

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 In the matter of :
5 METROPOLITAN EDISON COMPANY : DOCKET No. 50-289
6 (Three Mile Island Unit 1 : (Restart)
7 - - - - - x

8 Northwest Office Building
9 First Floor Hearing Room
Harrisburg, Pennsylvania

10 Friday, October 2, 1981

11 Reopened evidentiary hearing in the
12 above-entitled matter was commenced, pursuant to notice,
13 at 9:00 a.m.

14 BEFORE:

15 IVAN W. SMITH, Esq., Chairman,
Atomic Safety and Licensing Board

16 GARY MILHOLLIN, Special Master,
17 Atomic Safety and Licensing Board

18 DR. LINDA W. LITTLE, Administrative Law Judge

19 DR. WALTER H. JORDAN, Administrative Law Judge

20 Also present on behalf of the Board:

21 LAWRENCE BRENNER, Esq.
Administrative Law Judge
22 Legal Advisor to the Board

23 On behalf of the Licensee, Metropolitan Edison Company:

24 GEORGE F. TROWBRIDGE, Esq.
ERNEST L. BLAKE, JR., Esq.
25 DELISSA A. RIDGWAY, Esq.

1 Shaw, Pittman, Potts and Trowbridge
2 1800 M Street, N.W.
3 Washington, D.C. 20036

3 On behalf of the Commonwealth of Pennsylvania:

4 ROBERT ADLER, Esq.
5 Assistant Attorney General
6 505 Executive House
7 Harrisburg, Pennsylvania

8 On behalf of Mr. and Mrs. Norman Aamodt:

9 JOHN CLEWETT, Esq.
10 The Christic Institute
11 1324 North Capitol Street
12 Washington, D.C. 20002

13 On behalf of Three Mile Island Alert:

14 LOUISE BRADFORD

15 On behalf of Two Unnamed Parties:

16 MICHAEL F. McBRIDGE, Esq.
17 LeBoeuf, Lamb, Leiby & MacRae
18 1333 New Hampshire Avenue, N.W.
19 Washington, D.C. 20036

20 On behalf of One Unnamed Party:

21 DAVID E. COLE, Esq.
22 Smith and Smith
23 2931 North Front Street
24 Harrisburg, Pennsylvania 17110
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C O N T E N T S

W I T N E S S E S

-NCNE-

E X H I B I T S

-NONE-

Statement of Issues for reopened hearing proposed
by Licensee, The NRC Staff, The Commonwealth of
Pennsylvania, the Aamodts and TMIA.....23,122

Schedule for Reopened Proceeding.....23,187

Additional Minimum evidentiary presentations
specified by the Special Master at the
Conference of October 2, 1981.....23,187

P R O C E E D I N G S

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(9:00 a.m.)

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CHAIRMAN SMITH: Good morning, ladies and gentlemen. Before we proceed with the business at hand, I would like to introduce Gary Milhollin who is a judge, an administrative judge, on our panel and, as you know, will be serving as a Special Master. Judge Milhollin, will you stand? And he will be taken over, as the notes indicated, at the end of our session.

10

Also joining our unit as a legal intern is Ms. Carole Kagan who will be working with the parties in this reopened hearing. Ms. Kagan and Larry Brenner is still with us, except you may have noticed a new aura of infallibility about Mr. Brenner. He is now an administrative judge on the panel.

16

Are there any preliminary matters before we begin the agenda for this morning?

18

(No response.)

19

We have some housekeeping matters. We had a very difficult time finding this hearing space, and we expect even greater difficulty in finding hearing space for the two weeks or more of hearings that Judge Milhollin has scheduled. We would appreciate it very much if we could receive some help from the Commonwealth along that line. If you have any ideas, it would be

1 helpful, we would appreciate it.

2 Otherwise, our alternative is to rent space in a
3 hotel or something of that nature, which is not very
4 satisfactory. We have been denied the use of the Federal
5 District Court and the County Courthouse and the Utilities
6 Commission, and just about everybody.

7 MR. ADLER: I will look into it. It depends on the
8 dates.

9 CHAIRMAN SMITH: Yes, I know that is a problem. We
10 could really use help from the Commonwealth in that area.

11 MR. ADLER: I will do my best.

12 CHAIRMAN SMITH: The first item that we want to
13 discuss is the issue of confidentiality of the names of some
14 of the personnel involved in the subject matter of this
15 reopened hearing.

16 First, I want to report that at the request of the
17 Commission we have sent an unexpurgated copy of the
18 investigative reports to the Commission by way of the Office
19 of General Counsel. They understand that it is confidential
20 and will remain confidential until further order of the
21 Special Master of the Board.

22 The first determination as to the confidentiality
23 issue to be made by Judge Milhollin; this is the one item
24 that we recognize at the outset as involving a permissible
25 interlocutory appeal to the Board, and that is if Judge

1 Milhollin denies the request for confidentiality and orders
2 an open public hearing, he will entertain an immediate
3 appeal.

4 If we affirm denial of his order of denying -- if
5 we affirm his order denying confidentiality, we will
6 facilitate and perhaps even certify our own appeal to the
7 Appeal Board. In the meantime, until those steps, if
8 necessary, are accomplished, confidentiality will
9 maintained. Judge Milhollin will address that in particular
10 when he presides.

11 WE also accept former employees or, for that
12 matter, anyone who has an interest in the confidentiality as
13 having standing in this reopened proceeding to seek it, and
14 we have already had an appearance by LaBoeuf, Lamb,
15 representing parties asserting an interest in
16 confidentiality.

17 We have passed out a paper prepared by the Board
18 which superimposes upon the filing by the joint parties on
19 the proposed and agreed upon issues in the reopened
20 proceeding. The Board's comments are in brackets and in
21 deletions.

22 We regard our changes to the issues and to the
23 proposed issues as being tentative rulings, the way we
24 believe the issues should be formed for the reopened
25 hearing. We will take up the issues in order and hear

1 arguments for and against our modifications or otherwise:
2 then we will recess, if necessary, rule upon the issues,
3 then return and announce our ruling.

4 As a general comment, we accept the broad issue as
5 defined by the parties. That we think is a good job, and we
6 are ruling now on specific issues under the broad issue.

7 We view the specific issues to be example issues.
8 Judge Milhollin we have the authority to accept additional
9 issues under the broad issue, and to modify the specific
10 issues which are accepted by the Board. In fact, Judge
11 Milhollin will also have the authority, if the evidence
12 requires it, at his discretion to restate issues that we
13 have expressly not accepted.

14 In short, Judge Milhollin will have the authority
15 to form the issues to the evidence as it is developed within
16 the boundaries of the broad issue.

17 We have also looked at the evidentiary plans that
18 the parties have submitted and decided which issues could be
19 accepted. The Board itself is not making any rulings now on
20 evidentiary matters, except as the evidentiary may be
21 indirectly affected by our rulings on the issues.

22 I think at this point we will insert a copy of the
23 Board's tentative rulings on the issues into the transcript
24 for obvious reasons, so that the discussion can be in the
25 context of the papers we are discussing.

1 (Statement of Issues for Reopened Hearing Proposed
2 by Licensee, The NRC Staff, the Commonwealth of
3 Pennsylvania, the Aamodts and TMJA follows:)

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STATEMENT OF ISSUES FOR REOPENED HEARING
PROPOSED BY LICENSEE, THE NRC STAFF,
THE COMMONWEALTH OF PENNSYLVANIA, THE AAMODTS AND TMIA

A. Scope of Issues

The broad issue to be heard in the reopened proceeding is the effect of the information on cheating in the NRC April examination on the management issues considered or left open in the Partial Initial Decision, recognizing that, depending on the facts, the possible nexus of the cheating incident in the NRC examinations goes beyond the cheating by two particular individuals and may involve 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.

Consistent with this broad issue the parties proposing this Statement of Issues agree that the issues to be heard in this proceeding should include:

1. The extent of cheating by TMI-1 operator license candidates [on any other] on the NRC license examinations in April, 1981, and ~~the following~~ [or NRC-administered] Company examinations [including but not limited to the following]: Kelly examinations (including Category T) in April, 1980, Category T make-up examinations subsequently administered by the Company, and the ATTS mock examinations in early April, 1981.
2. The adequacy of the Staff's investigation of, and NRC response to, the cheating incident and rumors of cheating in the April, 1981, NRC examinations [including the adequacy of the Staff's grading procedures as set forth in Issue 10].

3. The adequacy of Licensee's investigation of, and Licensee's response to, cheating or possible cheating in the ~~Company administered~~ examinations listed in Issue (1) above.
4. ~~The adequacy of Licensee's response to the discovery of cheating and rumors of cheating in the NRC April, 1981 examinations.~~
5. The extent of Licensee management knowledge of, encouragement ^[negligent failure to prevent] of, and/or involvement in cheating in the above mentioned NRC and Company examinations.
6. The existence and extent of Licensee management involvement in cheating as alleged by the Aamodts in Paragraph 7 in response to the Board's Order of August 20, 1981.
7. The existence and extent of Licensee management constraints on the NRC investigation of cheating and rumors of cheating in the NRC April, 1981, examinations.
8. The adequacy of Licensee management response to the incident in July, 1979, referred to in the I&E investigation report and involving one of the two operators terminated as a result of cheating on the NRC April, 1981 examinations.
9. The adequacy of Licensee's plans for improving the administration of future Company qualification examinations for licensed operators and candidates for operator licenses, including the need for independent administration and grading of such examinations.

[DELETE]

[REDRAFTED]

10. The adequacy of the administration of NRC licensing examinations for TMI-1 personnel, including proctoring, grading, and safeguarding the integrity of examination materials; in addition, the adequacy of the Staff's review of the administration of Licensee's Category T examinations; also the adequacy of the Staff's plan for retesting operators and monitoring its NRC examinations to assure proper adherence to NRC testing requirements and to provide reasonable assurance that TMI-1 can be operated safely.
11. The potential impact of NRC examinations, including retests, and operator terminations on the adequacy of staffing of TMI-1 operations.
12. The sufficiency of management criteria^[and procedures] for certification of operator license candidates to the NRC with respect to the integrity of such candidates/ [and the sufficiency of the procedures with respect to the competence of such candidates].

The Aamodts and TMIA propose the following additional issues:

[REJECTED]

13. The extent of cheating by TMI-2 operators on NRC licensed operator examinations.
14. The extent of cheating by TMI non-licensed personnel on Licensee administered tests given since the TMI-2 accident.
15. The contribution that inadequate training made to the cheating incident.

[REJECTED]

[REJECTED]

[REJECTED,
but see
Issue 12]

16. The sufficiency of management criteria for certification of operator license candidates to the NRC with respect to the integrity and competency of such candidates.
17. The adequacy of the Staff's plan for retesting operators and monitoring its NRC examinations to provide reasonable assurance that TMI-1 will be operated safely.

[ACCEPT
but com-
bined and
limited in
Issue 10]

1 CHAIRMAN SMITH: We will take each issue
2 sequentially. Turning to issue 1, I think the changes are
3 obvious. The changes will be sharply limited, however, and
4 the limitations will become apparent when we take up a
5 discussion of proposed issue 13.

6 The purpose here is solely to make it clear that
7 Judge Milhollin need not limit his inquiry to only the main
8 tests; that is the only thing we are trying to accomplish by
9 our ruling on issue 1. We are not saying that any other
10 test is by our modification of the issue necessarily germane
11 to the reopened proceeding. But we will come back to that
12 in more detail when we get to proposed issue 13.

13 Mr. and Mrs. Aamodt, did you get a copy of the
14 paper I am referring to?

15 MRS. AAMODT: We have one copy, yes.

16 CHAIRMAN SMITH: I have an extra one if it would be
17 helpful to you.

18 MRS. AAMODT: It would be helpful, thank you.

19 CHAIRMAN SMITH: Before we move on to issue 2,
20 bearing in mind the group will come back again to the same
21 discussion on issue 13, proposed issue 13, is there any
22 discussion on issue 1 as we have modified it?

23 MR. TROWBRIDGE: Mr. Chairman, I would ask that we
24 take a short recess to give us an opportunity to really
25 inspect this.

1 CHAIRMAN SMITH: The entire --

2 MR. TROWBRIDGE: The entire document.

3 CHAIRMAN SMITH: All right, I think that is
4 appropriate, yes. I might say, however, that until you have
5 an opportunity to hear the Board's comments, which include
6 limitations on the meaning of our modifications, your
7 perusal of the document may not be satisfactory.

