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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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THREE MILE ISLAND ALERT'S MOTION TO
DISQUALIFY JUDGE IVAN W. SMITH

Three Mile Island Alert ("TMIA"), pursuant to 10 C.F.R. 2.704(c) and through undersigned counsel, hereby moves that Chairman Judge Ivan W. Smith, be disqualified from serving on the Atomic Safety and Licensing Board hearing the Three Mile Island management integrity issues. TMIA also moves that the reopened hearings on management integrity be reheard by a newly-constituted Atomic Safety and Licensing Board ("Licensing Board") untainted by Judge Smith's prejudice and bias.

The grounds for TMIA's motion are as follows:

1) Judge Smith's December 27, 1984 letter to U.S. District Court Judge Sylvia Rambo indicates his bias against intervenors, in particular Three Mile Island Alert, and his prejudgment of the issue the Licensing Board is currently hearing, the adequacy of the licensed operator training program at TMI.

2) Judge Smith must disqualify himself because his statements inside and outside these proceedings might lead one reasonably to question his impartiality. 28 U.S.C. 455(a);

3) Judge Smith has demonstrated his pervasive bias against TMIA throughout these hearings on management integrity such that he should be disqualified, 28 U.S.C. 455(b) (1);

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4) The Commission in the exercise of its inherent authority to maintain the integrity of its adjudicatory processes must remove Judge Smith from these proceedings.

As the Commonwealth of Pennsylvania, whose Motion to Disqualify TMIA supports, TMIA files this only after careful consideration of Judge Smith's statements during the recent and past hearings, and his off-the-record comments. It is clear that Judge Smith for some time has not possessed the necessary objectivity to ensure a full and fair hearing to all parties in the TMI restart hearings. Especially when the issue before the Licensing Board is General Public Utilities Nuclear's ("GPUN") lack of management integrity, the impartiality and integrity of the NRC's own hearing process must be above suspicion.[1]

I BACKGROUND

On October 2, 1981, Judge Smith, as Chairman of the Licensing Board appointed a Special Master to hear evidence about alleged operator cheating incidents at TMI, Unit 2, prior to the accident. On April 28, 1981, Judge Gary L. Milhollin issued an opinion in which he found a number of middle management and operational staff had participated in cheating on NRC and company exams and recommended, inter alia,

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[1] See also Memorandum to Parties to the TMI Restart Proceeding from Stephen Eilperin, October 8, 1981, in which Mr. Eilperin, then Chairman of the Atomic Safety and Licensing Appeal Panel, recused himself although he did not believe there was any convincing "legal infirmity to my sitting."

He recused himself because he believed his hearing this case would "substantially add /_ _/ to /_ TMIA's_/ distrust of the Commission's decisional process" and given the uniqueness of the TMI experience, TMIA has "an especially strong claim that there should be not the slightest appearance of unfairness to the decision about which they are concerned." See Exhibit 1, attached and incorporated herein.

1) Licensee be prohibited from using G and H to operate TMI-1, ¶311;

2) A sanction lesser than removal from licensed duties was appropriate for Mr. Husted given Mr. Husted's solicitation of an answer and failure to cooperate with an NRC investigation, ¶316-317;

3) VV (Floyd) submitted work answers written by O and was responsible for O's deception; additionally he had shown a disrespect for the training program, ¶330-331, 335. VV was properly removed from licensed duties.

The Licensing Board issued its Second Partial Initial Decision on July 27, 1982. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), LBP-82-56, 16 NRC 281 (1982). The Board determined, that licensee's certification to the NRC that Mr. Floyd had requalified as a reactor operator was a material false statement. Id. at ¶2048. With respect to G and H, the Board agreed with Judge Milhollin that both were involved in four cheating incidents. ¶2097. The Board disagreed, however, that removal of G and H from licensed operator responsibilities would be too severe, ¶2116, and recommended that G and H voluntarily accept a two-week suspension without pay. ¶2120. The Board determined that there was no reliable evidence Husted cheated and recommended no direct sanction for him. ¶2168.

On July 6, 1983, licensee GPUN and the Commonwealth entered into a settlement agreement whereby the Commonwealth withdrew its exceptions to the Second Partial Decision in their entirety in return for the Company's promise in the future to not use to operate TMI-1 anyone who had been found by the Licensing Board to have cheated on an NRC or licensee exam, and to not use Mr. Husted to operate TMI-1 or to train operator license holders or trainees. Licensee

initiated these settlement negotiations. Tr. at 32322.

On May 24, 1984, the Atomic Safety and Licensing Appeal Board found that the Licensing Board did not adequately consider and remanded the question of whether the cheating incidents indicated more extensive failures in the licensee's overall training program. The Appeal Board also remanded the "Dieckamp Mailgram" issue interpreted by the Licensing Board to be whether Herman Dieckamp knew or should have known on May 9, 1979 that statements he made in a mailgram to several members of the Commission and Congressman Morris Udall were inaccurate or false.

Hearings on the Dieckamp mailgram started on November 14, 1984, and continued through December 14, 1984. Hearings on training started on December 18 and have continued through January 11, 1985.

On December 27, 1984, after being requested to write a letter to U.S. District Court Judge Sylvia Rambo by Mr. Floyd's lawyer, Judge Smith wrote a letter requesting leniency for Mr. Floyd. Tr. at 32600; See Smith Letter, attached and incorporated herein as Exhibit 2.

Several portions of the letter addressed matters directly of relevance to the ongoing training hearings. In particular, the letter stated:

> More important, however, a severe criminal penalty against Mr. Floyd, is in my personal view, not needed to insure the integrity of the NRC operators' licensing process at Three Mile Island, nor would it be useful. The civil regulatory scheme presently administered by the NRC is exceedingly thorough. It is adequate to assure that the operators of Three Mile Island are persons of competence and integrity...I have confidence that the NRC administrative regulatory process, with extensive public participation, will provide an orderly and reliable mechanism for assuring that any problems caused by deception respecting

> Three Mile Island will have been identified and resolved. Deception in the future is very unlikely.
>
> Exhibit 2 at 2.

