



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Ivan W. Smith, Chairman
Dr. Walter H. Jordan
Dr. Linda W. Little



SERVED AUG 21 1981

In the Matter of)
METROPOLITAN EDISON COMPANY)
(Three Mile Island Nuclear)
Station, Unit 1)

Docket No. 50-289
(Restart)

August 20, 1981

ORDER RELATIVE TO THE SUBMISSION OF
VIEWS ON THE INVESTIGATION OF CHEATING

The Board and the parties have now received the August 11, 1981 NRC IE final Report on Investigation of Cheating by two of Licensee's shift supervisors on the RO and SRO operator licensing examinations. The Licensee and Staff have also served various board notifications and letters from counsel, which included the NRC Office of Inspector & Auditor report (served on August 7), and the then preliminary IE conclusions (served on August 6). The Staff's reports informs us that:

- (1) two shift supervisors have acknowledged that they were involved in cheating on the NRC RO and SRO examinations taken in late April 1981 and on the Licensee's mock examinations earlier in April 1981;
- (2) some sessions of the examinations were unproctored, and at least one proctor may have been inattentive for extended periods of time;
- (3) in the Staff's view, there is no evidence of cheating by other Licensee employees who took the examinations;
- (4) in the Staff's view, there is no evidence that, except for the

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knowledge of the two individuals involved, the Licensee either knew of the cheating prior to the NRC Staff becoming aware of it (from a comparison of the answers) or attempted to facilitate cheating by its employees;

(5) the Licensee has terminated the employment of the two individuals involved; and

(6) the Staff has concluded that there should be a reexamination of the other employees who took the examinations.

The possible nexus of this cheating incident to issues in this hearing, depending upon the facts, goes beyond cheating by two particular individuals. We are proceeding with the issuance of a partial initial decision on management issues. We do so in order to give the Commission as much time as possible to review the partial decision before we issue a subsequent decision on other issues. Also, by issuing our findings on training, staffing, and operator licensing now, the Commission, if it chooses, can monitor the IE investigation in the context of its relevance to this proceeding. However, in the partial initial decision we retain jurisdiction to consider further the effect of the investigation of cheating on our decision. The issues of Licensee's management integrity, the quality of its operating personnel, its ability to staff the facility adequately, its training and testing program, and the NRC process by which the operators would be tested and licensed, are all important issues considered in the partial decision. We will consider carefully the effect on such issues of the investigations to date and any further information which may be developed.

In this connection, any party with an interest in management issues should advise the Board, within ten days of the service of this order, of its views

of whether further actions, and if so what actions, should be taken in this proceeding with respect to the cheating incident. Parties who wish to undertake further investigation, discovery and/or move to reopen the proceeding to present evidence, should specifically identify what they would seek to prove, and identify their bases for believing the further actions they seek would be useful (or to state it negatively--why they believe the Staff investigation reports are inadequate). See Vermont Yankee Nuclear Power Corp. (Vermont Yankee), ALAB-138, 6 AEC 520, 523-24 (1973); Vermont Yankee Nuclear Power Corp. (Vermont Yankee), ALAB-124, 6 AEC 358, 362-65 (1973). Parties should also make clear the extent to which they are prepared to undertake the actions they recommend, as distinguished from recommendations, which we also invite, on what the Board should do pursuant to our sua sponte discretion.

Parties who believe no further action is warranted in this proceeding should postulate proposed findings, within the same time period, in support of this position. Such findings should include support for why the cheating matter may be closed on the basis of the termination of employment of two shift supervisors, and the retesting of all other employees who took the test. Such findings should also include specific support for the Staff's implicit conclusion that there is no involvement or culpability (by misfeasance, malfeasance or nonfeasance) in cheating on the NRC operator examinations, or in any prior NRC or Licensee operator examinations, exercises or the like, by any other Licensee employee, manager or consultant.

The Board directs the Staff, as part of its response, to provide an explanation of what is meant by the IE report conclusion, at p. 2, that

because enough information had been gathered so that "...an enforcement decision could be made, ...no additional investigative effort was warranted", and accordingly the investigation was closed. We are concerned that the IE investigation may have been terminated when sufficient information was obtained to reach the narrow enforcement decision that two individuals cheated, but before sufficient information was gathered to conclude there was no broader problem.

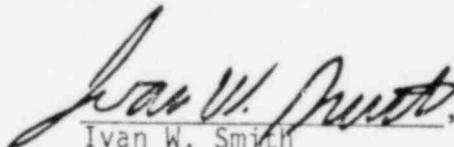
For purposes of the above submissions by the parties, all information available pertinent to the cheating investigations may be cited even though not in evidence.

If it has not done so in the course of its investigation, we direct the Staff to assure itself that it has possession of the originals of all pertinent Licensee documents and files, including any notes by Licensee's employees or consultants. Licensee may of course retain copies. This should include the mock Licensee examination and answer papers, and any records of the grading of them by Licensee. All parties are directed to assure that no arguably pertinent documents, records, notes by individuals, etc., (including those in the possession of consultants) are destroyed. This includes any notes by graders of examinations.

We have received the August 4, 1981 Aamodt "Motion for Open Investigation" and the August 5, 1981 letter from the Commonwealth. As the Commonwealth has correctly stated, motions for relief were then premature. Now that the Staff has issued its report, the Commonwealth and the Aamodts should respond to this order if they wish to participate further in this proceeding on the cheating incident. We note that we do not have jurisdiction to appoint a

separate investigation committee which would include members of the public as the Aamodts request. It appears this request is based on the Aamodts' misconception that "the hearing forum is no longer available" (Motion, at 2). We are retaining jurisdiction to decide what further actions, if any, should be taken on the cheating incident in this proceeding. Therefore, the hearing forum is available if we find that the record should be reopened, either on motion which we have invited or sua sponte, unless and until the Commission itself decides to consider this matter directly. If the Aamodts are seeking to have an investigation committee established to issue a report before or instead of action by this Board, such a request would have to be filed promptly and directly with the Commission.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

 Chairman
Ivan W. Smith
ADMINISTRATIVE JUDGE

Bethesda, Maryland

August 20, 1981