husted and refer the motion to the presiding officer assigned to conduct the hearing which Mr. Husted has requested. For the reasons discussed below, the Staff supports deferral of consideration of the Commonwealth of Pennsylvania's Motion.

II. DISCUSSION

In Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 317 (1985), the Commission decided to provide Mr. Charles Husted with "an opportunity to request a hearing on whether the Appeal Board's condition barring him from supervisory responsibilities insofar as the training of nonlicensed

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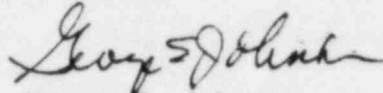
personnel is concerned should be vacated." Id. The Commission stated that should Mr. Husted request such a hearing within the time provided, the Commission would "assign the matter to an Administrative Law Judge for hearing separate from this proceeding." Id. By letter of March 25, 1985, Mr. Husted, through counsel, requested such a hearing. See, Notice to Commission, Appeal Board, Licensing Board and Parties, dated March 25, 1985, sent to Docket No. 50-289 SP (Restart) service list.

At the present time, however, no presiding officer has been designated, nor have the parties to the proceeding been determined. The Commonwealth of Pennsylvania's motion is therefore premature. In addition, there is no apparent reason why Commission action at this time on the Commonwealth of Pennsylvania's motion is either necessary or appropriate. The motion to disqualify the law firm of Shaw, Pittman, Potts & Trowbridge from representing Mr. Husted is a matter which would fall within the jurisdiction of a presiding officer, once designated. 10 C.F.R. § 2.717(a). Indeed, the Commonwealth of Pennsylvania's motion may involve resolution of disputed issues of fact which it would be appropriate for a presiding officer, rather than the Commission, to hear in the first instance. Given the Commission's intent to designate an Administrative Law Judge to conduct the proceeding, the Staff agrees with the position taken by Charles Husted, that consideration of Commonwealth of Pennsylvania's motion ought to be deferred until a presiding officer is designated. At that time, the subject motion may be referred or resubmitted to the presiding officer, as appropriate.

III. CONCLUSION

For the reasons stated above, the Staff supports Charles Husted's motion to defer consideration of the Commonwealth of Pennsylvania's disqualification motion until a presiding officer is designated with jurisdiction over such motion.

Respectfully submitted,



George E. Johnson  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 13th day of June, 1985.

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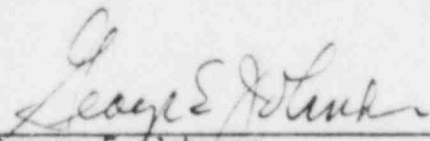
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NOTICE OF APPEARANCE

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BRANCH

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of the NRC Staff in the captioned matter. In accordance with 10 C.F.R. Section 2.713(b), the following information is provided:

Name: George E. Johnson  
Address: U.S. Nuclear Regulatory Commission  
Office of the Executive Legal Director  
Washington, DC 20555  
Telephone Number: 301-492-7445  
Admissions: Court of Appeals, State of New York  
Court of Appeals, State of Maryland  
U.S. District Court, District of Columbia  
U.S. Court of Appeals, 9th Circuit  
Name of Party: NRC Staff

  
\_\_\_\_\_  
George E. Johnson  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 13th day of June, 1985.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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CERTIFICATE OF SERVICE

OFFICE OF SECRETARY  
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I hereby certify that copies of "NRC STAFF RESPONSE TO CHARLES HUSTED'S MOTION TO DEFER CONSIDERATION OF THE COMMONWEALTH OF PENNSYLVANIA'S MOTION TO DISQUALIFY MR. HUSTED'S LEGAL COUNSEL" and "NOTICE OF APPEARANCE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 13th day of June, 1985:

\*Samuel J. Chilk  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Louise Bradford  
Three Mile Island Alert  
1011 Green Street  
Harrisburg, PA 17102

\*Herzel H. E. Plaine, General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Lynne Bernabei, Esq.  
Government Accountability Project  
1555 Connecticut Ave., NW  
Washington, DC 20009

Debbie Bauser  
Counsel for Charles Husted  
Shaw, Pittman, Potts & Trowbridge  
1800 M Street, NW  
Washington, DC 20036

\*Ivan Smith  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Mr. Henry D. Hukill  
Vice President  
GPU Nuclear Corporation  
Post Office Box 480  
Middletown, PA 17057

\*Sheldon J. Wolfe  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Thomas Y. Au, Esq.  
Office of Chief Counsel  
Department of Environmental Resources  
505 Executive House  
P. O. Box 2357  
Harrisburg, PA 17120

\*Mr. Gustave A. Linenberger, Jr.  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Mr. Marvin I. Lewis  
6504 Bradford Terrace  
Philadelphia, PA 19149

Mr. C. W. Smyth, Manager  
Licensing TMI-1  
Three Mile Island Nuclear Station  
P. O. Box 480  
Middletown, PA 17057

Ms. Marjorie Aamodt  
200 North Church Street  
Parkersburg, PA 19365

Sen. Allen R. Carter, Chairman  
Joint Legislative Committee on Energy  
Post Office Box 142  
Suite 513  
Senate Gressette Building  
Columbia, SC 29202

Chauncey Kepford  
Judith Johnsrud  
Environmental Coalition on Nuclear Power  
433 Orlando Avenue  
State College, PA 16801

Ms. Frieda Berryhill, Chairman  
Coalition for Nuclear Power Plant  
Postponement  
2610 Grendon Drive  
Wilmington, DE 19808

Michael McBride, Esq.  
LeBoeuf, Lamb, Leiby & McRae  
Suite 1100  
1333 New Hampshire Avenue, NW  
Washington, DC 20036

\*Atomic Safety & Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

\*Atomic Safety and Licensing Appeal  
Board Panel (8)  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Ms. Ellyn R. Weiss  
Harmon, Weiss & Jordan  
2001 S Street, NW  
Suite 430  
Washington, DC 20009

William S. Jordan, III, Esq.  
Harmon, Weiss & Jordan  
20001 S Street, NW  
Suite 430  
Washington, DC 20009

Jordan D. Cunningham, Esq.  
Fox, Farr and Cunningham  
2320 North 2nd Street  
Harrisburg, PA 17110

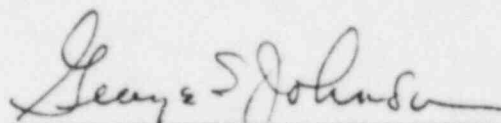
Ms. Jane Lee  
183 Valley Road  
Etters, PA 17319

Michael W. Maupin, Esq.  
Hunton & Williams  
707 East Main Street  
P. O. Box 1535  
Richmond, VA 23212

Mr. Thomas Gerusky  
Bureau of Radiation Protection  
Dept. of Environmental Resources  
P. O. Box 2063  
Harrisburg, PA 17120

George F. Trowbridge, Esq.  
Shaw, Pittman, Potts & Trowbridge  
1800 M Street, NW  
Washington, DC 20036

\*Docketing & Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555



George E. Johnson  
Counsel for NRC Staff