Judge Smith has stated two prejudgments in this paragraph. First, he has stated that he believes all problems in TMI's training program have been or will be solved so as to allow TMI-1 to operate. Second, he states that he does not believe that cheating will occur in the future in the TMI training program. This essentially is a prejudgment of the very issue the Appeal Board remanded: Do the cheating incidents of the past indicate serious deficiencies in the training program such that operators are not now adequately trained to operate TMI-1 safely?

On January 11, 1985, the Commonwealth of Pennsylvania filed a motion requesting that Judge Smith recuse himself on the grounds:

1) he had created an appearance of impropriety and bias by testifying in support of Mr. Floyd's character; and

2) He had interjected himself in matters within and outside the scope of the proceedings in a manner which demonstrated actual bias against the Commonwealth.

TMIA submits this motion initially to Judge Smith for determination. If he decides that he will not recuse himself, TMIA requests that it be referred to the Appeal Board, and if denied by the Appeal Board, to the Commission.[2]

TMIA also requests that all remanded hearings on management integrity be begun anew, since Judge Smith's prejudice and bias

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[2] Because Judge Smith is the subject of the recusal motion he considers it in the first instance. Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-672, 15 NRC 677, 683-85 (1982), rev'd on other grounds, CLI-82-9, 15 NRC 1363. (1982)("South Texas"), cited with app'd in Public Service Electric and Gas Co. (Hope Creek Generating Station, Unit 1), 19 NRC 13, 21 n.26 (1984) ("Hope Creek").

have denied TMIA and the other parties the fair and impartial hearing to which they are entitled.

II STANDARD FOR DISQUALIFICATION.

Licensing Board judges are governed by the same disqualification standards which apply to federal judges. South Texas, supra, 15 NRC at 1365; Hope Creek, supra, 19 NRC at 20; Duffield v. Charleston Area Medical Center, Inc., 503 F.2d 512 (4th Cir. 1974).

The standard for disqualification is the following:

> /A/n administrative trier of fact is subject to disqualification if he has a direct, personal, substantial pecuniary interest in a result; if he has a 'personal bias' against a participant; if he has served in a prosecutive or investigative role with regard to the same facts as are an issue; if he has prejudged factual -- as distinguished from legal or policy--issues; or if he has engaged in conduct which gives the appearance of personal bias or prejudgment of factual issues.

Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-101, 6 AEC 60, 65; Hope Creek, supra, 19 NRC at 20.

The statutory authority for this standard is found in 28 U.S.C. §144 and 455. Section 144 provides in relevant part:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

Section 455 provides in relevant part:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
> (b) He shall also disqualify himself in the following circumstances:
>
> 1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

The Commission has als adopted the federal court rule that a trial judge's bias or prej ice must stem from an extrajudicial source. South Texas, supra, 15 NRC at 1365, cited in Hope Creek, supra, 19 NRC at 22n.29; United States v. Grinnell Corp. 384 U.S. 563, 583 (1966); In re International Business Machines Corp., 618 F.2d 923, 927 (2nd Cir. 1980) ("IBM").[3]

The party moving to disqualify a judge must demonstrate that a reasonable person knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned. Hope Creek, supra, 19 NRC at 22; SCA Services, Inc. v. Morgan, 557 F.2d 110, 116 (7th Cir. 1977).[4]

Moreover, Congress intended to codify Canon 2 of the Code of Judicial Conduct in amending 28 U.S.C. §455. Fredonia Broadcasting, supra, 569 F.2d at 2256 n.7; Overseas Private Investment Corp. v. Anaconda Co., 418 F.Supp. 107,111 n.6 (D.D.C. 1976). Canon 2 of the Code of Judicial Conduct (ABA 1983) provides as follows:

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[3]Therefore, Judge Smith's preliminary assessments, made on the record, during the course of adjudicatory proceeding based solely upon application of the decisionmaker's judgment to the material properly before him in the proceeding does not normally compel disqualification. Commonwealth Edison Co. (LaSalle County Nuclear Power Station, Units 1 and 2), CLI-73-8, 6 AEC 169, 170 (1973)

See also Cinderella Career and Finishing Schools, Inc. v. Federal Trade Commission, 336 F.2d 754 (D.C. Cir. 1974), reversed and remanded on other grounds, 381 U.S. 739 (1975) in which the court held an FTC Commissioner should have recused himself because of public speeches he made indicating prejudgment of cases pending before him.

[4]The current section 455(a) substitutes for the prior subjective standard an "objective standard" for recusal. South Texas, supra, 15 NRC at 1366 cited with approval in Hope Creek, supra, 19 NRC at 22 n.29; Fredonia Broadcasting Corporation, Inc. v. RCA Corp., 569 F.2d 251, 257 (5th Cir. 1978) ("Fredonia Broadcasting").

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge...should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary to Canon 2 states:

...a judge should not voluntarily testify as a character witness. The Committee was informed of numerous instances in which judges were used as character witnesses, and that in each instance the judge was called to exploit the dignity and prestige of his judicial office. Many judges requested that they be protected from the demands made upon them to testify as character witnesses; others were of the view that a judge should be free to do what justice and his own conscience dictate.

The Committee considered several different standards. In the Interim Report the one then supported by the Committee was that /h/e /the/ judge should not testify as a character witness unless he is convinced that his testimony is essential to a just result." The Committee finally concluded that the proper standard would preclude a judge from being a volunteer character witness...

E. Thode, Reporter's Notes to Code of Judicial Conduct (1973), at 40.[5]

It also appears that Congress intended in amending 28 U.S.C. §255 to incorporate Canon 3 which provides in relevant part:

> 3C(1) A Judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

Canon 3A(6) is also relevant in barring a judge's public comment about pending or impending proceedings in any court. To the extent Judge Smith has violated Canons 2 and 3 of the Code of Jucicial Conduct, his conduct comes within the proscription of

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[5] Hope Creek, supra, 19 NRC at 24 and n.37.

