

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



January 25, 1985

RECEIVED
INF

'85 JAN 30 P2:22

RECEIVED
GENERAL SERVICE
BRANCH

The Honorable Robert W. Edgar
United States House of Representatives
Washington, D.C. 20515

SERVED JAN 30 1985

Dear Congressman Edgar:

Your letter of January 15, 1985 to Chairman Palladino 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 stated that the Commission should not make a decision on restart until Mr. Smith had been replaced and the Licensing Board's work had been thoroughly reviewed.

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. If he does not grant any of the motions or disqualify himself, the motions will be referred to the Atomic Safety and Licensing Appeal Board to determine the sufficiency of the grounds alleged for disqualification. The Commission may then choose to review the Appeal Board decision.

Judge Smith has not yet ruled on the disqualification motions. We will inform you of the agency's final decision.

Sincerely,

Herzel H. E. Plaine
General Counsel

8502010512 850125
PDR COMMS NRCC
CORRESPONDENCE PDR

Enclosure: As stated

cc: Parties to TMI-1 Restart Proceeding

DS02

§ 2.704 Designation of presiding officer, disqualification, unavailability.

31 FR 16309

(a) The Commission may provide in the notice of hearing that one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the matter, shall preside.

If the Commission does not so provide, the Chairman of the Atomic Safety and Licensing Board Panel will issue an order designating an atomic safety and licensing board appointed pursuant to section 191 of the Atomic Energy Act of 1954, as amended, or, if the Commission has not provided for the hearing to be conducted by an atomic safety and licensing board, the Chief Administrative Law Judge will issue an order designating an administrative law judge appointed pursuant to section 3105 of title 5 of the United States Code.

(b) If a designated presiding officer or a designated member of an atomic safety and licensing board deems himself disqualified to preside or to participate as a board member in the hearing, he shall withdraw by notice on the record and shall notify the Commission or the Chairman of the Atomic Safety and Licensing Board Panel, as appropriate, of his withdrawal.

(c) If a party deems the presiding officer or a designated member of an atomic safety and licensing board to be disqualified, he may move that the presiding officer or the board member disqualify himself. The motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion or the board member does not disqualify himself, the motion shall be referred to the Commission or the Atomic Safety and Licensing Appeal Board, as appropriate, which will determine the sufficiency of the grounds alleged.

(d) If a presiding officer or a designated member of an atomic safety and licensing board becomes unavailable during the course of a hearing, the Commission or the Chairman of the Atomic Safety and Licensing Board Panel, as appropriate, will designate another presiding officer or atomic safety and licensing board member. If he becomes unavailable after the hearing has been concluded:

(i) The Commission may designate another presiding officer to make the decision; or

(ii) The Chairman of the Atomic Safety and Licensing Board Panel or the Commission, as appropriate, may designate another atomic safety and licensing board member to participate in the decision;

(2) The Commission may direct that the record be certified to it for decision, except in adjudications in which exceptions to the initial decision may be taken to the Atomic Safety and Licensing Appeal Board; or

(3) The Commission may designate another presiding officer.

(e) In the event of substitution of a presiding officer or a designated member of an atomic safety and licensing board for the one originally designated, any motion predicated upon the substitution shall be made within five (5) days thereafter.

140 FR 518

40 FR 5195