8 MR. TROWBRIDGE: I understand that. Nevertheless,
9 it would enable us to raise questions for the Board.

10 CHAIRMAN SMITH: All right, let's take a recess
11 until the parties call us, but no more than 20 minutes.

12 (A short recess was taken.)

13 CHAIRMAN SMITH: I neglected to ask the Aamodt
14 family representative to identify himself on the record. He
15 did off the record; would you do it on the record, sir?

16 MR. CLEWETT: Yes, sir, my name is John Clewett, I
17 am working with a group called the Christic Institute in
18 Washington, D.C.

19 CHAIRMAN SMITH: Are you an attorney, sir?

20 MR. CLEWETT: Yes.

21 CHAIRMAN SMITH: All right. Are you serving as an
22 attorney?

23 MR. CLEWETT: Yes.

24 CHAIRMAN SMITH: Then you should file a notice of
25 appearance.

1 MR. CLEWETT: Yes, I have mailed one to the
2 Commission. I have copies of that, if you would like.

3 CHAIRMAN SMITH: Just make a temporary notice of
4 appearance. What bar are you a member of?

5 MR. CLEWETT: The District of Columbia and
6 California.

7 CHAIRMAN SMITH: Could you give us your mailing
8 address and phone number?

9 MR. CLEWETT: Yes. It is 1324 North Capitol Street
10 in Washington, 20002.

11 CHAIRMAN SMITH: Telephone number?

12 MR. CLEWETT: Area code 202, 797-8106.

13 CHAIRMAN SMITH: Thank you.

14 In retrospect, I think it would have been better
15 before the recess to have gone through the Board's reasoning
16 on all of the modifications of rulings. It would have been
17 a more efficient recess for you, and I think it is better
18 now that you have in context all of our ideas before we take
19 them up individually because it may affect your position on
20 any one particular issue.

21 So let's proceed that way. Go through our rulings,
22 then we will return to individual issues for individual
23 discussion.

24 As I indicated, the administration -- we have
25 already explained the modification for issue number 1.

1 Issue number 2 has added in the copies you received the
2 language, quote, "including the adequacy of the staff's
3 grading procedures as set forth in issue 10." I believe
4 that that addition confuses the issue and I think it should
5 be deleted and the issue should remain as it originally was
6 agreed upon by the parties.

7 The thing that we were trying to identify there is
8 that the adequacy of the staff's investigation into the
9 adequacy of the staff's grading procedure would have been
10 germane to the proceeding and I do believe it is, but I
11 think that the addition there tends to confuse the issue and
12 it is better to just leave it out.

13 We have combined issue 4 into issue 3, and this is
14 indeed a tentative ruling because we could have used, I
15 believe, an indication in the first instance of why issue 3
16 and issue 4 differ. It seems if we delete in issue 3 the
17 words "company administered" the need for issue 4 goes away.

18 We recognize that the Licensee has made the point
19 in its filings that it believed then that a concurrent
20 company investigation into the subject matter of the alleged
21 cheating might have interfered with the NRC investigation.
22 We understand that point. If this is the rationale of the
23 differing issues, we would like that explanation or any
24 other explanation that the parties could offer as to what
25 the difference is, and we will come back to that.

1 Issue 5 we have added the language, quote,
2 "negligent failure to prevent" and I think that that does
3 not require any further explanation on our part.

4 Judge Milhollin has some questions in an effort to
5 clarify some portions of issue 6.

6 Issue 10 is one that is potentially troublesome,
7 and we should spend some time discussing that this morning.
8 We have incorporated important aspects of proposed issue 17
9 into issue 10 in that the substantive adequacy of the
10 operator test, NRC operator tests, are placed in the issue.
11 And we believe that that modification requires an
12 explanation because we recognize that the substance of the
13 NRC examinations does not have a clear nexus to the issue of
14 cheating. And it is, of course, the issue of alleged
15 cheating which has been the sole basis for reopening the
16 evidentiary record.

17 We think that with the very sharp limitation that
18 we are imposing on the permissible inquiry into the
19 substance of the examinations, our reasoning I hope will
20 become clear. The inquiry into the substance of the
21 examinations will be limited to permit evidence on whether
22 the NRC exams are, because of their content, amenable to
23 cheating or otherwise subject to defeat of their intended
24 purpose.

25 The subissues that we can identify, and the only

1 subissues that now we can identify by our own imagination as
2 might having merit under this subissue, is whether because
3 of the content of the examinations the examination can be
4 passed by use of crib sheets, by memorizing stock
5 boilerplate answers, or by pre-identification of the
6 questions either by coaching on previous questions which
7 would indicate perhaps an insufficient bank of questions, or
8 by a lack of safeguards; for example, multiple sequential
9 sessions of the same examination.

10 We have tried to keep issue 10 intact and add only
11 modifications, but by the time we accomplished that it was
12 necessary to rewrite it in its entirety. So although we
13 will permit, under our tentative ruling, a limited inquiry
14 into the substance of the NRC exams, it is only for the
15 limited purpose of testing whether the purposes of the exam
16 can be defeated.

17 We most particularly do not want a detailed inquiry
18 into whether the exam content is correctly designed to test
19 operators on their general competence, or relitigation of
20 the overall issue of the adequacy of training. For example,
21 the proposed evidentiary plan by the Mamodt family on
22 proposed issue 17 includes things which would be a
23 relitigation, which we will not permit, subject to the
24 broader rulings that we had made with respect to the Special
25 Master's discretion.

1 Our concern, as we stated, is that there not be a
2 relitigation of the adequacy of training or the adequacy of
3 the exam content to test competency. Our concern is whether
4 the purpose, which we assume to be testing on the competence
5 of the operators, can be defeated by the nature of the
6 questions.

7 This subissue is a discretionary one; it is not
8 mandated by any of the rules of reopening procedures, and
9 accordingly, we and Judge Milhollin will exercise very
10 strong authority and discretion to prevent a general
11 litigation or a relitigation, it might be said, on the
12 relationship between the quality of the NRC test and the
13 operator competence.

14 Now, I stated this idea in one way or the other
15 three or four times. I am afraid I may have bored you with
16 it. But it is necessary that we repeat and stress what we
17 view as a very important limitation on this. Judge
18 Milhollin has consulted with us on the formulation of these
19 issues, and he agrees with this approach to issue 10 as we
20 have tentatively modified it.

21 Issue 12 has also been materially modified by the
22 Board. We have made our own addition to the issue by
23 including management procedures and by including the
24 subissue of competence of the examination candidates, and
25 this modification should be well understood by the parties

1 in its limitations.

2 We have, by design, broken the issue into two
3 sections so that only the procedures, not the criteria, for
4 certifying candidates with respect to competency will be at
5 issue. Here again, we will not entertain a new litigation
6 into the criteria for operator competence, but we will
7 permit a narrow litigation on whether the procedures, as
8 compared to criteria, for assuring that candidates are
9 competent to stand for NRC exams can be defeated. For
10 example, by cheating on company-administered exams and other
11 devices which we referred to with respect to limitations and
12 the permissible scope of inquiry under issue 10.

13 Did I use the word incompetent instead of
14 competent? I do not recall where I used it, but I intend to
15 refer to competency instead of incompetency throughout my
16 remarks.

17 Issues 13, 14 and 15 are rejected as issues
18 standing alone, but will be considered to a very limited
19 degree as evidentiary issues or subissues where close
20 relevance to the broad issue or any other accepted issue can
21 be demonstrated.

22 This ruling means that the licensee need not put on
23 an affirmative case on rejected issues 13, 14 and 15, nor
24 will the Board or Judge Milhollin permit a general discovery
25 effort on these rejected issues. Discovery may be had only

1 where the discovering party has evidence in hand which
2 demonstrates that discovery might produce additional
3 evidence relevant to the broad issue and/or an accepted
4 issue, or where other persuasive reason demonstrates that
5 discovery might be productive within the limits of our
6 ruling.

7 We have thoroughly considered the evidentiary
8 discovery plans submitted by the Aamodt family with respect
9 to these rejected issues, and find no reason in their
10 evidentiary plan to accept rejected issues 13, 14 and 15 as
11 issues in this reopened proceeding.

12 We wish to emphasize, however, that Judge Milhollin
13 is not foreclosed from accepting evidence falling into the
14 categories of rejected issues 13, 14 and 15 if the evidence
15 justifies the inquiry into the broad issue.

16 An example of how this could happen was discussed
17 among the Board members and Judge Milhollin in arriving at
18 this conclusion. For example, if the Aamodts establish on
19 their own that cheating by non-licensed personnel together
20 with other evidence has established that licensee's
21 management encouraged, condoned or negligently permitted
22 such cheating of non-licensed personnel, a question could
23 arise then as to whether that same management performed in
24 the same fashion with respect to licensed personnel.

25 That is just an example of how we would see that

1 the rejected issue could, in the evidentiary sense, be
2 brought into application to issues that we have accepted.

3 Incidentally, when it comes time to discuss these
4 particular issues, I will go over our reasoning as required
5 to refresh your memories of it and bring it back into
6 context. I realize my remarks are rather lengthy, and I
7 wish that we could have provided our reasoning in advance in
8 writing, but that was not possible.

9 The ruling on rejected issues 13, 14 and 15 we
10 recognize could have some relevance to the broad issue,
11 relevance in time and subject matter, but we felt that the
12 relevance in time and the relevance in subject matter is too
13 remote to permit an unrestrained litigation as separate
14 issues and to permit a discovery program.

15 In sum, we are exercising our judgment and
16 discretion to cut off litigation before the threshold of
17 rejected issues 13, 14 and 15. Judge Milhollin specifically
18 agrees, too, with our ruling and the rationale for our
19 ruling on these issues.

20 Issue 16 is rejected for the reasons stated in our
21 modification of accepted issue 12. And Issue 17 is limited,
22 as we indicated, as limited in issue 10; is incorporated
23 into accepted issue 10.

24 Now, if it pleases the parties, we will begin again
25 with issue number 1, and we will call upon -- unless you

1 have preference to the contrary -- we will call upon each of
2 these discussions counsel for Licensee, Intervenors,
3 Commonwealth and finally, the Staff, in that order.

4 Mr. Trowbridge.

5 MR. TROWBRIDGE: Mr. Chairman, we are now talking
6 about issue 1, correct?

7 CHAIRMAN SMITH: Yes, sir.

8 MR. TROWBRIDGE: Let me explain some problems we
9 have in understanding the scope, and let me suggest what
10 literally the scope of this might include.

11 Let me say as a preliminary matter that in drafting
12 1 before, as far as company examinations are concerned, we
13 attempted to cover what we call qualification examinations
14 and the mock examinations given to prepare people for the
15 exercise, the NRC test.

16 And those are included, as far as we are concerned,
17 in issue 1 at the present time, with the exception of the
18 requalification, the make-up tests on the Kelly non-Category
19 T exams. That has been the subject of a special
20 communication between myself and Mr. Amodt, copies of which
21 the Board has, and they might well come to be added to the
22 list.

23 If added, that would complete what we would regard
24 as a list of qualifications, tests and mock exams given to
25 TMI-1 operator license candidates since the accident.

1 I might add the words "since the accident" now; it
2 is no longer in the wording here. We did not need to put it
3 in, "since the accident", since we named only examinations
4 that occurred since the accident. But as presently phrased,
5 issue 1 could be considered to go back indefinitely in time
6 to TMI-1's existence. We have a problem with all
7 company-administered examinations, going beyond the
8 qualifications tests and mock tests.

9 We have an extensive program, a training program,
10 and have had a for a long time. There are weekly quizzes,
11 say, associated with this program; some of them are
12 exercises, some of them are open-book exercises, some of
13 them are closed-book exercises, take home, some are given in
14 classrooms. These are much of the function of the quizzing
15 to see whether training is getting across or not.

16 They are not the exam given at the end to test, all
17 right, how -- now this is it -- how well have you absorbed
18 it very much. And we would have as a practical matter an
19 enormous difficulty, I think, in finding how many of these
20 exist and producing them, and in knowing precisely what it
21 was we should produce.

22 So I had suggested the term "qualification" or
23 "mock examinations" be included in issue 1.

24 CHAIRMAN SMITH: Would you repeat the last thing?

25 MR. TROWBRIDGE: I am suggesting that the terms

1 "qualifications" and "mock examinations" be incorporated in
2 issue 1.