28 U.S.C. §255 as well.

Finally, administrative law judges are to observe, at least as guides to proper judicial conduct, the standards set out in the Manual for Administrative Law Judges. M. Ruhlen, Manual for Administrative Law Judges (1982). Among the standards which Judge Smith has transgressed are the following:

> Although the Judge should expedite the hearing and prevent unnecessary testimony, he should rarely impose arbitrary time limits. It is seldom possible to determine in advance how much time will be needed and an arbitrary cutoff can be severely prejudicial. Id. at 62-63.
>
> B. Judicial Attitude, Demeanor and Behavior.
> The Judge should be fair but considerate of counsel, witnesses and others in attendance. Each witness should be called by name and thanked when he is excused from the stand. Id. at 61.
>
> Ex Parte Communications.
> Ex parte communications are improper. Id. at 70.
>
> Fraternization.
> A judge should limit social activities with friends and colleagues if there is any likelihood of their being involved in matters coming before the Judge. It is not enough merely to avoid discussing pending matters; a Judge should shun situations that might lead anxious litigants or worried lawyers to think that the Judge might favor or accept the views of friends more readily than those of unknown parties.

In any event a Judge must avoid the appearance of impropriety. Id. at 71.

There is an exception to the general rule that bias mandating disqualification must be extrajudicial, which is that a judge may be disqualified if he demonstrates "pervasive bias and prejudice." South Texas, supra, 15 NRC at 1366 and 1374 (Asselstine Dissent); United States v. Gregory, 656 F.2d 1132, 1137 (5th Cir. 1981); School Commissioners of Mobile County, 517 F.2d 1044, 1051 (5th Cir. 1975), cert. denied, 423 U.S. 944 (1976); Nicodemos v. Chrysler

Corp., 596 F.2d 152, 155-156 (6th Cir. 1979).

The Commission also has inherent authority to assure the integrity of its adjudicatory proceedings. Pursuant to that authority, it should find that Judge Smith must be recused even if the Commonwealth and petitioning intervenors do not meet the legal standards which require recusal. Commissioner Asselstine wisely counseled the Commission to adopt a stricter standard for judicial conduct in order to maintain public confidence in the NRC adjudicatory process. See South Texas, supra, 15 NRC at 1374 (Asselstine Dissent); Commonwealth Edison Co., supra, 6 AEC at 170 n.4.

TMIA petitions for Judge Smith's recusal on the following grounds:

1) His December 27, 1984 letter to Judge Rambo indicates a bias against TMIA and a prejudgment of factual issues currently before him;

2) His conduct outside and within the proceedings demonstrates a pervasive bias and prejudice which mandate his recusal;

3) Judge Smith's conduct, even if determined to be judicial or stemming from sources of information available to him as Chairman of the Licensing Board, must be condemned in order to restore public confidence in the fairness of the NRC adjudicatory process; the Commission must exercise its inherent authority to remove Judge Smith from further participation in this case.

III. JUDGE SMITH'S LETTER TO JUDGE RAMBO IS EXTRAJUDICIAL CONDUCT WHICH INDICATES HE HAS PREJUDGED THE ADEQUACY OF TMI'S CURRENT TRAINING PROGRAM.

Judge Smith's letter to Judge Rambo is clearly extrajudicial conduct. In fact he acknowledges it as such in his letter when he

states "my comments are personal and I do not speak for the Nuclear Regulatory Commission or for any other person." Exhibit 2 at 1.

In addition, it appears from his letter that the source of much of his information regarding Mr. Floyd is extrajudicial, that is, information not on the record. Although Judge Smith states that he knows "nothing about Mr. Floyd except the information produced on the public hearings (sic) most of which is set out in our July 1982 decision," in fact the letter recounts facts about and motives for Mr. Floyd's actions which do not appear in either his decision or in Judge Milhollin's decision.

Nowhere does Judge Smith in the Licensing Board's Second Initial Decision state that Mr. Floyd's deception was "an impulsive act and...not motivated by personal ambition." Nor does he state in this decision that Mr. Floyd "neglected his examination responsibilities out of a misguided but altruistic effort to attend to matters of perceived greater urgency." TMIA is also unaware of any licensee testimony presented which would support these conclusions about Mr. Floyd's character.

Second, Judge Smith speculates in this letter on whether TMI personnel need the deterrent of a severe punishment to avoid cheating in the future. He states that a prison sentence is not necessary because "Mr. Floyd's damaged career and public humiliation will be seen by others as too high a risk and price for any gain from cheating." It is clear Judge Smith did not hear testimony about how Mr. Floyd's "damaged career and public humiliation would be seen by others" and in fact the evidence which he cites in his opinion is to the contrary. For example, Judge Smith admits

in the decision some employees did not see Mr. Floyd's transfer as a demotion. Second PID at ¶2282. Moreover, he concludes that Mr. Floyd was not humiliated by his transfers and disagrees with Judge Milhollin and TMIA that Mr. Floyd should be publicly humiliated. Id at ¶2286.

One can see that Judge Smith did not find within the context of the restart hearings that Mr. Floyd's career had been damaged and he had suffered public humiliation. He came later to that conclusion and must have drawn it from extrajudicial information.

Finally, Judge Smith offers his opinion in the last paragraph of his letter that "deception in the future is very unlikely." Essentially he had already determined, by December 27, 1984, at the very beginning of the hearings that the GPUN training program was adequate. He also states that he is confident that the civil regulatory process will resolve whatever problems there are so, apparently, TMI-1 will be able to operate safely. This is also prejudgment of the issue of whether the training program is so deficient that it does not adequately train operators to run Unit 1 safely. These conclusions on their face have to be drawn from evidence outside the record since the hearing had barely started on December 27, 1984. Moreover, it is important to recognize that Judge Smith has never heard Mr. Floyd as a witness; therefore he had never personally observed his demeanor and testimony tested in a courtroom setting. Thus Judge Smith's letter satisfies the standard which mandates his removal.

The statements in his letter indicate a clear bias in favor of licensee's position that the current training program has

resolved all problems discovered during the cheating incidents and a bias against TMIA's position that the current training program suffers from the same problems as in the past. Further, the letter clearly prejudges the issues of fact on the adequacy or inadequacy of the training program in favor of licensee. Judge Smith's statements would easily lead a reasonable person knowing all the circumstances...to the conclusion that the judge's impartiality might be questioned." South Texas, supra, 15 NRC at 1366. The tatements are also extrajudicial and stem from information he received outside these restart proceedings.[6] Therefore this letter requires his removal.

