

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

In re JOSEPH MACKTAL

OI-89-008

'89 AUG -8 P3:59

Joseph J. Macktal's Statement
Regarding His Motion for Recusation

OFFICE OF GENERAL COUNSEL
DOCKETING SERVICE
BRANCH

On June 15, 1989 Mr. Joseph J. Macktal, Jr. was subpoenaed by the NRC OI. On June 22, 1989 the NRC issued an Order upholding said subpoena. On July 3, 1989 Mr. Macktal, through counsel, filed a Motion for Reconsideration and Motion for Recusation. On July 5, 1989 Mr. Macktal's Motion for Reconsideration was denied by the NRC.

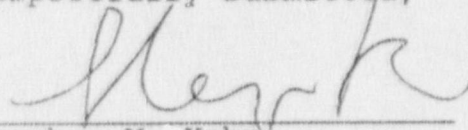
On August 2, 1989 counsel for Mr. Macktal learned that the NRC was still considering the Motion for Recusation. Mr. Macktal's counsel believed that the Motion for Recusation was moot, as Mr. Macktal has no pending motion or requests before the NRC. Apparently, the NRC maintains that the Motion for Recusation is not moot.

According to NRC precedent, a motion for disqualification of a Commissioner would be determined "exclusively" by each Commissioner. Pacific Gas & Electric Co., 11 NRC 411 (1980). When the Commissioners acted upon the Motion for Reconsideration, they had ample opportunity to disqualify themselves on the basis of Mr. Macktal's request. None of the Commissioners disqualified themselves. The disqualification motion was constructively denied when the NRC issued its July 5, 1989 Order. See, OI-89-008.

Presently Mr. Macktal is not a party to any proceeding pending before the Commission. Consequently, the Commission

no longer has jurisdiction to consider Mr. Macktal's Motion
for Recusation, as said Motion is moot.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "M. Kohn", written over a horizontal line.

Stephen M. Kohn

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August 2, 1989

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was
served upon the following parties on the 2nd day of August
1989:

By First Class Mail

Chuck Mullins
Secretary of the NRC
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

By:



Stephen M. Kohn