3 CHAIRMAN SMITH: As a limiting factor?

4 MR. TROWBRIDGE: As a limiting factor as far as
5 company examinations go.

6 CHAIRMAN SMITH: That is --

7 MR. TROWBRIDGE: As to --

8 CHAIRMAN SMITH: Wait a minute.

9 (Board conferring.)

10 I think we need to dwell on this point just a
11 moment. What is -- give me again the qualifying items.

12 MR. TROWBRIDGE: I have not -- well, I would put,
13 just drafting it --

14 CHAIRMAN SMITH: Well, you said it clearly; I just
15 did not write it down.

16 MR. TROWBRIDGE: All right, let me try this.
17 Quote, "or any other company-administered qualification or
18 mock examinations since the accident or NRC-administered
19 examinations since the accident." I am drafting very
20 quickly, Mr. Chairman, but that would convey my thought.

21 Let me add also, I mentioned the weekly quizzes.
22 Let me mention some more problems. There are tests of one
23 kind or another that may be given to virtually all personnel
24 on the site. There are tests not directly concerned with
25 licensed operators, but which licensed operators may have to

1 take along with others.

2 There are -- I am going to give you some examples
3 of the kinds of tests, and I am talking about written tests
4 although there are oral tests as well, perhaps in some of
5 these categories. There are general, what I would call
6 radiation protection, elementary do's and don'ts about
7 radiation if you are in a nuclear plant that are given to
8 everybody. And that includes the licensed operators. They
9 are not peculiar to licensed operators.

10 And then there are more elaborate tests for
11 radiation protection for radiation workers, which would
12 include licensed operators. We are talking about tests
13 where you include everybody including contractor personnel,
14 since the -- the two and a half years following the
15 accident. It is something in the neighborhood of 11,000 or
16 12,000 tests, as far as radiation protection tests are
17 concerned.

18 Some of the personnel we are talking about would
19 fall in the category of supervisors and there are special
20 tests administered to supervisors. The training department
21 has estimated that there have been some 620 supervisor tests
22 in the two and a half year period I am talking about. I
23 could not tell you how many of those involved licensed
24 personnel and how many of them did not. But certainly, some
25 of them would have.

1 There are tests for workers trained to use
2 respirators; written tests. These would include at least
3 some licensed personnel.

4 Going back to what I call the general employee
5 training which everybody gets, I mentioned basic health
6 physics.

7 CHAIRMAN SMITH: Well, Mr. Trowbridge, we recently
8 have written a decision which describes many of these, and I
9 think, you know, we are aware of the breadth and the
10 magnitude of the testing on the training program. Your
11 point is well understood.

12 MR. TROWBRIDGE: All right. My last comment on the
13 scope, just so the Board understands the NRC-administered
14 examinations, whereas issue 1 was phrased solely in terms of
15 the April 1 examinations. Assuming that this issue were
16 limited to NRC-administered examinations since the accident,
17 there would be included I think a total of two examinations;
18 one involving seven candidates and one involving four. --
19 and I do not vouch for the total accuracy of those figures
20 but that is my present understanding -- for people who came
21 along in the pipeline while TMI-1 was down but nevertheless
22 had to be licensed to be in the control room at TMI-1.

23 These would be, for the most part, people who were
24 becoming RO's for the first time, but at least to my
25 recollection there were at least two that were jumping from

1 RO's to SRO's. So the NRC did give license examinations to
2 these 11 individuals and what they got
3 out of it was ostensibly a cold license to operate the plant
4 in a shutdown condition.

5 So I want the Board to be aware -- these are not
6 large group examinations as were involved in April, but they
7 are NRC examinations administered, as I understand it, to a
8 group of seven and a group of four.

9 I would like to add just one further observation
10 before stopping. I think when you include the company
11 examinations that are listed here and the NRC examination in
12 April, you have an enormous sampling of examinations
13 sufficient, in our view, to give an indication of the issues
14 that might be involved and their impact on management
15 training or other management issues.

16 We estimate that between the NRC examinations, and
17 particularly the company examinations, when you add up the
18 individual questions, you are probably already talking about
19 10,000 questions. That seems to us a rather large sampling
20 which has a bearing on how many more examinations we ought
21 to be going into; how many more --

22 CHAIRMAN SMITH: I want to remind the parties of
23 the purpose of the Board's appearance here today. We
24 could have issued an order accepting the broad issue and
25 allowed it to Judge Milhollin to accept the specific issues

1 within that category. But we believed that it would be
2 helpful if the Board itself addressed immediately the
3 possible realm of issues so that there would be no question
4 about whether Judge Milhollin has jurisdiction over these
5 issues, and we believe it would facilitate his task, which
6 is going to be a difficult one as it is.

7 Our modification of issue 1 in the face of uniform
8 agreement by the parties was not really necessary. It was
9 to make it clear that Judge Milhollin will have the
10 authority to conform the issues to the evidence as it is
11 developed, and that he is not foreclosed from considering
12 other examinations as appropriate.

13 We had not intention, as we discussed, with respect
14 to issue 13 to permit an unrestrained discovery effort which
15 would flush out all of the examinations that could
16 conceivably be incorporated into that modification.

17 Ms Bradford?

18 MS. BRADFORD: Mr. Smith, I would prefer that the
19 Aamodt's argue when we get to issue 13 which is our
20 particular issue.

21 CHAIRMAN SMITH: Who is going to speak?

22 MR. CLEWETT: I guess I will. At least initially,
23 Your Honor.

24 MR. TROWBRIDGE: I am unable to hear, Mr. Chairman.

25 MR. CLEWETT: I am sorry. I indicated, at least

1 initially, that I would like to address this. Our reaction
2 is -- and we appreciate your comments that it is primarily
3 to Judge Milhollin to conform the issues to the evidence as
4 it comes out. But we would just like to state for the
5 record that if the issues are going to be the extent of
6 cheating and whether or not the management of the licensee
7 has failed to create an atmosphere such that cheating does
8 not occur, it may well be necessary to examine some of these
9 other tests.

10 Now, we do not have the resources to examine 11,000
11 or 12,000 or however many tests there may have been. But we
12 would urge the Board to realize the view of the licensee as
13 to what the proper method of sampling is, is not an
14 especially relevant view.

15 There may well be some conflict of interest there,
16 and we would hope that in order to help the Board in
17 addressing these issues, that we would be able to follow the
18 evidence where it goes. And I guess that is our main point.

19 So that we feel it would not be appropriate to
20 forbid the inquiry into some of these other examinations,
21 nor would it be appropriate to forbid any inquiry into any
22 examinations that may have been given before the accident,
23 because if there was a pattern of pervasive cheating that
24 was already in existence before the accident, that also
25 would be useful information.

1 CHAIRMAN SMITH: Mr. Adler?

2 MR. ADLER: The Commonwealth agrees entirely with
3 the Board's position that Judge Milhollin's jurisdiction
4 should not be limited to examinations since the TMI-2
5 accident. We do not understand what relevance the TMI-2
6 accident has as a starting point in terms of the issue of
7 management competence and management administration of exams.

8 We believe, however, that the licensee's point
9 regarding the number of examinations, if you include quizzes
10 and so forth, is voluminous and we do not believe that the
11 litigation should proceed to that extent, to examine every
12 single exam or quiz that has ever been issued by the
13 licensee. We believe that is almost a given.

14 However, whenever there is some evidence of
15 cheating on any exam given to TMI operators, if there is a
16 threshold determination or threshold showing, evidentiary
17 showing, we believe that issue would be ripe for hearing.

18 CHAIRMAN SMITH: Mr. Swanson?

19 MR. SWANSON: Ms. Swartz will be addressing this,
20 Your Honor.

21 MS. SWARTZ: The staff believes that getting into
22 examinations before the accident is really too remote. The
23 entire restart proceeding was dealing with events that
24 perhaps led up to the accident or events that had a direct
25 nexus to the accident. There does not seem to be any reason

1 now to go before that; events before the accident would seem
2 to us to be too remote.

3 For another thing, there is no evidence that there
4 was any cheating; on any exams before, and the point that the
5 Board made that if intervenors can independently come up
6 with evidence that would indicate there had been cheating,
7 then perhaps it is a matter for the Board to get into or
8 Judge Milhollin to get into. But until that time, it would
9 be a fishing expedition that should not be allowed in this
10 reopened proceeding.

11 CHAIRMAN SMITH: All right, let's move on to issue
12 2. I see no need to discuss it since the modification first
13 contemplated by the Board has been deleted.

14 Now, if we could have an explanation by the parties
15 as to the distinguish between issues 3 and 4 and the
16 adequacy or inadequacy of our modification, it would be very
17 helpful.

18 MR. TROWBRIDGE: Mr. Chairman, this was my initial
19 drafting effort. There is no explanation. They could well
20 have been included together, just as the Board has done. My
21 thought processes took them one at a time.

22 CHAIRMAN SMITH: Okay, all right. Perhaps we saw a
23 difference that did not exist. Does anybody else wish to
24 comment on that, the Board modification of issues 3 and 4?

25 MR. CLEWETT: Can we ask for just a brief pause

1 while we look at this once again?

2 CHAIRMAN SMITH: All right.

3 (Pause.)

4 MR. CLEWETT: Your Honor, I think to the extent
5 that there ever was a distinction, it was more a historical
6 one in terms of how these were drafted originally, but
7 especially since the April NRC examination is included in
8 issue 1, we do not see any reason why they should ever have
9 been distinct.

10 CHAIRMAN SMITH: Okay. The modification to issue
11 5; is there an objection to that addition? That is, the
12 adding of, quote, "negligent failure to prevent" cause to
13 the issue?

14 (No response.)

15 CHAIRMAN SMITH: You have no objection?

16 MR. TROWBRIDGE: We have no objection. I'm not
17 sure it is necessary to comment.

18 CHAIRMAN SMITH: I assumed that none of the parties
19 would have an objection to that.

20 MR. CLEWETT: That is right.

21 CHAIRMAN SMITH: Dropping down, then, to issue 10 --

22 MR. TROWBRIDGE: Mr. Chairman, on issue 10, our
23 principal is with the last phrasing, "to provide reasonable
24 assurance that TMI-1 can be operated safely." If I
25 correctly understood the Chairman's explanation, this is not

1 to be a re-evaluation of the substance or the value of NRC
2 examinations and the questions testing what they purport to
3 test; but rather, an inquiry into the possibility that the
4 questions lend themselves --

5 MR. CLEWETT: Excuse me, we are also having
6 difficulty hearing.

7 MR. TROWBRIDGE: I am sorry, let me restate that.
8 It was our understanding of the Chairman's explanation --
9 I'm sure you will correct me if I'm wrong -- that this
10 rephrased issue is not intended to open up for re-evaluation
11 the substantive value of NRC examinations, the adequacy of
12 the questions or to test the competency of operators, for
13 example. But rather, it was an effort to allow the
14 particular questions to be examined from the standpoint of
15 whether they lent themselves to cheating or abuse from --
16 through memorization of prepared materials.

17 CHAIRMAN SMITH: As an example.

18 MR. TROWBRIDGE: As an example. My comment on that
19 is that I think it is possible, if that is what the Board
20 has in mind, to redraft that last clause to say just that,
21 and eliminate future wrangling over what is intended to be
22 encompassed within that last clause.

23 CHAIRMAN SMITH: The intervenors?

24 MR. CLEWETT: Your Honor, we think that it was
25 quite clear what the import of the Board's comments was.

1 Certainly, the staff's plan for retesting operators and
2 monitoring its examinations is designed to assure proper
3 adherence to testing requirements and to provide assurance
4 that the operation will be safe.

5 I do not think that the addition of these clauses
6 detracts from the basic thrust of the meaning of what the
7 Board is interested in. I think that it would stand as it
8 is.

9 CHAIRMAN SMITH: The problem, as I see it,
10 expressed by Mr. Trowbridge is that we have approached issue
11 10 by adding a very broad modification, then limiting the
12 broad modification by our oral remarks. And he proposes
13 that the issue should be, by its express language,
14 indicative of the limitations, which I think has merit.

15 I cannot recall offhand now what our reasoning was
16 to approach it in that exact language except it seemed to be
17 convenient. There was language there which was easily
18 picked up, placed in the issue, and which would reach the
19 inquiry as we saw it to be as limited.