Moreover, this letter, which is clearly Judge Smith's testimony about Mr. Floyd's character, is in direct violation of Canon 2 of the Code of Judicial Conduct which prohibits such testimony and, therefore, 28 U.S.C. §455 as well. Fredonia Broadcasting Corp., supra, 569 F.2d at 256 n.7.

Judge Smith sent this letter requesting leniency for Mr. Floyd only after Mr. Floyd's attorney requested that he do so. The communications between Judge Smith and Mr. Floyd were ex parte in the sense that Mr. Floyd and licensee's interests in this proceeding

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[6] Contrary to the petitioner in the IBM case, which did not show or purport to establish or identify any personal connection, relationship or extrajudicial incident which accounted for the alleged personal animus of the trial judge, Judge Smith's voluntary submittal of a letter to Judge Rambo is clearly extrajudicial and outside of any of his normal responsibilities as an Atomic Safety and Licensing Board judge.

are identical. Mr. Floyd's attorney, in arguing that Mr. Floyd's conduct was not detrimental to the public health and safety, is arguing licensee's case. He therefore is licensee's agent and any contacts between him and Judge Smith should have been open to all parties. Neither TMIA nor the other intervenors to this proceeding has been informed of the communications occuring between Mr. Floyd's attorney and Judge Smith which led to this letter. Clearly Judge Smith's conversations, given Mr. Floyd's position is parallel to the company's position, were ex parte communications. Even if not ex parte, such communications lead to the appearance of impropriety, which requires Judge Smith's disqualification.

It is obvious that Judge Smith, in voluntarily lending the prestige of his office as an NRC administrative law judge to Mr. Floyd in an unrelated criminal proceeding, has violated the proscription that a judge should avoid the appearance of impropriety. The letter seems especially inappropriate since Mr. Floyd has never appeared before Judge Smith.

IV JUDGE SMITH HAS DEMONSTRATED PERVASIVE BIAS AND PREJUDICE WHICH MANDATES HIS RECUSAL.

Even if Judge Smith's letter is found not to stem from an extrajudicial source so as to mandate recusal, Judge Smith must be removed for the pervasive bias and prejudice he has demonstrated on the record of this proceeding.

TMIA will cite only those unwarranted attacks against TMIA's counsel and TMIA's witnesses. TMIA also supports the Commonwealth in its argument that statements of Judge Smith on November 21, 1984 and January 2, 1985 were not related to the subject matter of the proceeding and were not j stified or caused by any conduct or

behavior of the parties.[7]

First, Judge Smith attacked TMIA's witnesses on matters which were unrelated to the subject matter of the proceeding. Prior to deciding what if any portion of David Gamble's testimony would be received, Judge Smith attacked Mr. Gamble as though he had an interest in the proceeding, other than that of a witness subpoenaed by a party to the proceeding:

> Mr. Gamble is not helpful. Mr. Gamble's testimony is rather naive and simple. And it's not instructive to us.
>
> He has a mechanical approach to how Board's (sic) weigh evidence I believe. So, with that you have not made a case for Mr. Gamble's testimony.

Tr. at 29034-29035.

The following morning, Judge Smith recognized the imprudence of his remarks and asked that they be stricken from the record. Tr. at 29059-60.TMIA objected to striking of the remarks because it believed they reflected Judge Smith's bias against TMIA and its witnesses.

The Board did permit Mr. Gamble to testify, only after directing that TMIA file modified, written prefiled testimony. On December 7, 1984, Judge Smith again attacked Mr. Gamble, this time for what he perceived was Mr. Gamble's unethical or illegal failure to inform interviewees in the NUREG-0760 investigation of their Miranda rights.[8]

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[7] TMIA counsel who have sworn out an affidavit in support of this motion were not present at the January 2, 1985 hearing session. If deemed necessary TMIA member Louise Bradford will swear out an affidavit attesting to the accuracy of the Commonwealth's account of Judge Smith's statements during the January 2, 1985 hearing.

[8] The hornbook rule is that only an individual who is taken into custody must be given their Miranda rights. Miranda v. Arizona, 384 U.S. 436 (1968).

Judge Smith carried out the following questioning of Mr. Gamble:

JUDGE SMITH: Well, the reason for my concern--I mean representing the interest of the Department of Justice.
Now, did you inform the people that you were questioning that you were a Department of Justice representative?

WITNESS: I was not a Department of Justice representative, so I didn't...
...

JUDGE SMITH: As a professional investigator, and as a lawyer at the time, did you make any analysis of what might happen if you began to develop evidence against a witness being interviewed, which evidence is to be used in a criminal prosecution without informing them of that?

WITNESS: Yes, sir. We have a great deal of discussions on this general subject matter between the Office of Inspector and Auditor and the Department of Justice...

JUDGE SMITH: ...But I am talking about what happens when you, as a criminal investigator, develop--would have developed information used to criminally prosecute a person..and you have not informed that person that you are conducting a criminal investigation...

WITNESS: For one, there is not problem--we didn't feel there was any problem in using it, in that we were not conducting a criminal investigation. We were there merely to insure that the regulatory investigation did not destroy any potential criminal case that may exist....

JUDGE SMITH: ...Were the people who were being investigated informed that there could be a criminal investigation into these matters?

WITNESS: No, sir.

JUDGE SMITH: Do you have any ethical misgivings about what you did? ...

And I am wondering if he has any ethical misgivings of inquiring into people for that purpose, and not telling them about it.

Tr. at 30684-30688.

Judge Smith admits that his questioning of Mr. Gamble was improper at a point when he attempts to restrain NRC counsel Jack Goldberg from similar improper questioning:

MS BERNABEI: If there is going to be an interrogation of this man simply because he appeared as a witness, which I think is totally inappropriate, I think all parties should be able to ask questions about it, and present witnesses.

JUDGE SMITH: ...I tend to share your concern. The essence of your concern...I did initially explore it improperly, I believe. I mean with improper purposes, because I was taken up with my concept of the process rather than the issues, but it also is relevant to the context in which Mr. Gamble asked questions--you know, where he was coming from.

I share your concern. And I do sense a tone by Mr. Goldberg of punishment, and I think that is your concern, and I think it should not be permitted. Having been the offender myself, I cannot be too critical of Mr. Goldberg on it, but I do share her concern.

