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January 30, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ADMINISTRATIVE LAW JUDGE



In the Matter of)
GENERAL PUBLIC UTILITIES NUCLEAR) Docket No. 50-289 (CH)
(Three Mile Island Nuclear Station,)
Unit No. 1))

NRC STAFF RESPONSE TO CONTENTIONS SUBMITTED
BY GPU NUCLEAR CORPORATION AND TMIA AS
SUPPLEMENTS TO THEIR PETITIONS TO INTERVENE

I. INTRODUCTION

Pursuant to the Presiding Officer's Memorandum and Order of December 6, 1985, the NRC Staff hereby responds to the "Supplement to TMIA's Request for Leave to Intervene in the Hearing Granted Charles Husted" ("TMIA Supplement"), and "GPU Nuclear Corporation's Supplement to its Petition to Intervene" ("GPU Supplement"), in which TMIA and GPU Nuclear proffered their respective contentions.

TMIA seeks admission of the following two contentions:

1. The Appeal Board's condition barring Charles Husted from supervising responsibilities insofar as the training of non-licensed personnel is concerned, should not be vacated.
2. Husted should be barred from serving as an NRC licensed operator by reason of his demonstrated bad attitude and lack of integrity.

TMIA Supplement, at 1. As bases for these contentions, TMIA recites references in the decisions of the Special Master, Licensing Board, and Appeal Board, in Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 1), LBP-82-34B, 15 NRC 918 (1982), modified in part,

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LBP-82-56, 16 NRC 281 (1982), modified in part, ALAB-772, 19 NRC 1193 (1984), rev'd in part, CLI-85-2, 21 NRC 282, 317 (1985).

In further support of its contentions, TMIA argues that the evidence cited from the Restart proceeding showed "a total disregard [by Mr. Husted] for the NRC regulatory process" and that if Mr. Husted were permitted to operate the TMI-1 plant or supervise training of future operators, "the public will have no assurance that the plant will be operated safely." TMIA Supplement, at 2.

GPU's Supplement seeks the admission of the following contention:

The conduct and attitude of Charles Husted with which GPU Nuclear is familiar indicates that the NRC should not disqualify Mr. Husted from serving as an NRC-licensed operator, an instructor of licensed or non-licensed operators, or a supervisor of operator training personnel.

GPU Nuclear states that this contention is based on the opinions of GPU Nuclear management personnel who have supervised, evaluated and interacted with Mr. Husted over a number of years. Specifically, it is asserted that "Mr. Husted was considered to be a good operator, a good instructor, and a good training supervisor." GPU Nuclear argues that, based on its experience with Mr. Husted, he "is a man of character and integrity who properly understands and appreciates the responsibilities associated with the operation of a nuclear power plant including the importance of training..." GPU Nuclear Supplement, at 2.

As set forth below, the NRC Staff finds the three proffered contentions to satisfy Commission rules for the admission of contentions. 10 C.F.R. §2.714(b). In addition, the contentions fall within the scope of the issues

identified by the Commission as the subject of this proceeding ^{1/} and do not introduce matters otherwise excluded by the Commission from litigation in adjudicatory hearings under Subpart G to 10 CFR Part 2. ^{2/} As a result, the Staff does not oppose the contentions proffered by the intervening parties, TMIA and GPU Nuclear.

II. DISCUSSION

Inasmuch as a petitioner must proffer at least one admissible contention to be admitted as an intervenor in a proceeding (10 C.F.R. §2.714(b)), one of TMIA's contentions and GPU Nuclear's single contention must satisfy Commission requirements for admission of contentions in order for these petitioners to be admitted to this proceeding. Thus, under the regulations, petitioners must "include [in their petitions] a list of the contentions" they "seek to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." Id.

At the pleading stage, a contention need not be true to be acceptable, but it must be specific and have a basis. Washington Public Power Supply System, et al. (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 551 n.5 (1983), citing, Houston Lighting and Power Co. (Allens Creek Generating Station, Unit 1), ALAB-590, 11 NRC 542 (1980). Further, Section 2.714 does not require the petitioner to detail the evidence to be used in support of the contention. Virginia Electric and Power Company (North Anna

^{1/} See Commission Notice of Hearing, dated September 6, 1985, 50 Fed. Reg. 37098 (September 11, 1985).

