

4/95

DOCKETED
UNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

MAR 21 08:37

COMMISSIONERS:

OFFICE OF THE
DOCKETING & RECORDS
BRANCH

- Nunzio J. Palladino, Chairman
- Thomas M. Roberts
- James K. Asselstine
- Frederick M. Bernthal
- Lando W. Zech, Jr.

MAILED MAR 21 1986

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

Docket No. 50-289 (CH)

ORDER

On September 5, 1985, the Commission issued a Notice of Hearing granting Charles Husted's request for a hearing. 50 Fed. Reg. 37098 (September 11, 1985). A prehearing conference was held in this proceeding on February 19, 1986. On March 4, 1986, Three Mile Island Alert (TMIA), an intervenor in this proceeding, moved the Commission to dismiss the Notice of Hearing.¹ TMIA argued that Mr. Husted's request for a hearing was untimely, that Mr. Husted should have participated in

¹TMIA also requested the Commission to stay further proceedings pending resolution of its motion to dismiss. Since the Commission has decided to deny the motion to dismiss, it need not address the stay request.

8603240166 860320
 PDR ADOCK 05000289
 G PDR

2502

the TMI-1 restart proceeding, and that the only issue is legal, not factual.

TMIA misconstrues the Commission's decision to provide Mr. Husted a hearing. As explained in CLI-85-2, the Commission decided not to resolve the difficult questions regarding whether Mr. Husted was legally entitled to an opportunity for hearing because, among other things, in fairness to Mr. Husted it was offering him an opportunity to request a hearing. 21 NRC 282, 316-17 (1985). The focus of this hearing is not a legal one, but rather a factual determination of whether the Appeal Board's condition should remain in place. This determination, unlike that made in the TMI-1 restart proceeding, will be made after Mr. Husted has had a full opportunity to participate in the hearing.² TMIA has

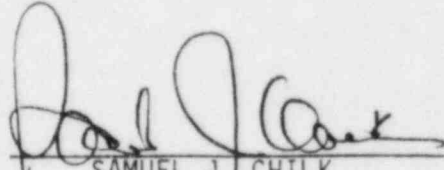
²TMIA asserts that the basis of the Commission's decision to offer Mr. Husted a hearing was that he "had had no notice of the Appeal Board's condition and no opportunity to comment." TMIA's assertion is misleading. The point is not that Mr. Husted could have commented after the condition was imposed, but that Mr. Husted was not put on notice at the initiation of the TMI-1 restart proceeding that action might be taken against him as a result of that proceeding. Hence he has not had an adequate opportunity to litigate the issues involving him.

presented no arguments not considered by the Commission in commencing this proceeding. Accordingly, TMIA's motion to dismiss is denied.³

It is so ORDERED.



For the Commission


SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.

this 20th day of March, 1986.

³TMIA's argument that Mr. Husted's request for hearing was untimely is itself both untimely and incorrect. CLI-85-2 was served on February 26, 1985. Under the terms of that order and the Commission's regulations, Mr. Husted had until March 25 to request a hearing. See 10 CFR 2.710. Hence his March 25 request was timely.