Tr. at 30767.

At a prehearing conference on November 9, 1984, Judge Smith attacked the motives of TMIA in calling certain witnesses. He stated that he would not permit TMIA to call former NRC Commissioner Peter Bradford because he believed that 'the principal purpose and perhaps the only purpose that we can infer from you package is that you are offering him because of his status." Tr. at 27841. Later Judge Smith repeated, "The only purpose that we can see for offering former Commissioner Bradford as for the purpose to which you allude in your motion is to lend his status to your views because you could employ the same analysis that he would employ and make them as arguments, but no, you wish to employ his status." Tr. at 27851.[9]

Judge Smith also implied that TMIA was somehow deceiving the two former Commissioners whom TMIA proposed to call of the purpose and use to be made of their testimony:

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[9] TMIA has never represented or even implied that it intended to call former Commissioners Bradford or Victor Gilinsky for their status. See generally, TMIA's Memorandum of Points and Authorities in Support of Motion for Certification of Order Barring Bradford and Gilinsky Testimony (November 19, 1984).

> I would like to add to the Board's consideration with respect to Dr. Gilinsky and the factual area, we are not comfortable that Dr. Gilinsky has been fully informed concerning the use that is being made with your views of his views...we are not confident that given the accuracy of your statements one through three, that Dr. Gilinsky is thoroughly informed as to what the narrowness of our issues are and what we are allowed to do.[10]

Tr. at 27870.

Finally, Judge Smith attacked TMIA for the position it has taken on the training issue in the past and currently. On January 3, 1985, Judge Smith attributed to TMIA and TMIA intervenor Louise Bradford responsibility for poor operator attitude and morale at TMI:

MS. BRADFORD: It is our position that TMI employees, including operators, have--and since the cheating incident--a great deal of distrust for management...

JUDGE SMITH: Okay. You know, one of the frustrating things about this is that no one has readily identified what has happened here. As I read this document, this followed the Special Master Report in which many of the employees of GPU were called to testify, in which Intervenor, Three Mile Island Alert, cross examined these people and caused a morale problem, and now their criticism is that the Company didn't support them in this morale problem...You are expected to testify over and over again. If you testimony does not agree with your previous statements it's thrown back in you face, possible loss of your job, licensed position, public humiliation, peer pressure, discredit to your professional standing.

All of this is an illusion to the public hearing process in which you sitting right there--

MS. BRADFORD: Judge--

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[10] It is interesting to note that TMIA was also accused by Judge Smith of withholding information because it stated that it was not authorized by Dr. Gilinsky to prefile testimony or state with any greater specificity his testimony with regard to his conversation of May 7, 1979 with Mr. Dieckamp. Tr. at 27867-27869.

JUDGE SMITH: --made a contribution, which is your right, which is the statute permits that.

MS. BRADFORD: Judge Smith--

JUDGE SMITH: But there is something wrong. I mean, there is something wrong with the whole process when the hearing process causes morale problems, causes frustration, and that very effect is turned around and used as evidence against the adversary.

I don't know how to unravel that, but it just strikes me as simply not appropriate. I--

MS. BRADFORD: Judge Smith--

JUDGE SMITH: You are a contributor by exercising your rights. You are a contributor to the morale problem. And the Board has expressed the concern about the morale problems of the employees brought about by this very hearing process.

And now here we are, we are being asked to take a morale problem brought about by hearings under the Atomic Energy Act as itself a deficit chargeable to the Licensee, which we should look at in ruling against them. It just can't be done.

And that is the net effect of what you're asking us to do.

MS. BRADFORD: Judge Smith--

JUDGE SMITH: It takes you away from your home, it takes you away from your job, and you must make up the work, emotional stress. This is all references to the Special Master's hearing.

...There may be a problem that this hearing process has made a negative contribution to employee morale and we have expressed that concern before and I am expressing it right not. But we are not going to use that fact to make you win the case, and that is what the effect is of what you are asking us to do. (emphasis added)

Tr. at 32396-32401.

It is apparent from this interchange that Judge Smith is biased against TMIA and in favor of licensee. Judge Smith, instead of inquiring into the causes within licensee's management or organization for the cheating incidents, has blamed intervenor TMIA for the poor attitude of operators to which Judge Milohollin in part attributed the cheating. It is clear that with this bias Judge

Smith will not objectively inquire, as is his mandate from the Appeal Board, into what the cheating incidents indicate about the competence and integrity of licensee's current training program.

Judge Smith has at other times attempted to prevent TMIA Counsel from conferring by admonishing them not to confer during the hearings, See, eg., Tr. at 30958. Other times he has attacked TMIA counsel when she was attempting to put objections on the record. See TMIA objections to proposed format of findings, Tr. at 31707-31710.

In September, 1982, TMIA has objected to what it perceived as the Board's bias, when it filed its brief in support of Exceptions to the Board's Partial Initial Decisions of August 27, 1981 and July 27, 1982. See TMIA's Brief in Support of Exceptions to Practice Initial Decisions of Management Issues and Reopened Proceedings (September 30, 1982), at 2-7, 41-43.

The Appeal Board rejected TMIA's charges of bias and prejudice at that time. Yet TMIA believes that Judge Smith's bias was apparent and manifest in the two early Partial Initial Decisions rendered in the early portions of these management integrity hearings.

Judge Smith on at least two occasions has indicated that he sees his duties as Chairman of the Licensing Board to go beyond the mandate handed down by the Appeal Board, and include protecting individuals accused of misconduct to ensure they have the full panoply of due process rights afforded a criminal defendant. For example, he stated that he did not wish to grant a sequestration order unless there is a "very, very strong demonstration of need. In this very proceeding persons have been accused and have been punished in secret proceedings, much to my personal dismay..." Tr. at 29092.

Judge Smith's responsibility in these preceedings is to protect the public health and safety. Other branches of the United States government, including the U.S. Attorney, the Department of Justice, the NRC's Office of Investigations, the U.S. district courts, and the Public Defender Service protect an individual's due process rights when he or she is proven to have engaged in misconduct affecting the safety of a nuclear power plant. Judge Smith also may not consider his personal feelings about such individuals' due process rights in making these safety decisions.

