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

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Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

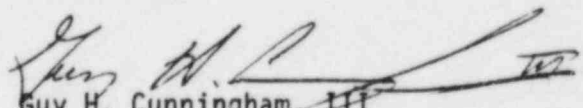
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of
METROPOLITAN EDISON COMPANY, ET AL.
(Three Mile Island Nuclear Station, Unit No. 1)
Docket No. 50-289^{SP}
(Restart Remand on Management)

Dear Mr. Chilk:

In accordance with NRC Manual Chapter 4125, section 4125-032d, I am forwarding to the Commission the attached Differing Professional Opinion by Prasad Kadambi, Project Manager, Operating Reactors Branch 4, Division of Licensing, NRR. Mr. Kadambi's Differing Professional Opinion concerns the NRC Staff's Response to Commonwealth of Pennsylvania, Three Mile Island Alert, and Union of Concerned Scientists Motions to Disqualify Judge Ivan Smith, dated January 29, 1985.

Sincerely,


Guy H. Cunningham, III
Executive Legal Director

Attachment: As stated

cc w/ attachment: TMI-1 service list

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PDR ADOCK 05000289
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

FEB 19 1985

MEMORANDUM FOR: John F. Stolz, Chief
Operating Reactors Branch #4
Division of Licensing

FROM: N. P. Kadambi, Project Manager
Operating Reactors Branch #4
Division of Licensing

SUBJECT: DIFFERING PROFESSIONAL OPINION REGARDING
NRC STAFF'S RESPONSE TO COMMONWEALTH OF
PENNSYLVANIA, THREE MILE ISLAND ALERT,
AND UNION OF CONCERNED SCIENTISTS MOTIONS
TO DISQUALIFY JUDGE IVAN SMITH, DATED
JANUARY 29, 1985

This statement is filed with you pursuant to NPC Manual Chapter 4125 and NRR Office Letter No. 11. My perception of the Staff position is as follows:

Judge Smith's actions indicate a significant likelihood that extrajudicial events have influenced him to prejudge the TMI-1 Restart proceeding on the matter of adversely affecting individuals.

The purpose of this Differing Professional Opinion is to either bring about a change in the Staff's position or to complement the arguments provided by the Staff to include my interpretation of the record. I believe at least the latter course is justified because the Staff has an obligation to publicly consider all sides of an issue before making a decision. My difference with the Staff position is based on being present as an observer through most of the remanded hearings on TMI-1 Restart, which began on November 14, 1984 and ended on January 18, 1985.

The following are the points I wish to make:

- (a) The Staff's position is that Mr. Floyd's criminal conviction on cheating and the resulting sentencing hearing were extrajudicial events. It is my opinion that, because Mr. Floyd's trial would not have taken place absent the cheating hearings presided over by Judge Smith, the subject matter of Judge Smith's letter is not extrajudicial.

- (b) A major basis for the Staff's position is an interpretation of Judge Smith's statements in a manner indicating that he may be reluctant to adversely affect individuals through Board actions. I believe that a more valid interpretation of those statements would attribute to Judge Smith a desire to take full control of the forces which, within the Board's jurisdiction, might adversely affect individuals. To my knowledge, Judge Smith has not said that individuals should not be adversely affected by the Restart proceedings. The substance of his statements, I believe, say that if individuals are adversely affected, it must be for good cause, and that the Board must be either primarily responsible for it, or should be consulted in bringing it about.
- (c) The Staff's position is silent on important statements made by Judge Smith stressing his deep concern for maintaining fairness in the proceedings. If the proceedings are perceived to be unfair by plant operators, the safety of the plant could be compromised, and the Board should be concerned about any such decrements of safety. I believe that such safety concerns motivated some of Judge Smith's statements, although they may not have been explicitly stated as such. To the extent that Judge Smith's letter to Judge Rambo was motivated by safety concerns, the extrajudicial arguments are also unjustified.

In summary, I believe the Staff should either oppose the motions to disqualify Judge Smith, or should present a more complete response by including the above arguments on the matter. If neither action is taken, at a minimum the staff arguments would be found to be incomplete, and at a maximum, the staff would be perceived as being unfair to Judge Smith.

N. P. Kadambi

N. P. Kadambi, Project Manager
Operating Reactors Branch #4
Division of Licensing