20 Let's hear from the rest of the parties, then we
21 will take under advisement the recommendation.

22 MR. CLEWETT: The part of the reason why that
23 language appeared in 10 might have been because of the
24 original wording of issue 17.

25 CHAIRMAN SMITH: That is exactly right. That is

1 where we got it, and to that extent, we indicated on your
2 issue sheet that we have accepted issue 17 as limited by
3 10. But the limitation of 10 pretty well -- very, very
4 sharply limits what would have been 17; very sharply limits
5 it.

6 MR. CLEWETT: We would be amenable to discussing
7 any clear statement of exactly what the Board indicated.
8 But I would like to point out that without having in front
9 of me all of exactly what the NRC testing requirements are,
10 it might well be possible that cheating could still
11 technically be the testing requirements, but have an effect
12 that would cause the operation of the plant to be unsafe. I
13 mean, at least in theory.

14 I cannot specify exactly how that might happen, but
15 it seems reasonable to include the basic kernel of what one
16 is after, which is safe operation.

17 CHAIRMAN SMITH: This parallels our particular
18 concern, as you stated it, but not quite as broad. That is,
19 we were concerned that there is a possibility, without
20 knowing until we hear the evidence, that the NRC testing
21 requirements could be met and yet, the substantive purpose
22 of the examination could be defeated by some mechanism in
23 the examples which we gave but not to a full inquiry into
24 whether the substance of the test is deficient to train
25 operators adequately to protect the public health and

1 safety. That is another statement of our concern.

2 We will give you an opportunity to discuss, in the
3 context of issue 17, whether or not we are correct in that
4 limitation. We might just as well take that opportunity
5 now. If you disagree with us on the limitation of the
6 inquiry into the content of the examination, now is your
7 opportunity to express your disagreement.

8 MR. CLEWETT: May we take just a moment?

9 CHAIRMAN SMITH: Yes.

10 (Pause.)

11 MR. CLEWETT: Your Honor, we have no objection at
12 this time.

13 CHAIRMAN SMITH: To that limitation?

14 MR. CLEWETT: To that limitation.

15 CHAIRMAN SMITH: Mr. Adler?

16 MR. ADLER: The Commonwealth agrees with the issue
17 as limited by the Board.

18 CHAIRMAN SMITH: Ms. Swartz?

19 MS. SWARTZ: The staff also agrees with the wording
20 as it is but seeks a couple of clarifications.

21 One, in the second line talking about including
22 proctoring, grading and safeguarding the integrity, the
23 staff wonders if by grading, does the Board mean that in the
24 way the staff grades it also, along with marking A, B, C, D,
25 do they also check for cheating? Is that what you mean by

1 grading?

2 CHAIRMAN SMITH: Yes, that is precisely what we
3 mean.

4 MS. SWARTZ: As opposed to a substantive inquiry
5 into how it is they go about the grading?

6 CHAIRMAN SMITH: That is right.

7 MS. SWARTZ: And the other?

8 CHAIRMAN SMITH: Excuse me, let me hedge that.
9 That is, this has been a collegial project getting this
10 language, and that is my impression of it. And I will see
11 if my colleagues confirm that impression. That is how I
12 recall it.

13 MS. SWARTZ: Fine.

14 The other question we have, or statement we would
15 like to make, is it is our understanding that adherence to
16 NRC testing requirements provides reasonable assurance that
17 TMI can be operated safety.

18 CHAIRMAN SMITH: Then you would not have any
19 quarrel with out issue.

20 MS. SWARTZ: No, we do not. We are just expressing
21 our point that we do not really need the "and." NRC testing
22 requirements -- adherence to NRC testing requirements
23 provides reasonable assurance that TMI can be operated
24 safely.

25 CHAIRMAN SMITH: That is very helpful, Ms. Swartz,

1 I am glad you stated that. You can see why the Board might
2 have inferred to the contrary. When you agreed -- the
3 parties agreed on issue 10 but not on issue 17, which we saw
4 was the major difference.

5 MS. SWARTZ: Right. I believe the reason we did
6 not agree on issue 17 was for that precise reason, that we
7 wanted to look at the NRC testing requirements and not the
8 broader issue of whether TMI will be operated safely.

9 CHAIRMAN SMITH: I think, then, that you have
10 agreed with the Board's formulation of the issue.

11 MS. SWARTZ: Right.

12 The last thing we would like to say is we are not
13 sure why 17 has to stay in. We think 17 is completely
14 subsumed in issue 10 and 17 should be deleted.

15 CHAIRMAN SMITH: Exactly. We could have just as
16 easily have said 17 rejected, but see issue 10 which
17 includes it. And we could have said that issue 16 is
18 accepted instead of rejected. This was an arbitrary
19 balancing. I think you are right.

20 When the Board's order issues listing the issues,
21 there will only be 9 issues, and we will restate them as
22 they are to be litigated.

23 MS. SWARTZ: Fine.

24 CHAIRMAN SMITH: Your point is very good. It will
25 avoid confusion, assuming -- yes, 9, assuming nothing

1 happens this morning to change our minds.

2 MR. CLEWETT: As a point of clarification, Your
3 Honor, it would appear that only one of the first 12 issues
4 has been deleted.

5 CHAIRMAN SMITH: I said nine; I meant 11.

6 MR. CLEWETT: Thank you.

7 CHAIRMAN SMITH: Yes, that got your attention.

8 (Laughter.)

9 All right, on issue 12.

10 MR. TROWBRIDGE: Mr. Chairman, I would like to ask
11 -- because I do not think I fully caught it the first time
12 -- a second explanation by the Chairman as to what is
13 encompassed in the bracketed clause at the end in terms of
14 sufficiency of the procedures.

15 CHAIRMAN SMITH: All right.

16 (Board conferring.)

17 I will go over my original notes and I will go into
18 additional explanation of how we view issue 12.

19 We have included the subject of competence of the
20 examination candidates into the issue, but there are two
21 aspects of the way that we have included it. And the issue
22 is broken into two discrete sections.

23 As you can see, the first clause would bring into
24 question the adequacy of the management's criteria and
25 procedures for certifying operator license candidates with

1 respect to their integrity. So criteria would apply to
2 integrity, and only. Procedures would apply to the
3 integrity of the candidates.

4 When it comes to the competency, the competence of
5 the candidates, we will permit an inquiry into the
6 sufficiency of the procedures which are used to determine
7 the competency.

8 For example, Mike Ross makes his report to the
9 supervisor of training at TMI-1; it goes to Mr. Toole, who
10 goes to Mr. Hukill and how they go about it. We will not
11 permit new litigation into the sufficiency of the criteria
12 for competency.

13 Perhaps a distinction between criteria, substantive
14 criteria for competency and mechanical management procedures
15 may be a difficult distinction to make. Maybe it exists
16 only in our minds; I do not know. The evidence might
17 disabuse us of whether this is an appropriate modification.

18 MR. TROWBRIDGE: May I ask a question at this point?

19 CHAIRMAN SMITH: Let me complete my notes on it
20 because we gave some examples. We will not entertain a new
21 litigation into the criteria for operator competency. We
22 will permit a narrow litigation on whether the procedures
23 for assuring that candidates are competent to stand for the
24 stand can be defeated. This is comparable to our concern on
25 issue 10.

1 For example, can a candidate, by cheating on
2 company-administered exams, convince Mr. Hukill to certify
3 him to the Commission as ready to take the NRC exam? That
4 we would regard as a procedural consideration.

5 We will not permit a new litigation in addition to
6 the several weeks we had into the adequacy of the
7 company-administered training and examinations; content, the
8 substance of it.

9 MR. TROWBRIDGE: Thank you, Mr. Chairman, for the
10 restatement.

11 CHAIRMAN SMITH: That is an example.

12 Again, we recognize that within the company
13 training procedures there would be other just parallel to
14 the devices which could be used to defeat the purposes of
15 the NRC testing procedures. We would have an inquiry into
16 whether such devices or others not foreseen by us could be
17 used to defeat the purposes of management's certification
18 procedures and management's determination of competency,
19 such as cheating, crib sheets, memorization of boilerplate,
20 pre-identification of questions, failure of the company to
21 safeguard questions and all the things we saw as possible
22 defeating mechanisms on the NRC examination.

23 MR. TROWBRIDGE: Mr. Chairman, then my comment is
24 very similar to my comment on the addition to issue 10. I
25 think the Board has again borrowed language from later

1 contentions. I think it is possible to restate this in
2 terms of -- that it would reflect that the Board means that
3 the procedures it is talking about have some nexus to
4 cheating or the possibility of cheating, jyping on the
5 system.

6 CHAIRMAN SMITH: Cheating or other mechanisms which
7 would defeat the purpose. I would not regard, for example,
8 memorization --

9 MR. TROWBRIDGE: I used the word gypping as well.

10 CHAIRMAN SMITH: What was the second word you used?

11 MR. TROWBRIDGE: Gypping.

12 (Laughter.)

13 CHAIRMAN SMITH: Gypping. I would hesitate to use
14 that in a Board order.

15 (Laughter.)

16 But if it hits the mark, we will use it.

17 Mr. Clewett for the intervenors? I assume you are
18 speaking for the intervenors on this.

19 MR. CLEWETT: At the moment it appears so. We view
20 the modification that the Board has introduced to be
21 essentially reasonable. We assume that the essence of what
22 the Board is driving at is that, for example, if the
23 certifying officials of the licensee were to knowingly
24 certify people that they knew did not meet any reasonable
25 criteria for certification, that that act of knowingly

1 certifying somebody who does not meet the criteria would be
2 a procedural matter that would be open to discovery.

3 CHAIRMAN SMITH: It certainly would be open. I had
4 not thought about it in particular reference to issue 12,
5 but it arguably is there, yes.

6 MR. CLEWETT: Thank you.

7 CHAIRMAN SMITH: Mr. Adler?

8 MR. ADLER: We agree with the issue as stated by
9 the Board. We think that a particularly important point was
10 the Board's point that you are not referring to procedures
11 in the very narrow sense, but also the considerations that
12 go into determining whether an operator should be certified
13 to sit for an NRC exam.

14 CHAIRMAN SMITH: Now wait a minute --

15 MR. TROWBRIDGE: I did not understand that to be
16 the Board's statement.

17 CHAIRMAN SMITH: I think you had better restate
18 that. I do not know how far you think we went.

19 MR. ADLER: As I understood your last comment, say
20 Mr. Hukill's considerations in determining whether operator
21 A should be permitted to sit for a licensing exam should be
22 considered, not to the extent of reviewing the entire
23 training program, but to the extent of determining whether
24 or not that individual passed an audit examination, whether
25 retraining since that examination is sufficient and so

1 forth. And perhaps I ought to explain the basis for my
2 concern.

3 As we understand it, a number of operators who did
4 not pass the ATTS audit exam were permitted to sit for the
5 April licensin examination. As we understand licensee's
6 rationale, they believe that the operators did not pass the
7 ATTS exam in only a limited number of categories, and that
8 the operator would be able to study up on those categories
9 before the exam.

10 We are interested in what considerations go into
11 licensee's decision that an operator who fails an audit exam
12 is, in fact, qualified to sit for the licensing exam.

13 CHAIRMAN SMITH: Mr. Trowbridge?

14 MR. TROWBRIDGE: May I respond to that?

15 CHAIRMAN SMITH: Yes.

16 MR. TROWBRIDGE: It seems to me Mr. Adler is
17 raising now for the reopened hearing in question an issue
18 which easily could have been explored to a greater extent
19 than it was explored if Mr. Adler wished to in the main
20 hearing.

21 It was clear at that time that candidates who had
22 not passed the ATTS examination and grading criteria sat for
23 the NRC exam. I do not think there is any need to go over
24 that again in the reopened hearing because it has no nexus
25 to cheating.

1 I think the Board carefully confined its statement
2 as to the purpose of its restated issue to be cheating or
3 gypping on the system.

4 MR. ADLER: If I may respond to that very briefly,
5 at the time of the main hearing we had no reason to discount
6 licensee's assurances with regard to such operators; we had
7 no evidence. Now we do have some reason to believe that
8 there may, in fact, be some nexus between failure of an
9 audit exam and an operator's performance on the licensing
10 exam.

11 (Board conferring.)

12 CHAIRMAN SMITH: Inevitably, the parties will be
13 able to identify issues that do not neatly fall within or
14 without our ideal of the scope of the issues, and we had
15 decided before we came here that we would draw the line
16 close to the board in deciding which particular factual
17 issues might fit into an issue as we described it. And we
18 hesitate to make any particular rulings.