Judge Smith, in attacking the Commonwealth of Pennsylvania for entering into an agreement with licensee regarding former operators G and H, stated that he believed this agreement was "an absolute violation of that man's due process, and I won't be a party to that type of activity unless it is absolutely necessary for a broader ruling on the public safety." Tr. at 29092. Judge Smith has no current jurisdiction over this settlement agreement and his primary responsibility is to protect the public health and safety and not assure the due process rights of licensee employees and managers accused or found to have engaged in misconduct.

Judge Smith's frequent and unjustified attacks on TMIA, TMIA counsel and TMIA witnesses demonstrate an extreme lack of judicial demeanor and objectivity. More importantly, it reveals a pervasive bias against TMIA in these hearings and his inability objectively to examine the issue before him, whether it be on the Dieckamp Mailgram issue or the adequacy of the TMI training program. Judge Smith's rulings, although not specifically addressed in this motion, also demonstrate his inability fairly and rationally to

analyze the parties' respective arguments and even-handedly decide their requests on the merits. See generally, TMIA's Memorandum in Support of Motion to Certify Order Barring Bradford and Gilinsky Testimony.

Moreover, Judge Smith has on several occasions signaled to witnesses the correct answers to questions so that their answers would appear credible. On December 13, 1984, TMIA called a number of current and former licensee employees and managers who had originally answered in response to a TMIA interrogatory that they had been aware on March 28, 1979, the first day of the accident, of a hydrogen burn in the containment. A large number of these individuals retracted their answers after speaking to licensee lawyers and then stated that they were not certain when they first learned of the hydrogen burn. TMIA argued that these employees' original answers were accurate and that they were changing these answers under pressure from the company. TMIA called six individuals to demonstrate that their current testimony was not credible.

Robert Boyer, testified that he had understood that he had made mistake when he reviewed his questionnaire and "spontaneously" sent in his corrections to Jack Thorpe, licensee's licensing manager. Mr. Boyer testified further that he had not been requested by any of the company's attorneys to confirm that he made a mistake on the questionnaire. Tr. at 31, 563. The company's counsel had informed the Board that in fact they had requested that these employees confirm thay they were changing their answers to the questionnaires, and that the employees did not themselves initiate these corrections. Tr. at 31458. Therefore, it was obvious that Mr. Boyer's testimony

(and Mr. Rochino's testimony before him, Tr. at 31454-32455) was not credible when he stated that he had spontaneously confirmed his corrections to the GPUN Licensing Manager. Judge Smith, in asking a question in the middle of TMIA questioning of Mr. Boyer, successfully elicited an answer that in fact licensee had requested Mr. Boyer's confirmation letter. Tr. at 31564. His questioning thereby helped Mr. Boyer rehabilitate his testimony to appear more credible.

Judge Smith's letter to Judge Rambo merely states extrajudicially the prejudgment he had already made of the issues before him, which was apparent to any of the parties participating in the hearing. It was clear from the early stages of these remanded hearings he would rule for the licensee. The letter merely corroborates the pervasive bias and prejudice which TMIA has demonstrated adhered in the hearings themselves. South Texas, supra, 15 U.S.C. at 1366; School Commissioners of Mobile County, supra, 517 F.2d at 1051.

The pervasive bias and prejudice Judge Smith has demonstrated requires his recusal under 28 U.S.C. §144 and §255.[11]

V. THE COMMISSION IN THE EXERCISE OF ITS INHERENT AUTHORITY MUST REMOVE JUDGE SMITH FROM ANY PARTICIPATION IN THESE HEARINGS TO HALT ERODING PUBLIC CONFIDENCE IN THESE HEARINGS.

Regardless of applicable legal standards, the Commission may order recusal as an exercise of its discretionary supervisory authority over pending adjudications. South Texas, supra, 15 NRC at 1367. The need to assure public confidence in the integrity and impartiality of the licensing process is of fundamental importance to the Commission's decision whether to exercise this inherent authority.

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[11] It is also clear that Judge Smith has transgressed the standards of judicial conduct outlined in the Manual for Administrative Law Judges, and cited in Section III, supra, at 9.

Northern States Power Company (Prairie Island Nuclear Generating Plant, Units land 2), CLI-75-1, 1 NRC 1, 2 (1975).

Moreover, the adjudicatory process is strengthened by "establishing public confidence in the sound discharge of the important duties which have been entrusted to /the Commission/." Id.

It is clear that the citizens of Pennsylvania and their elected representatives have lost confidence in Judge Smith's ability to discharge his judicial responsibilities impartially. See Philadelphia Inquirer, January 10, 1985, at 28; Wall Street Journal, January 7, 1985, at 6, attached and incorporated herein as Exhibits 3 and 4 respectively.

This loss of faith, whether warranted or not, undermines the integrity of these proceedings and ultimately infects the entire regulatory process. Judge Smith has obviously acted imprudently and in violation of the Canons of the Code of Judicial Conduct. See Sections III and IV, supra. He has, at a minimum, failed to give proper importance to the training issue which he is currently hearing. He has acted intemperately and recklessly toward at least two of the parites, the Commonwealth of Pennsylvania and TMIA. And he has indicated that he has prejudged the issue and predetermined the adequacy of the training program.

The legitimacy of the adjudicatory process will not be recovered except by Judge Smith's removal and a reconstituted Licensing Board free of his publicly-perceived bias.

V. CONCLUSION.

In consideration of the above arguments,TMIA respectfully requests that Judge Ivan W. Smith recuse himself, or that he be removed from this case, and that those portions of the

remanded management hearings over which he has presided be reheard before a newly-constituted Atomic Safety and Licensing Board, impartial and free from prejudice and bias. TMIA also submits in support of its motion the attached Affidavit of Counsel.

