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RELATED CORRESPONDENCE

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))

TMIA'S BRIEF IN SUPPORT OF
APPLICATION FOR ISSUANCE OF SUBPOENA

INTRODUCTION

On June 5, 1986, TMIA filed an Application for Issuance of Subpoena for the purpose of requiring the appearance of Gary L. Milhollin at the above-captioned proceeding.

During a June 9, 1986 telephone conference of the parties, Judge Margulies ordered TMIA to file a brief in support of its application by June 13, 1986, and further ordered that the brief address the matters listed below:

- a) the adequacy of the notice in seeking the subpoena, in the context of this proceeding;
- b) the general relevancy of the testimony sought;
- c) whether the request meets the requirements of 10 CFR 2.720(h)(2)(i).

TMIA submits the following in compliance with that order.

ADEQUACY OF NOTICE

At a May 20, 1986 prehearing conference, the Staff proposed that the parties stipulate to the fact that during

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Mr. Husted's December 10, 1981 appearance before the Special Master, he appeared to be flippant and less than serious. TMIA declined to be a party to the stipulation because (a) the issue of Husted's attitude was central to the Appeal Board's decision to impose a condition on the restart of TMI-1; (b) because Husted's attitude throughout the investigative and hearing process was an issue, and singling out one area for stipulation would minimize the significance and pervasiveness of Husted's attitude problem; and (c) because Husted's attitude is an issue in this hearing which cannot be resolved by stipulation. A stipulation is not an adequate substitute for a factual hearing.

On May 27, 1986, the undersigned contacted Mr. Milhollin who indicated that he would not appear at the Husted hearing voluntarily. On June 5, 1986, TMIA filed its Application for Issuance of Subpoena.

The Special Master's Report issued on April 28, 1981; all parties to the current proceeding are familiar with the findings and conclusions concerning Husted, contained in the report. By filing on June 5, 1986, other parties were given more than two weeks notice prior to the hearing in which to prepare. Therefore, no party is prejudiced by TMIA's filing of June 5th.

GENERAL RELEVANCY OF THE TESTIMONY SOUGHT

As stated above, Husted's attitude and the related issues of his demeanor and forthrightness during the hearing, were central to the Appeal Board's decision to impose the condition which gave rise to the current hearing. The Special

Master was the only impartial observer of Husted's attitude and demeanor at the hearing. As such, he is in a position to provide the best evidence on this issue.

REQUIREMENTS OF 10 CFR 2.720(h)(2)(i)

Under 10 CFR 2.720(h)(2)(i), TMIA satisfies the requirements of exceptional circumstances to require the attendance and testimony of named NRC personnel.

Gary L. Milhollin was the trier of fact during the reopened hearing on cheating. His impressions as to the conduct and demeanor of Husted in support of his findings and conclusions render him the only witness or person to substantiate, amplify and explain the basis for the facts stated in his report. No other witness can so testify. No other impartial witness is available to contradict Husted on these issues.

CONCLUSION

For the reasons stated above, TMIA's request for Issuance of Subpoena should be granted.

Respectfully submitted,

A handwritten signature in cursive script that reads "Louise Bradford".

Louise Bradford
for Three Mile Island Alert, Inc.

June 13, 1986