



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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The Honorable William F. Goodling
United States House of Representatives
Washington, D.C. 20515

Dear Congressmen Goodling:

Your letter of February 12, 1985 to the Commission has been referred to me for reply. You requested that Judge Ivan Smith be replaced as Chairman of the Atomic Safety and Licensing Board presiding over the Three Mile Island Unit 1 restart proceeding, because of a letter that Smith sent to United States District Court Judge Sylvia Rambo. You also requested that the Commission not make a decision on restart until the Ivan Smith question and all other matters related to TMI-1 restart are satisfactorily completed.

Three parties to the restart proceeding have filed motions with Judge Smith asking him to recuse himself from further participation in the restart proceeding because of his letter to Judge Rambo, and also because of statements he made during the course of the restart proceeding.

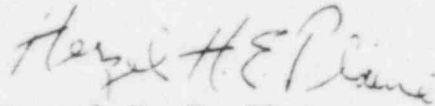
Under the Commission's regulations, 10 CFR 2.704 (enclosed), Judge Smith is given the opportunity to rule on these disqualification motions. Judge Smith denied these motions on February 20, 1985. The Commission has taken review of that decision, and will be ruling on the matter in the near future. With regard to other matters related to restart, the attached order fully explains the Commission's decision that the Licensing Board should decide the training and mailgram issues, but that no further hearings are required in the restart proceeding. The Commission must now decide whether to

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await the Licensing Board's decision on training and the mailgram before deciding whether to authorize restart.

Sincerely,

A handwritten signature in cursive script, appearing to read "Herzel H. E. Plaine".

Herzel H. E. Plaine
General Counsel

Enclosures:
As stated

cc: The Honorable George W. Gekas
Parties to TMI-1 Restart Proceeding

GEORGE W. GEKAS
17TH DISTRICT PENNSYLVANIA

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEES

CRIMINAL JUSTICE - RANKING MINORITY MEMBER

CONSTITUTIONAL AND CIVIL RIGHTS

SELECT COMMITTEE ON AGING



Congress of the United States

House of Representatives

Washington, D.C. 20515

February 12, 1985

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Mr. Nunzio Palladino
Chairman
Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dear Chairman Palladino:

The Nuclear Regulatory Commission has scheduled a public meeting on Wednesday, February 13, 1985 -- tomorrow -- to consider and affirm an order on the importance and impact on the possible restart of the Unit One reactor at Three Mile Island of those TMI hearings presently in progress or under review by the NRC.

While this matter before the Commission on Wednesday certainly represents one of the most important of the TMI saga to date, one issue of greater preeminence has appeared which must receive your immediate attention: the disqualification of administrative law judge Ivan W. Smith.

Judge Smith's recent letter to Judge Sylvia H. Rambo requesting leniency for James R. Floyd was an admission of bias which certainly cannot go unnoticed. By expressing his "personal" desire about the outcome of the Floyd case, Smith discarded the robes of judicial impartiality. But, even though his actions now show the tint of his personal, not judicial, opinion, Smith still maintains judicial stature in the Three Mile Island review.

The fact of Smith's letter to Judge Rambo is enough to cast a cloud over the entire TMI proceeding in which Smith participated. The absence of any action -- by the NRC or Smith himself -- to remove him from the hearing board after such an appearance of bias jeopardizes the validity of any future -- and past -- hearings on Three Mile Island. Any future actions by Smith as the administrative law judge considering the restart of TMI Unit 1 would be called into question. Both sides of the issue, and especially the general public, are being dealt a great disservice by this lack of proper action.

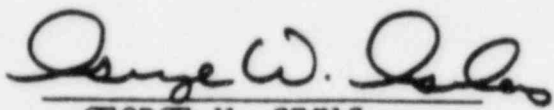
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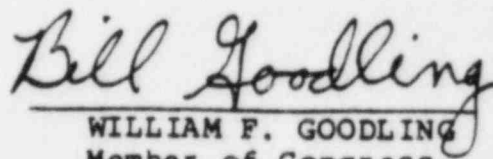
We, as representatives from the towns and counties surrounding Three Mile Island, beseech you to resolve the Ivan Smith question before continuing with any other aspect of consideration. And, following the resolution of that matter, we feel that the Nuclear Regulatory Commission should consider the question of restart only and not until the full and satisfactory completion of all hearings and matters related to Three Mile Island now pending before the Nuclear Regulatory Commission.

Thank you for your time and consideration of our views.

Very truly yours,



GEORGE W. GEKAS
Member of Congress



WILLIAM F. GOODLING
Member of Congress

GWG/wac