Respectfully submitted,

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Attorneys for Three Mile Island Alert

DATED: January 14, 1985

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL PANEL
WASHINGTON, D.C. 20555

Exhibit 1

October 8, 1981

MEMORANDUM FOR: ALL PARTIES

FROM: Stephen F. Eilperin, Chairman
Three Mile Island-1 Restart Proceeding

RE: METROPOLITAN EDISON COMPANY ET AL.
(Three Mile Island Nuclear Station,
Unit 1) Docket No. 50-289 (Restart)

On September 28 I wrote a memorandum to the parties disclosing my prior involvement with matters touching the TMI-1 restart proceeding, and asking whether there was objection to my chairing the Appeal Board that would review at least the Licensing Board's August 27, 1981 Partial Initial Decision in this proceeding. The NRC staff had no objection, while the Union of Concerned Scientists, which did not participate on the management issues to which the Licensing Board's August 27 decision was addressed, reserved its right to object at a later date if I were appointed to the Appeal Board to review the follow-up Licensing Board decision on design and technical issues.

Three Mile Island Alert, Inc. ("TMIA"), however, voiced strong objections to my participation on the Appeal Board at this time. Its objections were twofold. First TMIA claimed that as a matter of law I was disqualified by reason of having supervised, as the Commission's Solicitor, the litigation defense of two TMI-1 restart related cases, People Against Nuclear Energy v. NRC, No. 81-1131 (D.C. Cir.) and TMIA v. NRC, No. 81-1157 (D.C. Cir.). This was said to demonstrate my substantial interest in the outcome of the TMI-1 restart proceeding and unquestionable prejudice to TMIA. Second, TMIA claimed that apart from legal considerations I was perceived as biased by area residents, and my appointment to the Appeal Board exacerbated the distrust with which TMIA's constituency had come to view the Commission's decisional process.

On the basis of TMIA's letter I have decided to recuse myself from the Appeal Board for the TMI-1 restart proceeding. I do so not on the basis of the claimed legal infirmity to my sitting for I believe that the Commission's former Solicitor, as the Commission itself, is free to hear and decide the TMI-1 restart proceeding, including any issues a court might remand for further consideration. TMIA does not claim that the Commission is somehow disqualified from having issued the rulings that gave rise to the TMI-1 restart related litigation. Defending those rulings in court would perforce not be ground for disqualification.

I am persuaded, however, to recuse myself in light of TMIA's argument that my sitting substantially adds to their distrust of the Commission's decisional process in this matter, and that it deserves total confidence in the tribunal which will hear its appeal. Plainly, a litigant should have confidence that the tribunal which will hear its case will do so fairly, but at what point a party's fear of unfairness (where the prospective judge thinks there is none) should lead to voluntary recusal is a difficult judgment to make. In this regard I think the TMI experience has undoubtedly been unique, especially for those who live in that area. They, of anyone, have an especially strong claim that there should be not the slightest appearance of unfairness to the decision about which they are concerned. Moreover, TMIA's unhappiness with the decisional process to date stems not only from the restart rulings that have been taken to court but includes earlier Commission decisions dealing with the cleanup of TMI-2 such as the decision to purge the TMI-2 containment of krypton. There too, as Solicitor, I actively defended the Commission's position in court. Additionally, I participated in advising the Commission on its course of action, had a hand in supervising the drafting of the Commission orders, and had rather frequent contact with lawyers for Metropolitan Edison during the extensive litigation which followed. On still other aspects of the TMI-2 cleanup, such as the operation of EPICOR-II I have had occasional contact with utility officials who later were witnesses in the TMI-1 restart proceeding.

Despite the fact that I have not formed any position on the merits of the Licensing Board's decision and consider myself free of bias about any of the issues which might come before me in this case, given the totality of circumstances recited above I think the integrity of the Commission's decisional process is better served if I voluntarily recuse myself from this proceeding so there is not the slightest doubt that TMIA and the other parties to the restart proceeding will be given a fair hearing. I therefore will not serve on either of the Appeal Boards which will review the TMI-1 restart proceeding.

Exhibit 2

11125 Powder Horn Drive
Potomac, Maryland 20854
December 27, 1984

Honorable Sylvia H. Rambo
U.S. District Judge
% Robert Ruth, Probation Officer
U.S. Probation Office
Federal Building
3rd and Walnut
Harrisburg, Pennsylvania 17108

Re: United States v. James R. Floyd
Crim. No. 84-00099 (M.D. Pa.)

Dear Judge Rambo:

I hope that the Court will be lenient with James R. Floyd. As an administrative law judge with the Nuclear Regulatory Commission, I have served since August 1979 as the Chairman of the Atomic Safety and Licensing Board presiding over the proceeding considering the proposed restart of Three Mile Island Unit No. 1. Much of this proceeding has involved issues of the integrity and competence of the managers and operators of Three Mile Island Nuclear Station. I have been informed that the recommendation contained in the Board's decision of July 27, 1982 (16 NRC 281, 344-55) brought about the investigation and subsequent indictment of Mr. Floyd.

While serving as Chairman of the Three Mile Island Licensing Board I have had an excellent opportunity to gain some insight into the events and the affected persons following the 1979 accident at the station. I hasten to add, however, that I know nothing about Mr. Floyd except the information produced on the public hearings most of which is set out in our July 1982 decision. Also, my comments are personal and I do not speak for the Nuclear Regulatory Commission or for any other person.

I have basically two grounds for believing that leniency is appropriate. The first pertains to the background against which Mr. Floyd's actions should be judged. Mr. Floyd worked very hard in the months following the accident. He possesses excellent technical skills. Management depended very heavily upon him in addressing the many problems needing solution on the island. I have always felt that Mr. Floyd's deception was an impulsive act and that it was not motivated by personal ambition. He could have sought relief from his other duties in order to train properly for the requalification examination, to his personal benefit. He could have passed easily without deception. One senses he neglected his examination responsibilities out of a misguided but altruistic effort to attend to matters of perceived greater urgency. In addition, he apparently felt that he was well qualified notwithstanding his licensing status.

My second reason for hoping for lenient treatment for Mr. Floyd is that severe punishment is not necessary as a deterrent. I recognize that, whatever his motive, cheating on the requalification examination was a very serious matter and cannot be condoned or appear to be condoned. However, Mr. Floyd's damaged career and public humiliation will be seen by others as too high a risk and price for any gain from cheating.