^{2/} See note 3, infra.

Power Station, Units 1 and 2), LBP-84-40A, 20 NRC 1195, 1198 n. 4 (1984), citing, Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 & 2), ALAB-130, 6 AEC 423, 426 (1973). See also, Commonwealth Edison Company (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1740 (1985). Inasmuch as the TMIA and GPU Nuclear contentions are (1) sufficiently precise to provide adequate notice to the parties as to the issues raised, (2) within the scope of the proceeding, and (3) not otherwise inappropriate for adjudication,^{3/} the Staff considers the pleading requirements to be satisfied. See, Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 (1974).

The scope of the hearing offered to Charles Husted was originally set forth in Metropolitan Edison Company et al. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 317 (1985). There, the Commission offered Mr. Husted "an opportunity to request a hearing on whether the Appeal Board's condition barring him from supervisory responsibilities insofar as the training of non-licensed personnel is concerned should be vacated." Id. In the September 6, 1985 Notice of Hearing (Notice of Hearing), the Commission further noted and agreed to Mr. Husted's request to expand the offered hearing to address "whether he is barred by concerns about his attitude or integrity from serving as an NRC licensed operator, or a licensed operator instructor or training supervisor." Notice of Hearing, at 1, 3.

^{3/} For example, contentions challenging applicable statutory requirements or the basic structure of the Commission's regulatory process are not appropriate for adjudication. Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, at 20 (1974).

Both petitioners' contentions fall within the scope of the hearing so defined by the Commission. Indeed, the bases proffered by TMIA closely track the factual questions on which the Commission stated the hearing will focus. Notice of Hearing, at 2.

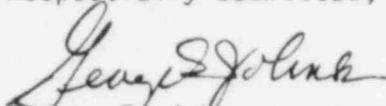
In "Mr. Husted's Answer to Supplement to TMIA's Request for Leave to Intervene in the Hearing Granted Charles Husted" ("Husted Answer"), dated January 24, 1986, Mr. Husted responds to TMIA's contentions by suggesting that the contentions in this proceeding should be reformulated and limited to the four factual questions listed in the Commission's Notice of Hearing (at 2). Mr. Husted's proposal is aimed at preventing undue expansion of the issues through TMIA's contentions. Husted Answer, at 2-3. The Staff does not interpret the Commission's Notice of Hearing as necessarily restricting the scope of the hearing to the four factual questions listed at page 2 of the Notice. To be sure, the Commission considered resolution of these four matters to be essential to the proceeding. However, the Commission's delineation of the four issues was expressly for the purpose of determining whether to grant Mr. Husted's request to expand the scope of the hearing to include consideration of Mr. Husted's suitability for serving as an NRC licensed operator or a licensed instructor or training supervisor. Notice of Hearing, at 2. In the Staff's view, to strictly limit the proceeding to the resolution of these four factual questions could have the undesirable effect of precluding the presentation of evidence not directly related to the events in question which may have a material bearing on Mr. Husted's suitability for the positions in question. Therefore, the Staff views the limitation Mr. Husted proposes as unwarranted and undesirable.

In sum, the Staff believes the contentions proffered by petitioners TMIA and GPU Nuclear satisfy the pertinent regulatory requirements and are consistent with the scope of the hearing provided for in the Commission's Notice of Hearing. The Staff therefore offers no objection to admission of the proffered contentions.

III. CONCLUSION

Inasmuch as the contentions proffered by TMIA and GPU Nuclear are consistent with both the regulatory pleading requirements and the Notice of Hearing, the proffered contentions should be admitted.

Respectfully submitted,


George E. Johnson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 30th day of January, 1986.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CONTENTIONS SUBMITTED BY GPU NUCLEAR CORPORATION AND TMIA AS SUPPLEMENTS TO THEIR PETITIONS TO INTERVENE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 30th day of January, 1986:

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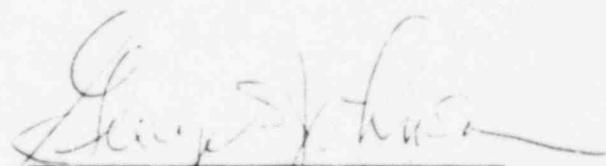
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