



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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Mr. Franklin D. Linn, Sr.
President
Board of Commissioners
Lower Swatara Township
1499 Spring Garden Drive
Middletown, PA 17057

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50-289 SP

Dear Mr. Linn:

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.

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.

Sincerely,

Martin G. Malsch
Deputy General Counsel

Enclosure:
As stated

cc: Parties to TMI-1 Restart Proceeding

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§ 2.794 Designation of presiding officer, disqualification, unavailability.

(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:

(1)(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.