19 We have given an example but we hesitate to make
20 any particular rulings as to any particular factual issue,
21 preferring to leave that to Judge Milhollin as he hears
22 arguments that are better thought out and has more of an
23 opportunity to reflect, which we do not have today.

24 So we will listen to your arguments and refer them
25 to Judge Milhollin, or perhaps during the recess we might be

1 motivated to add further guidance to our understanding of
2 the issue.

3 But the way it stands right now, I think it would
4 be difficult for the Board to say flatly yes or no; we just
5 have not thought about that aspect of it and I'm sure there
6 are going to be many other examples that you in your
7 ingenuity will be able to come up with that will cause Judge
8 Milhollin difficulty.

9 (Laughter.)

10 Is there any other further discussion on issue 12?
11 I say, we may come back to that and give a flat ruling, but
12 it is probable that we will not.

13 All right, let's go to 13. I think we have already
14 discussed 13 to a great deal with respect to the other
15 issues, but let's discuss it directly.

16 I understand that you, Ms. Bradford, wish to argue
17 on this issue.

18 MS. BRADFORD: Yes.

19 CHAIRMAN SMITH: All right. Since it is rejected
20 you have prevailed so far. Let's change the sequence and
21 permit Ms. Bradford to discuss it.

22 MR. TROWBRIDGE: We may avoid some long speeches.

23 MS. BRADFORD: I just would like to reaffirm to the
24 Board. I understand that we will be allowed, if we have
25 developed sufficient evidentiary material, that these other

1 issues will be considered by Dr. Milhollin.

2 CHAIRMAN SMITH: We reject them as identified
3 issues in the proceeding, and Judge Milhollin agrees. We do
4 not necessarily foreclose them as possible evidentiary
5 issues to be followed up, however, in the exercise of our
6 discretion and judgment which requires that we draw a line
7 someplace.

8 The boundary of relevance with respect to
9 remoteness in time and the subject matter, we have drawn the
10 boundary excluding these. We ruled that upon a preliminary
11 showing, evidentiary showing, already in the hands of the
12 parties or by other persuasive reasoning which we do not
13 want to foreclose but we cannot think of, you could present
14 a case, you will not even be permitted to engage in
15 discovery on such a broad issue absent some type of evidence
16 already in hand or other persuasive reasoning.

17 Licensee would not be required to put on an
18 affirmative case. The issues would be looked at solely as
19 sub-evidentiary areas which, based upon our view of the
20 reopened proceeding now, are beyond the scope of relevance
21 because of remoteness.

22 MS. BRADFORD: Mr. Smith, would you clarify further
23 for me just exactly what you mean by evidence in hand?

24 CHAIRMAN SMITH: It would almost be impossible to
25 do that because I do not know what it would be, and that

1 would have to be up to Judge Milhollin. But we are saying
2 that you cannot begin a general discovery if you have some
3 evidence which leads you to believe that there was cheating
4 by the TMI-2 operators and you wish to pursue that and you
5 can, consistent with the rules of evidence and all the other
6 procedural rules which have been in place in this proceeding
7 and which Judge Milhollin will modify to meet his purposes,
8 you can come forward with that presentation if it meets
9 those tests.

10 Moreover, if you can convince Judge Milhollin that
11 you have evidence in hand or other persuasive reason, which
12 I do not know what it would be, that justifies discovery you
13 can ask for it.

14 But our view of the issue now as it is set forth in
15 proposed issue 13, it is because of arguable remoteness and
16 arguable relevance, but because of remoteness not relevant
17 because it is too far removed in time and it is too far
18 remote from the subject matter.

19 MS. BRADFORD: I understand. So that I would more
20 probably raise it this afternoon.

21 CHAIRMAN SMITH: Yes. The purpose here --
22 (Board conferring.)

23 Are you referring to present TMI-2 operators who
24 are now TMI-1 operators that used to be TMI-2 operators? Is
25 that what you are talking about?

1 MS. BRADFORD: No. We do have some evidence that
2 we would like to explore further in discovery. I think the
3 evidence I have would meet the threshold evidence, as you
4 just described it.

5 CHAIRMAN SMITH: You will have to convince Judge
6 Milhollin.

7 MS. BRADFORD: I understand.

8 CHAIRMAN SMITH: Rejected issue 14 -- oh, excuse
9 me, I'm sorry, I did not mean to foreclose additional
10 comment on 13.

11 MR. CLEWETT: If I might just add, we also would
12 commend the Board for its determination that although these
13 are not accepted as separate issues they will be considered
14 as they are shown to be related to the general issues.

15 As an example of what we view as the reasonableness
16 of the Board's action here, we would like to just note for
17 the record that July 31, 1981 memorandum from the Office of
18 Inspector and Auditor which made several recommendations in
19 response to the cheating incident; one of which was that
20 there be a selective review of the written portion of other
21 examinations where there were above-average class rates, to
22 determine whether there were any indications of cheating on
23 those exams.

24 And that in line with this sort of recommendation
25 we think that there well might be cause to examine to one

1 extent or another some of these other tests. But we would
2 join with TMIA in commending the Board for leaving open the
3 possibility that the evidence will justify some discovery in
4 these areas.

5 CHAIRMAN SMITH: Are there any additional comments
6 on our ruling?

7 MS. SWARTZ: We do not have anything on 13, but we
8 would like to go back to 12 for just a minute.

9 CHAIRMAN SMITH: All right.

10 MS. SWARTZ: Since we did not get a chance to
11 comment before, Mr. Swanson has done some quick research.
12 The point Mr. Trowbridge made about the fact that
13 eligibility of certain candidates to sit for the April
14 examination was an issue that was raised and litigated and
15 the parties made findings on and the Board also made
16 findings on in their partial initial decision, it is page
17 157, Finding 273, that issue was brought up; the eligibility
18 of the candidates to sit for the NRC exam.

19 In addition, the concern that Mr. Adler raised that
20 there has been evidence of cheating on other exams and this,
21 therefore, may influence the procedures used to certify the
22 competency of operators for the NRC exam, the issue of
23 cheating on other exams is certainly going to be brought up
24 in the context of other issues. And it seems to us that his
25 concern would be fully aired then, and we have no comment to

1 make on issue 13.

2 CHAIRMAN SMITH: Any other comment on 13?

3 (No response.)

4 14, the extent of cheating by TMI non-licensed
5 personnel on licensee-administered tests given since the
6 TMI-2 accident. That is rejected, but we recognize the
7 possibility that an evidentiary showing could be made
8 demonstrating the relevance of that rejected issue to the
9 broad issue and to the specific issues.

10 Any discussion of that?

11 MR. CLEWETT: Our comments would be the same for
12 issues 13, 14 and 15, which the Board considered as a unit?

13 CHAIRMAN SMITH: Any further comments on 14?

14 (No response.)

15 Fifteen?

16 (No response.)

17 Any further comments? The Board is now prepared to
18 recess. Oh, we have 16 and 17.

19 As I stated, we could very easily have designated
20 that as a separate issue, but limited as we did. Is there
21 any additional discussion of our action on 16?

22 (No response.)

23 Okay. Does anyone wish to comment on it? How
24 about 17? I think that has been thoroughly discussed with
25 respect to our debate on issue 13.

1 Any further discussion of any issue?

2 (No response.)

3 We are going to recess now --

4 MS. SWARTZ: Excuse me, Judge, did you say earlier
5 that you were going to discuss confidentiality?

6 CHAIRMAN SMITH: No.

7 MS. SWARTZ: Is that something Judge Milhollin is
8 going to discuss?

9 CHAIRMAN SMITH: Yes. Were you present? Did you
10 get our ruling on the procedural aspects of confidentiality?

11 Confidentiality will be first addressed by Judge
12 Milhollin. He will make the initial ruling.

13 MS. SWARTZ: Fine.

14 CHAIRMAN SMITH: It is, however, an issue which we
15 recognize as justifying an interlocutory review by us. If
16 he should decide to deny the request for confidentiality, we
17 will entertain an immediate review of that.

18 If we should decide to affirm an order denying
19 confidentiality, we will facilitate -- we will consider
20 facilitating an immediate review to the Appeal Board,
21 perhaps by certification of a deferred ruling of our own.
22 In the meantime, confidentiality shall be maintained. Judge
23 Milhollin will address that and he will hear arguments on
24 whether confidentiality should be maintained.

25 And also, I provided a copy of the unexpurgated

1 reports to the Commission.

2 MS. SWARTZ: Right. Something else we wanted to
3 ask is if during your recess the parties could exchange
4 discovery, go over each other party's discovery --

5 CHAIRMAN SMITH: I am sure Judge Milhollin will
6 welcome that because he has that high on his priorities.

7 MS. SWARTZ: What we were going to discuss, though,
8 is coming up with objections if the parties have objections
9 to other parties' discovery today, bringing it up today,
10 presenting it to Judge Milhollin and having him rule today
11 on the acceptability or non-acceptability of specific
12 discovery questions.

13 CHAIRMAN SMITH: Our recess will be very brief;
14 then you can bring up your remarks to Judge Milhollin. Any
15 further comments on the Board's actions this morning?

16 (No response.)

17 All right, we will take a recess of approximately
18 10 or 15 minutes.

19 (A short recess was taken.)

20 CHAIRMAN SMITH: We just have a very brief
21 statement to make as to our ruling on the issues, and then
22 we will receive some questions from the media on the record,
23 and then we will turn it over to Judge Milhollin.

24 With respect to our ruling on issue 1, we accept in
25 principle the modification urged by Mr. Trowbridge, and we

1 will give the tentative language of how that is going to
2 work. The final language is going to be worked out on the
3 written order following this conference. But the way it
4 would read now is at the end of your draft of issue 1, this
5 language: "and such other examinations..."

6 MR. TROWBRIDGE: Excuse me?

7 CHAIRMAN SMITH: I will start again. Quote, "and
8 such other examinations as the Special Master shall deem
9 relevant." These latter shall include at least the
10 following, and then we will go to -- well excuse me. I put
11 the addition at the wrong place because it was after the
12 example.

13 The addition should have been -- the essence of it
14 is that the examinations which will be considered under the
15 issue are those examinations which the Special Master shall
16 deem relevant, which shall include the examinations already
17 agreed to by the parties, and the following: "any other
18 company-administered qualification or mock examination or
19 NRC examination since the accident."

20 The other examinations we referred to there, that
21 the Special Master shall deem relevant, is just another
22 restatement that we do not foreclose the Special Master, by
23 our rulings on these issues, anything falling outside this
24 category which the category accepted would limit discretion
25 of the Special Master required the same type of showing that

1 we discussed with respect to issue 13.

2 Now, with respect to the modifications of issues 10
3 and 12, we appreciate and agree with the desirability of
4 having the language of those issues incorporate the
5 limitation issues as recommended by the licensee's counsel.
6 That would have been a product of careful draftsmanship. We
7 considered that possibility very carefully and it may not be
8 practical. We do not know.

9 But I know we have had discussion enough today as
10 to what the issue means to turn it over for the Special
11 Master to work on, and then the final language will take
12 into account, if we can, the recommendation that we be more
13 precise as to the limitation in the language of the issue
14 itself.

15 Are there any other matters to bring before the
16 Board?

17 (No response.)

18 All right, we will receive questions as a part of
19 the Commission's regulations, which provides for members of
20 the public to present questions to presiding officers
21 concerning the public interest in issues at hearing. We
22 make a particular provision for representatives of the news
23 media to ask us questions about this proceeding. Naturally,
24 we will not discuss the merits, but we will try to discuss
25 the procedural aspects of what we are doing and anything

1 else we can tell you.

2 Gentlemen?

3 MR. ROSS: Specifically, what is the purpose of the
4 meeting today?

5 CHAIRMAN SMITH: The purpose of the meeting is to
6 reopen the evidentiary hearing on the restart of Three Mile
7 Island One to inquire into the effect of the information on
8 cheating on the NRC April examination on the management
9 issues left open by our partial initial decision, and other
10 information which might be relevant to that reopened
11 proceeding.

12 That is the stated purpose. We have been
13 discussing this morning the issues which will be considered
14 in this proceeding. We have appointed an administrative
15 judge from the panel of judges which are available to
16 conduct NRC hearings to serve as a special hearing officer,
17 a Special Master, on this reopened hearing. This is Judge
18 Gary Milhollin, who is a professor of law at the University
19 of Wisconsin Law School, and who is a part-time judge with
20 our panel.