More important, however, a severe criminal penalty against Mr. Floyd, is in my personal view, not needed to insure the integrity of the NRC operators' licensing process at Three Mile Island, nor would it be useful. The civil regulatory scheme presently administered by the NRC is exceedingly thorough. It is adequate to assure that the operators of Three Mile Island are persons of competence and integrity. Many weeks of public NRC hearings have been devoted to the issue of TMI management integrity and operator competence and, in fact, hearings on that very issue are still in progress. I have confidence that the NRC administrative regulatory process, with extensive public participation, will provide an orderly and reliable mechanism for assuring that any problems caused by deception respecting Three Mile Island will have been identified and resolved. Deception in the future is very unlikely. A severe sentence for Mr. Floyd would add nothing.

Sincerely,

Ivan W. Smith

cc: William J. Fulton, Esq.
Herzel E. Plaine, General Counsel, NRC
Parties to TMI-1 proceeding

EXHIBIT 3

The Philadelphia Inquirer

An Independent Newspaper

Published Every Morning by Philadelphia Newspapers, Inc.
400 N. Broad Street, P.O. Box 8263, Philadelphia, Pa. 19101

SAM S. McKEEL
President

EUGENE L. ROBERTS JR.
Executive Editor

EDWIN GUTHMAN
Editor

Thursday, January 10, 1985 Page 20-A

NRC's sham on Pennsylvania

A special panel of the Nuclear Regulatory Commission has been conducting hearings since 1980 to determine whether the undamaged Unit 1 reactor at Three Mile Island can be returned to service safely. Members of the Atomic Safety and Licensing Board are charged with impartially weighing all the evidence and making a recommendation on restart to the NRC.

The chairman of that board, Ivan W. Smith, has abandoned any pretense of impartiality by writing a letter asking leniency for a TMI supervisor who was convicted of cheating on a reactor operator license test and now faces a jail sentence. Saying his letter to U.S. District Judge Sylvia Rambo was sent "on humanitarian grounds," Mr. Smith asserted he sees nothing in the letter "which indicates a bias to anybody."

The TMI supervisor in question was convicted of cheating by having another employee complete portions of an examination for him. That exam was ordered by the NRC to determine if TMI operators were qualified.

One of the issues pending before Mr. Smith and the board is whether the training of TMI operators is adequate to prevent a repeat of the 1979 accident in the Unit 2 reactor.

Mr. Smith's letter ought to have resulted in a harsh reprimand from the NRC and his removal from the three-member board. Mr. Smith clearly has disqualified himself from any further involvement in the safety hearings and has compromised the entire process.

But the NRC apparently sees nothing wrong with his advocacy. That should come as no surprise because it would appear that the commissioners are about to vote on the restart of Unit 1 without waiting for the safety board to complete its investigation.

Several officials confirmed Tuesday that the NRC may decide on the restart before the end of January. "Conditions are ripe" for a vote, said the NRC's deputy general counsel.

In other words, the hundreds of hours of testimony and thousands of pages of documents submitted over the past 4½ years have been an exercise in futility — a sham perpetrated on a public that believed the NRC was serious about determining whether Unit 1 was safe. In considering a vote before critical evidence is in, the NRC is disregarding the legitimate concerns of the people of Pennsylvania and the law charging the commission with protecting the public health and safety.

Yesterday, Gov. Thornburgh called for the removal and replacement of Mr. Smith on the board. The governor noted that Mr. Smith had proven himself incapable of rendering a fair and impartial decision in the TMI case. All other people elected to protect the interest of Pennsylvanians must also raise their voices in protest immediately.

EXHIBIT 4

THE WALL STREET JOURNAL.

NRC Official Asks Leniency in Case Of Cheating on Test

* * *

Letter to Judge Could Delay Inquiry Into Restarting Three Mile Island's Unit 1

By Ron Winslow
Staff Reporter of The Wall Street Journal

A Nuclear Regulatory Commission safety official has written to a federal judge to urge leniency for a former Three Mile Island supervisor who faces a jail sentence for cheating on a reactor operator license test.

Ivan W. Smith, of the NRC's Atomic Safety and Licensing Board, made the recommendation on behalf of James R. Floyd, who was convicted in November of cheating on a reactor-operator licensing exam in August 1979 when he had another operator complete portions of a take-home test for him.

The letter could prove troublesome to General Public Utilities Corp., which owns Three Mile Island. Mr. Smith is chairman of the licensing board examining whether GPU is fit to restart the undamaged Unit 1 reactor at Three Mile Island, which has been closed since the highly publicized March 1979 accident at the adjacent Unit 2. As part of its inquiry, the board is now looking at the integrity of GPU's operator-training program. Critics charge that Mr. Smith's letter shows a bias in favor of GPU.

In the letter to Judge Sylvia Rambo, who presided over Mr. Floyd's trial in Harrisburg, Pa., Mr. Smith asserted that "a severe criminal penalty against Mr. Floyd" isn't needed because the NRC's regulatory process is "adequate to ensure that the operators of Three Mile Island are persons of competence and integrity." He also characterized Mr. Floyd's cheating as "impulsive" and "not motivated by personal ambition." He said, "Deception in the future (at Three Mile Island) is very unlikely."

Lynn Bernabei, an attorney for Three Mile Island Alert, which opposes restart of the plant, charged that the letter indicates that Mr. Smith has "prejudged" the operator-training issue in the restart hearings. She said she plans to request that he remove himself from further participation and that "an unbiased" board be appointed to hear the restart case. That could prolong the hearings and further delay a commission decision on GPU's often delayed restart request.

Pennsylvania Gov. Dick Thornburg, who has long insisted that the NRC complete its evaluation of GPU's operator-training program before allowing a restart, also criticized Mr. Smith's letter. "It certainly appears to be insensitive to the need for enhancing public confidence in the integrity of the hearing process," he said through a spokesman.

Mr. Smith said the letter was personal. "I see nothing in the letter which indicates a bias to anybody," He said. He said the letter was sent "on humanitarian grounds" after Mr. Floyd's attorney, William Fulton, had indicated Mr. Floyd faced a possible jail sentence. Mr. Smith said he didn't believe Mr. Floyd should go to jail for the cheating offense. Mr. Smith made the letter public at safety hearings last week.

Mr. Fulton has appealed Mr. Floyd's conviction. Mr. Floyd was supervisor of operations at Three Mile Island's Unit 2 reactor at the time of the accident.