21 The Board selected Professor Milhollin for this
22 responsibility for dual reasons. One is that we have very
23 high confidence in his abilities and his objectivity, and
24 particularly, we thought it was noteworthy that Professor
25 Milhollin himself has expertise in the administration of

1 very complicated examinations.

2 MR. ROSS: You have narrowed the scope of what the
3 hearings are going to be. Specifically, what will you look
4 into?

5 CHAIRMAN SMITH: We have discussed this morning 11
6 specific issues which the Board has adopted. Some of them
7 are rather involved.

8 It would be very difficult to summarize them
9 accurately.

10 MR. ROSS: Specifically, the issue 10.

11 CHAIRMAN SMITH: Issue 10. Let me summarize that
12 one for you. It will be the adequacy of the administration
13 of NRC licensing examinations for TMI-1 personnel, including
14 the proctoring, grading and safeguarding the integrity of
15 the examination materials. In addition, we will inquire
16 into the adequacy of the staff's review -- that is the NRC
17 staff's review -- of the administration of licensees
18 Category-T examinations. And I might explain Category-T
19 examinations are those testings on their competency to
20 handle the type of accident which is related to the TMI-2
21 accident.

22 We will also inquire into the adequacy of the NRC's
23 staff's plan for retesting the NRC -- the TMI-1 operators
24 and monitoring the new NRC examinations to assure proper
25 adherence to the law, to the regulations

1 and to whether the re-examination can provide reasonable
2 assurance that TMI-1 can be operated safely.

3 Which raises a question that the Board intended to
4 inquire of. We can come back to it. Maybe it is an
5 appropriate time. We can infer by agreement of all the
6 parties to this issue that the licensee, within this
7 proceeding, does not oppose the re-examination of its
8 operators. Is that correct, Mr. Trowbridge?

9 MR. TROWBRIDGE: That is correct, Mr. Chairman.

10 MR. ROSS: What effect would this have on the
11 restart of Unit Number One?

12 CHAIRMAN SMITH: One of the reasons why we selected
13 a Special Master in addition to the particular competence of
14 the Special Master, Professor Milhollin, is that we did not
15 want to stop working on the initial decision to attend to
16 the many, many details that will be required in this
17 reopened proceeding.

18 I think that those who stated here -- Judge
19 Milhollin will learn that the schedule that he has in mind
20 for opening and closing this special issue will take longer
21 than our plan for issuing the initial decision. We hope to
22 have the initial decision out in this case in November of
23 1981.

24 Judge Milhollin's tentative schedule, which will be
25 discussed later this afternoon, indicates a possibility of

1 the Board ruling upon his report to us in about February.
2 We do not know what effect this will have. We have not
3 analyzed it yet. We will report that problem to the
4 Commissioners.

5 In answer to your question about limitation, we do
6 not know. Yes, sir?

7 MR. SOLLENBERGER: So it looks as if this reopening
8 of the record will extend the deliberative process somewhat,
9 is that correct?

10 CHAIRMAN SMITH: It will extend the time which this
11 Board deliberates the issues, but the effect it will have
12 upon the Commission's consideration of restart after they
13 see the major part of our initial decision we simply do not
14 know. We do not know.

15 We, of course, would expect whatever appropriate
16 contributions to the solution of that problem from the
17 parties, but it is just too early to say.

18 MR. SOLLENBERGER: Do you anticipate the NRC would
19 rule on any of your decisions before this Judge Milhollin's
20 --

21 CHAIRMAN SMITH: That is a possibility. That is
22 beyond our jurisdiction. We simply cannot answer for the
23 Commissioners.

24 When our decision on all of the evidence that we
25 have received to date is prepared, we will issue and we will

1 address the problem if it still exists at that time of the
2 pendancy of this matter at that time. We just simply have
3 to wait and see what the events bring.

4 Anything further, gentlemen?

5 (No response.)

6 Anything further?

7 (No response.)

8 All right. As we said at the close of the record
9 in July, that we did not believe that the day was actually
10 there when we were closing the record, and I think our
11 disbelief had some merit, we will now turn it over to Judge
12 Milhollin.

13 We will keep, for the Special Master's proceeding,
14 we will keep continuity of the transcript numbers for ease
15 of citation, absent objections of the parties. However, the
16 status of that transcript as citable evidence in our
17 proceedings is not clear.

18 The evidence received by Judge Milhollin is not
19 evidence received by the Board and is not directly citable
20 to us. It will have to be, under circumstances ruled upon
21 by Judge Milhollin and the Board later on.

22 But in the meantime, absent objections by the
23 parties, we will just continue the sequential numbering of
24 the transcript of the proceeding. From this point on it
25 will be the proceeding of the Special Master and not of the

1 Board. Is there any objection to that or comments on that
2 approach?

3 (No response.)

4 Off the record.

5 (Discussion off the record.)

6 JUDGE MILHOLLIN: Good morning, my name is Gary
7 Milhollin. As you know, I have been appointed Special
8 Master for the purpose of the reopened proceeding.

9 I have been with the Licensing Board as a part-time
10 or consultant employee for several years. My full-time
11 employment is at the University of Wisconsin Law School
12 where I am a professor.

13 It might be well before we do anything else for the
14 parties to formally introduce themselves for the purpose of
15 this reopened proceeding so that we know who the parties to
16 the reopened proceeding. We will begin with the licensee.

17 MR. TROWBRIDGE: On behalf of the Licensee, Mr. --
18 I started to say Mr. Chairman. I will call you Judge
19 Milhollin or Special Master.

20 JUDGE MILHOLLIN: You can address me as Judge
21 Milhollin, or as Mr. Chairman; I am used to both.

22 MR. TROWBRIDGE: All right. On behalf of the
23 Licensee, I am George F. Trowbridge, member of the law firm
24 Shaw, Pittman, Potts and Trowbridge in Washington, D.C. On
25 my left is my partner, Ernest L. Blake and wearing a pink

1 shirt behind me is Ms. Delissa Ridgway.

2 JUDGE MILHOLLIN: Thank you.

3 MS. SWARTZ: I am Lucinda Swartz, I am counsel for
4 the NRC staff. This is Daniel T. Swanson, who is also
5 representing the staff project manager, who is working on
6 this case, Mr. Harley Silver.

7 JUDGE MILHOLLIN: Thank you.

8 MS. BRADFORD: I am Louise Bradoford, I am
9 representing TMIA. Behind me is Joanna Doroshow who is
10 assisting me.

11 JUDGE MILHOLLIN: Thank you.

12 MR. CLEWETT: Your Honor, my name is John Clewett,
13 I am with the law firm by the name of the Christic Institute
14 in Washington, D.C. We are representing Norman and Marjorie
15 Aamodt, who are intervenors in this proceeding.

16 JUDGE MILHOLLIN: Thank you.

17 MR. ADLER: My name is Robert Adler, I am an
18 assistant counsel for the Commonwealth of Pennsylvania; also
19 participating on behalf of the Commonwealth will be Mr.
20 William Dornsife. You can stand up. He is the supervising
21 nuclear engineer for the Commonwealth.

22 JUDGE MILHOLLIN: Thank you.

23 The items of business for this conference are the
24 following. As you have been notified in the order
25 scheduling the conference, we will discuss the following

1 things.

2 First, consolidation of parties. Second, we will
3 discuss discovery. These are not in order. These are just
4 items. Third, we will talk about the schedule for closing
5 discovery, for filing testimony and beginning the
6 evidentiary hearing. And we will also talk about the issue
7 of confidentiality of the names of examinees.

8 For the convenience of attorneys who are going to
9 argue the issue of confidentiality, unless the other parties
10 object I would propose to take that up first. Is there any
11 objection to that?

12 MR. TROWBRIDGE: No, but, Judge Milhollin, we have
13 just been handed two memoranda; one from TMIA and one from
14 the Aamodt's on this subject. I am not sure you have --

15 JUDGE MILHOLLIN: On which subject?

16 MR. TROWBRIDGE: On confidentiality. I am not sure
17 you have received your copies yes.

18 JUDGE MILHOLLIN: I have received a document from
19 TMIA, I believe, on confidentiality.

20 MR. TROWBRIDGE: And there is a second handwritten
21 one, I believe, from the Aamodt's.

22 JUDGE MILHOLLIN: I notice in front of me here
23 there is a paper with handwriting on it. I have not been
24 officially given it, however.

25 MR. CLEWETT: That is my fault, Your Honor. I

1 should have officially served you with one. I attempted
2 earlier this morning to serve it on the Board and they
3 instructed me to serve it upon you. So I wanted to wait
4 until you arrived.

5 JUDGE MILHOLLIN: Are we now officially provided
6 with one?

7 MR. CLEWETT: Unless the one up there will do.

8 JUDGE MILHOLLIN: Is it the same as the one you
9 have in your hand?

10 MR. CLEWETT: Yes.

11 JUDGE MILHOLLIN: It appears to be the same
12 document that was found here upon the desk when I arrived,
13 so I will consider that you have now given it to me.

14 MR. CLEWETT: I will attempt to do a better job
15 serving future documents that I might have.

16 MR. TROWBRIDGE: I would suggest, Judge Milhollin,
17 that everyone take time out to read these documents before
18 we start discussion.

19 JUDGE MILHOLLIN: Of course. What I perhaps should
20 have said already is what I propose to do is make some
21 opening remarks and pass out some materials to you, and then
22 adjourn and give you an opportunity to look at the discovery
23 requests which are -- I'm sorry -- to look at requests for
24 documents which were to be filed today and to discuss those
25 among yourselves in addition to documents which you may have

1 just received with the hope that you can work out any
2 differences among yourselves as to the adequacy of
3 documents, or as to the propriety of discovery requests
4 during our adjournment.

5 As I said, I will also give you during the
6 adjournment -- before the adjournment I will give you a
7 proposed schedule for the balance of the hearing which I
8 have prepared, and I will also give you a document entitled
9 "Additional minimum evidentiary presentations specified by
10 the Special Master," and these additional presentations will
11 be for the licensee and the staff.

12 MR. TROWBRIDGE: And at what point will we take up
13 the confidentiality? After?

14 JUDGE MILHOLLIN: I would propose to take up
15 confidentiality when we reconvene, since we only have 25
16 minutes now before the time that people normally eat lunch.
17 Unless it would be more convenient to take up
18 confidentiality now.

19 MR. TROWBRIDGE: I am suggesting we need a little
20 time to take up confidentiality. I am thinking of the
21 attorneys who are here especially for this purpose. It
22 seems to me we could take up confidentiality fairly soon. I
23 think we need a fairly long session among the parties to
24 look at discovery requests, consider schedules --

25 JUDGE MILHOLLIN: Yes, I agree.

1 MR. TROWBRIDGE: And I propose we do not defer the
2 confidentiality until after lunch.

3 JUDGE MILHOLLIN: That is certainly a reasonable
4 proposition. How do the other parties feel about that?
5 Would you prefer to take a short break to look at the new
6 filings on confidentiality and then discuss it before
7 lunch? Or would you prefer to take a long break and discuss
8 confidentiality after we come back? What would be your
9 pleasure?

10 MR. TROWBRIDGE: I would suggest a short break.

11 MR. CLEWETT: Not solely for the purpose -- not at
12 all for the purpose of creating disagreement, we would
13 prefer a longer break and discuss the confidentiality first
14 when we return.

15 MS. SWARTZ: Excuse me. During a long break, would
16 that also include looking over discovery and preparing
17 responses to discovery?

18 JUDGE MILHOLLIN: Yes.

19 MS. SWARTZ: Not preparing response, but preparing
20 objections to discovery.

21 MR. TROWBRIDGE: Was that your --

22 JUDGE MILHOLLIN: Before making this procedural
23 decision I perhaps should ask for anyone who is planning to
24 make a limited presentation on the subject of
25 confidentiality to identify themselves, and to indicate what

1 his views are on the subject.

2 MR. McBRIDE: I am Michael F. McBride, Associate
3 with the law firm of LaBeouf, Lamb, McRae in Washington,
4 D.C., and I appear on behalf of two of the three individuals
5 whose identity might be disclosed if unexpurgated copies of
6 the NRC reports are released to the parties and the public
7 in this proceeding.

8 This reference from Mr. Trowbridge to the document
9 of TMIA was the first that I heard of it, so I would
10 appreciate, prior to the discussion on confidentiality, to
11 be provided with a copy of that document. Before I see it I
12 cannot know whether I need a long break or a short break.

13 MR. ADLER: For the record, Mr. Chairman, I also
14 have not received a copy of TMIA's filing.

15 MR. COLE: Your Honor, my name is David Cole, I am
16 with the law firm of Smith and Smith here in Harrisburg, I
17 represent the third unnamed individual whose name might be
18 brought up at this hearing, and I would concur with Mr.
19 McBride's request that we have some time to be able to look
20 over these documents.

21 JUDGE MILHOLLIN: Would you prefer to take a
22 ten-minute break and come back and argue about
23 confidentiality, or what would you prefer to do? Would you
24 prefer to argue confidentiality this afternoon after a lunch
25 break?

1 MR. McBRIDE: I do not need anymore than ten
2 minutes, but I will abide by any ruling that is made that
3 will suit everyone.

4 MS. BRADFORD: Judge Milhollin, we need to make
5 more copies of the document.

6 JUDGE MILHOLLIN: I have two extra ones here. More
7 than two, I have three extra's.

8 MS. BRADFORD: That is the Aamodt's. Ours was
9 served yesterday afternoon, and I have handed out all the
10 copies except the original. We will need time to find a
11 place to make more copies. I think all the parties have
12 copies of our discussion. This is the document to which I
13 am referring. We did not anticipate the need for so many
14 copies. We will need time to locate copying facilities and
15 make more copies.

16 JUDGE MILHOLLIN: When did you file that document?

17 MS. BRADFORD: I filed it -- I served it by hand on
18 the Board and yourself yesterday afternoon. I have just
19 filed it with the other parties.

20 JUDGE MILHOLLIN: Very well. The other parties --
21 there are insufficient copies for the parties?

22 MS. BRADFORD: Right.

23 JUDGE MILHOLLIN: Which parties do not have a copy?

24 MS. BRADFORD: This gentleman here.

25 JUDGE MILHOLLIN: Very well. It looks to me as if

1 this is getting very difficult to reach this morning, the
2 issue of confidentiality. I would be amenable to take a
3 ten-minute break to discuss it, but if it is going to take
4 longer than ten minutes to discuss it or 15, then perhaps we
5 should put it off.

6 Let me ask you, is there discussion by the parties
7 which will go beyond the filings to a significant degree, or
8 are you prepared to stand pretty much on what you have filed?

9 MS. SWARTZ: The staff is prepared to stand pretty
10 much on what we filed.

11 JUDGE MILHOLLIN: Other parties?

12 MR. CLEWETT: We would like the opportunity to
13 discuss it. I doubt our discussion will go substantially
14 beyond the scope of what we filed. We would like to be able
15 to discuss that, though.

16 JUDGE MILHOLLIN: Why don't we take a ten-minute
17 adjournment and reconvene and see whether we can go into
18 confidentiality at that time?

19 (Short recess.)

20 JUDGE MILHOLLIN: The conference will now come to
21 order. We are now ready to discuss the issue of
22 confidentiality. Are there any preliminary matters before
23 we take that up that any party would like to present?

24 MR. McBRIDE: Yes. I would like to request that on
25 an informal basis on the advice of Chairman Smith, that I

1 and Mr. Cole be provided copies of all documents served by
2 the parties with respect to the issue of confidentiality
3 until the matter is resolved, without being put on the
4 service list formally for the receipt of all documents filed
5 in this proceeding.

6 JUDGE MILHOLLIN: Very well. I take it there is no
7 objection to that request.

8 MR. TROWBRIDGE: No. Could we have Mr. Cole's full
9 name and address?

10 MR. COLE: Yes. My name is David E. Cole, my
11 address is 2931 North Front Street, Harrisburg, Pennsylvania.

12 MR. TROWBRIDGE: Thank you. We have Mr. McBride's.

13 Mr. Chairman, you did ask how long this might take
14 to discuss the issue of confidentiality. I would say to the
15 Board I probably have ten -- and ten usually turns out to be
16 15 -- minutes worth of comments myself on the TMIA and
17 Aamodt filings.

18 JUDGE MILHOLLIN: I suspected as much. So, do the
19 other parties have additional time? Does the staff have
20 comments on the filings as well?

21 MS. SWARTZ: Yes, just a few, I would say 5 or 10
22 minutes.

23 MR. ADLER: Mr. Chairman, I have a brief
24 restatement of the Commonwealth's position after further
25 consultation with the Governor's office. One or two minutes

1 at most.

2 JUDGE MILHOLLIN: I am going to have some questions
3 of the parties with respect to their positions as well. It
4 looks now as if we are going to break for lunch. Mr.
5 McBride?

6 MR. McBRIDE: I have extensive argument I would
7 like to present.

8 JUDGE MILHOLLIN: Oral argument?

9 MR. McBRIDE: Yes.

10 JUDGE MILHOLLIN: Beyond the arguments made in your
11 brief?

12 MR. McBRIDE: Yes, because at the time we made
13 those arguments we had not had the benefit of any other
14 parties' views. We have been working since that time with
15 the benefit of some of those views from Tuesday literally
16 until five minutes ago preparing, on the basis of what I now
17 understand the parties' positions to be on the issue of
18 confidentiality.

19 JUDGE MILHOLLIN: Which views are you referring to?

20 MR. McBRIDE: We did not have the staff's brief at
21 the time we filed ours. I have some comments with respect
22 to that. We did not have the licensee's position. I have
23 some brief comments with respect to that. And I have just
24 received this morning the positions of the intervenors, the
25 Commonwealth, TMIA and the Aamodt's.

1 JUDGE MILHOLLIN: Very well. Then we will recess
2 for the purpose of discussing among the -- for the purpose
3 of having the parties discuss among themselves the following
4 subjects:

5 First of all, the materials which have been --
6 discovery materials which have been exchanged today. My
7 understanding is that the parties have exchanged the
8 materials, is that correct?

9 MR. TROWBRIDGE: We have not received anything, I
10 think, from TMIA. Is that correct?

11 MS. BRADFORD: That is correct.

12 JUDGE MILHOLLIN: Yes?

13 MR. CLEWETT: Is this in lieu of lunch?

14 (Laughter.)

15 JUDGE MILHOLLIN: What we are talking about now is
16 how long we should break for lunch and this work that I am
17 now describing. So the parties during the recess will
18 complete the exchange of any documents which may be tendered
19 at this time, and the parties will discuss amongst
20 themselves objections to these documents for purposes of
21 resolving differences.

22 As you have been informed, all document requests
23 are due today. So insofar as -- well, document requests are
24 due today so you should be prepared to make document
25 requests when we reconvene this afternoon, if you have not

1 already made those requests.

2 MR. TROWBRIDGE: We understood that this was all
3 discovery requests were due today; documents would be most
4 of it but interrogatories as well.

5 JUDGE MILHOLLIN: No. My intention is to have all
6 documents requests due today, and then to discuss with all
7 of you what your additional needs for discovery might be.

8 MR. TROWBRIDGE: Well anyhow, we have handed out --
9 actually served interrogatories and document requests.

10 JUDGE MILHOLLIN: Very well.

11 MR. CLEWETT: Judge Milhollin, we were informed
12 yesterday afternoon when a representative of the NRC called
13 and stated that we were supposed to have all of our
14 discovery requests today. This seems to be a highly unusual
15 procedure.

16 It was our understanding from the statement from
17 the memorandum and order of the Board that there would be at
18 this meeting today -- it said the parties shall describe the
19 discovery which they require, and then it talked about
20 informal discovery and discussing devices for shortening the
21 time for discovery, and then an example of that was the
22 possibility of having the parties meet for exchange of
23 discovery requests informally.

24 We have some materials prepared in terms of
25 describing what discovery we are interested in, but in terms

1 of coming up with formal requests for discovery we did not
2 even know until this morning what the issues were. And it
3 would seem highly unusual to require us in the space of 15
4 minutes or three or four hours to come up with all of the
5 discovery requests that we might require.

6 It would seem reasonable to allow us at least a
7 couple of weeks after the issues had been described before
8 formal discovery would begin, which appears to be what is
9 being talked about now. And I am at a loss to understand
10 why this procedure is being talked about. I have not even
11 seen any order of the Board that discusses this.

12 There was a call from an NRC representative who
13 alleged this was a requirement, and this is all we have
14 heard.

15 JUDGE MILHOLLIN: My orders were to have you
16 telephoned on Monday and my information is that you were
17 telephoned on Monday and informed that document requests
18 would be due today; not that all discovery requests would be
19 due today, but just the document requests would be due
20 today. And so I am going to assume that that communication
21 occurred, and that there is no unfairness in asking you to
22 make document requests today.

23 You should be prepared when we reconvene to make
24 the document requests.

25 MR. CLEWETT: We would ask your indulgence to a

1 limited extent to allow a lengthy time that we break so we
2 would have some hope of meeting this requirement. If the
3 goal of the Special Master is to conduct a fair hearing, we
4 would hope you would indulge us at least to that extent.

5 JUDGE MILHOLLIN: I think until evidence to the
6 contrary appears, that is true. So as I was saying, the
7 item of business at this break, one of the items of business
8 will be to formulate and be prepared to make request for
9 documents when we reconvene. And also, you should discuss
10 among yourselves other discovery requests.

11 I have prepared a schedule which I will hand out
12 before we break which I will give to you for purposes of
13 discussion. It is a schedule for the balance of this
14 proceeding.

15 Also, I have prepared a list of additional issues
16 which I will pass out to you before we break. So during the
17 break I would expect you to look at the schedule and look at
18 the statement of additional issues and be prepared to
19 discuss both the schedule and the additional issues after
20 the break.

21 MR. TROWBRIDGE: Does the statement of issues
22 include what you referred to as minimal evidence?

23 JUDGE MILHOLLIN: Yes, that is right. In essence,
24 this additional statement of issues contains a list of
25 evidentiary issues, and it is principally directed to the

1 staff.

2 Are there any other matters before we break for
3 lunch?

4 MR. TROWBRIDGE: I think it would be well for the
5 intervenors, if it is convenient now, to establish a time
6 when we are coming back, and I think we will have to use
7 this room. There is lunch and whatever further work you
8 have to do in getting together your documents.

9 JUDGE MILHOLLIN: I was going to propose 2:00
10 o'clock which would give an hour for lunch and an hour for a
11 work session. I would be prepared to hear your response as
12 to whether that is convenient.

13 MR. TROWBRIDGE: When would we get back? In an
14 hour?

15 JUDGE MILHOLLIN: You can arrange that among
16 yourselves after we break.

17 So hearing no objection, we will adjourn until 2:00
18 o'clock.

19 (Whereupon, at 12:05 p.m. the hearing recessed for
20 lunch, to reconvene at 2:00 p.m. the same day.)

21 (Judge Milhollin distributed the following
22 documents to the parties present:)

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SCHEDULE FOR
REOPENED PROCEEDING

- On Oct. 2 - Requests for documents.
- Discussion of other discovery.
- By Oct. 9 - Furnish documents requested on Oct. 2.
- Submission of other discovery requests.
- Special Master available to rule on objections in meeting on Oct. 9.
- By Oct. 26 - Complete discovery.
- By Nov. 2 - Written testimony received, including trial plan outlines which will summarize testimony of each witness and state what the testimony will seek to prove.
- Where a party seeks to prove its case-in-chief by questioning an adverse witness, a trial plan outline, as above, is required at this time.
- Nov. 10-14 - Hearing Tuesday through Saturday.
- Nov. 17-21 - Hearing Tuesday through Saturday.
- Cross-examination plans are filed Nov. 10.

The following dates assume the hearing will end Nov. 21.

- + 13 days (Dec. 4) Proposed Findings Received.
- + 20 days (Dec. 11) Reply Findings Received.
- + 50 days (Jan. 11) Estimated receipt of Master's report.

Master's Report:

- + 7 days (Jan. 18) Comments by parties Received.
- + 14 days (Jan. 25) Replies to Comment by Parties Received.
- + 28 days (Feb. 1) Board Decision on Reopened Proceeding.

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Additional minimum evidentiary
presentations specified by the
Special Master at the Conference
of October 2, 1981

The following matters are specified by the Special Master to be the subject of evidentiary presentations by the Licensee and Staff. The parties are invited to discuss these matters at the Conference of October 2, 1981. These matters are in addition to the matters previously nominated by the parties in their letter of September 24, 1981 to the Atomic Safety and Licensing Board. The matters are listed under the issues proposed in that letter:

Issues 1, 3 and 5: In general, is the Licensee's examination and certification program adequate to insure that qualified personnel sit for the NRC exams?

- a) Why didn't the Licensee discover the cheating on the mock exams?
- b) Why didn't other persons who sat for the examination on which cheating occurred, and who were in a position to observe the cheating, report it? Were management-level employees in a position to observe the cheating? Did they learn of it later and fail to report it? For example, Mr. [REDACTED], the instructor for licensed operator training, is reported to have refused to answer questions by investigators concerning whether reference material was covertly brought into the examination room, or to reveal the details of rumors of cheating which he may have heard.

- c) What is the practice of allowing re-examinations of those who fail initially on the various examinations which the Licensee gives? What is the purpose of this practice?
- d) How does the Licensee administer its examinations so as to prevent cheating or other devices which defeat the purpose of the examinations?

Issues 2 and 10: In general, are the NRC examinations administered in such a way as to insure that operating personnel are qualified for their positions?

- a) Proctoring. Has it been adequate in the past? Will it be adequate in the future? When were proctors present during the TMI examinations? What did they do while present and absent? What arrangements for proctoring did they make during their absence? What instructions were they given by their superiors? What instructions did they give to the examinees?
- b) Grading. Has it been adequate in the past? Will it be adequate in the future? Who graded the TMI exams? Why wasn't the cheating detected?
- c) Other monitoring. To what extent does NRC monitor the Licensee's training program? Is NRC's interest confined to its own examination? NRC was to have monitored the "Category T" examination. What is NRC's procedure for doing so? Would NRC have detected cheating on the "Category T" examination?

- d) Integrity of the examination. What has been NRC's procedure for preventing examinees or their instructors from discovering what questions will be asked on examinations? Are the same questions repeated from one examination to the next? Do responses to the questions require fresh analysis by the examinee, or can the responses be memorized? To what extent are candidates "coached?" Mock and actual examinations are to be compared. The bank of questions maintained by NRC is to be furnished, together with the examinations mentioned in issue 1, above.
- e) Oral tests. How will the oral test be given and graded?
- f) Attitude of the NRC Staff. The Kemeny Commission found that operator training was greatly deficient; that the depth of understanding was far too shallow. It also found that the branch of NRC that monitored operator training was "weak and understaffed," and that NRC limited itself to "giving routine exams." It concluded that no quantity of "fixes" would cure the basic problem, which it found to be the attitude of the people who were involved. Because the cheating incident occurred after the Staff had responded to the Kemeny Commission and promised to improve, what does the possibility of laxity in the Staff's procedures indicate about the Staff's attitude?

1 AFTERNOON SESSION

2 (2:05 p.m.)

3 JUDGE MILHOLLIN: The conference will now come to
4 order.

5 Before we begin our discussion of confidentiality,
6 there are a couple of housekeeping matters I should mention.

7 Mr. Cole, you should file notice of appearance in
8 due form.

9 MR. COLE: Yes, sir. I did send that in earlier
10 this week. I guess because of the problems with the mails
11 or whatever it was not received. I have copies of sent here
12 if you would like one.

13 JUDGE MILHOLLIN: No. If you sent it, I'm sure it
14 will arrive.

15 Mr. Clewett, I assume you are going to refile by
16 mail the document you distributed to me this morning.

17 MR. CLEWETT: In typed form, yes.

18 JUDGE MILHOLLIN: In typed form so it can be bound
19 into the physical record. Okay.

20 An additional matter concerning filing. When you
21 file copies with the Licensing Board panel -- I am sorry --
22 with the Licensing Board, you should include two copies for
23 the Chairman of the Licensing Board. Chairman Smith should
24 get two copies of all things.

25 MR. TROWBRIDGE: With you?

1 JUDGE MILHOLLIN: Yes. All documents which are
2 filed in this proceeding, which are then served on the
3 Chairman of the Licensing Board, should consist of two
4 copies for the Chairman of the Licensing Board.

5 MR. TROWBRIDGE: And not the other members of the
6 Licensing Board?

7 JUDGE MILHOLLIN: Yes, that is right.

8 MR. TROWBRIDGE: What about parties -- some of them
9 are kind of remote -- ECNP, UCS -- who are not participants
10 in this proceeding, the special reopened proceeding? We
11 have a fair number of them.

12 JUDGE MILHOLLIN: Why don't we take that up when we
13 take up consolidation?

14 MR. TROWBRIDGE: Fine.

15 JUDGE MILHOLLIN: Perhaps that would be the most
16 orderly way to discuss that sort of thing. If we forget to
17 talk about it, perhaps you can bring it up then.

18 MR. TROWBRIDGE: I will remember.

19 JUDGE MILHOLLIN: Unless there are other
20 preliminary matters, I am ready to entertain arguments on
21 confidentiality.

22 MR. ADLER: I just have one, Judge Milhollin.

23 Regarding a hearing room, it appears I can provide
24 a room on the date specified in your proposed schedule with
25 one exception, the afternoon of the 20th. So if that has

1 any bearing on whether or not we adopt it, that would be
2 helpful.

3 JUDGE MILHOLLIN: Very well. Perhaps you and I
4 could get together after the proceedings today to discuss
5 informally the possibility.

6 MR. ADLER: Fine.

7 JUDGE MILHOLLIN: I take it no party would object
8 to that.

9 (No response.)

10 JUDGE MILHOLLIN: Okay. We are now ready for
11 arguments on confidentiality. Perhaps we could take this in
12 the usual order with the Licensee first.

13 MR. TROWBRIDGE: I have one slight variation that I
14 would suggest. If I understood Mr. Adler correctly, the
15 Commonwealth's position has been altered since they filed
16 the statement of their position on confidentiality. Since
17 my remarks would largely be in response to other people's
18 comments, perhaps we could be advised what the change is.

19 MR. ADLER: My comments are more in the nature of
20 an amplification rather than an alteration, but I have no
21 problem starting.

22 It is basically in response to the memorandum filed
23 by Mr. Clewett. We are somewhat in agreement with some of
24 the points raised in Mr. Clewett's memorandum regarding the
25 potential usefulness of putting the involved individuals on

1 the stand for the determination of such issues as management
2 involvement. However, we continue to feel that protection
3 of these individuals is of consideration; and what we would
4 propose would be to defer ruling on the issue of
5 confidentiality pending the formulation of the rest of the
6 evidentiary record. And we believe that if there is some
7 indication of management complicity, involvement, knowledge,
8 et cetera, of cheating, then there might be grounds to bring
9 these witnesses on the stand.

10 The only other point I have is that in that event
11 we would argue in favor of having an in camera session.

12 JUDGE MILHOLLIN: Well, let me ask a question,
13 since I am taking your views now. My understanding is that
14 you feel that the letter system which is proposed by the
15 Licensee would be adequate for your purposes.

16 MR. ADLER: Yes, sir.

17 JUDGE MILHOLLIN: And your only reservation would
18 be possibly the difficulty that would arise if it were
19 necessary to call as a witness one of the individuals, for
20 example, or some other person who might assert an interest
21 in confidentiality, is that correct?

22 MR. ADLER: That is correct.

23 JUDGE MILHOLLIN: Perhaps we could hear from the
24 representatives of the individuals now.

25 MR. MC BRIDE: Yes, Judge Milhollin. I thought we

1 were going to go with the Licensee first, but this is fine.

2 The only suggestion I would have in terms of the
3 order of presentation is that we be permitted to close,
4 since my understanding of the law is that the burden is upon
5 us to justify nondisclosure.

6 JUDGE F L'HOLLIN: That was the reason for my sudden
7 decision and have you go first, because you are in the
8 position of the proponent in substantive terms with respect
9 to this question.

10 MR. MC BRIDE: Right. The reason that we entered
11 special appearances on behalf of the individuals we
12 represent, the reason we are here today is because of the
13 severity of the threat to the individuals that Mr. Cole and
14 I represent if disclosure of their identities is permitted
15 by the Board's order.

16 In the last couple of years since the time of the
17 TMI-2 accident a number of the individuals that we represent
18 in other contexts and other employees of Three Mile Island
19 have been the targets of anonymous and threatening telephone
20 calls, including one death threat to a person whom we
21 represent; and these sorts of threats seem to me to be
22 likely to continue given the feeling in the community and
23 the intense amount of interest that is associated with this
24 proceeding. And I think no better evidence of that fact
25 could be given than the number of media representatives here

1 this morning.

2 The law that governs the issue before you is the
3 Freedom of Information Act and the Commission's regulations,
4 because the Commission's regulations tie into the decision
5 that you have to make with respect to disclosure, the nine
6 exemptions of the Freedom of Information Act, and the act
7 itself.

8 The relevant exemptions are Exemption 6 and
9 Exemption 7, which have been loosely referred to in other
10 contexts as the privacy exemptions.

11 Now, the Commission's regulations give you the
12 authority to do whatever you deem just in the circumstances
13 of this issue after balancing the factors involved. The
14 factors involved are the public interest in disclosure, the
15 private interest in nondisclosure, and the weighing of other
16 steps that could be taken to accomplish all the ends sought
17 by the parties and by the individuals we represent.

18 When you strike that balance, the balance must be
19 struck in favor of nondisclosure, if the private interest in
20 nondisclosure outweighs the public interest, even if there
21 is a substantial public interest in disclosure.

22 The most applicable exemption here I think is
23 Exemption 7C of the Freedom of Information Act which uses
24 the standard of an unwarranted invasion of personal
25 privacy. And I think I should begin by noting the contrast

1 between Exemption 7 and Exemption 6.

2 Exemption 6 uses the phrase "clearly unwarranted
3 invasion of personal privacy," and the Department of the Air
4 Force v. Rose, which is perhaps the lead case under
5 Exemption 6, the Supreme Court's opinion on that subject
6 distinguishes between the two exemptions and provides for a
7 lesser showing under Exemption 7 than under Exemption 6 to
8 justify nondisclosure. Footnote 16 is the relevant passage
9 in the opinion.

10 There have been a number of cases in recent years
11 under the Freedom of Information Act in which the names of
12 individuals involved in one type of proceeding or another
13 have been withheld from public disclosure, notwithstanding
14 the disclosure of other aspects of their involvement in
15 whatever matter may be at issue.

16 The case of Nix v. the United States, for example,
17 the names of FBI agents and an assistant U.S. attorney were
18 withheld from public disclosure, notwithstanding the fact
19 that they are publicly employed, paid by the taxpayers to
20 perform the functions they performed, and there is a
21 substantial public interest in knowing their identities.

22 The case of Rushford v. Civiletti involving
23 journalists who sought the identities of judges, federal
24 judges who may have been the target of criminal
25 investigations by the Justice Department, it was determined

1 that their identities not be disclosed as to any living
2 judges because of the severe adverse impact it could have on
3 them personally and professionally.

4 And in the Providence Journal Company v. FBI case
5 cited in our papers, the District Court, and affirmed on
6 this point by the Court of Appeals, held that information
7 about the private life of a chieftain, if you will, of
8 organized crime was nondiscoverable or not subject to
9 disclosure, notwithstanding the intense public interest in
10 the individual in question.

11 JUDGE MILHOLLIN: Excuse me. If the government in
12 those cases had decided or elected to disclose the
13 information sought would the act have prevented the
14 disclosure?

15 MR. MC BRIDE: The act without anyone to enforce it
16 would not have been self-executing, but the individuals
17 involved had an interest in asserting that the act should
18 prevent disclosure.

19 Mr. Patrarca in the Providence Journal Company case
20 was permitted to intervene and assert his personal interest
21 in nondisclosure, for example.

22 JUDGE MILHOLLIN: What I am asking you is this:
23 the act seems to justify the Government's decision not to
24 turn over information in the cases in which or not to
25 justify it in cases where the Government decides not to

1 disclose.

2 MR. MC BRIDE: Correct.

3 JUDGE MILHOLLIN: Does it say anything about the
4 case where the Government decides to disclose? It would
5 have to then be directed to the power of the individuals
6 concerned to stop the Government from disclosing.

7 What is your position on that?

8 MR. MC BRIDE: With respect to this proceeding, the
9 act can be used as a shield rather than a sword, if you
10 will, by the individuals whose interests are in question
11 because of the Commission's regulations. The Commission's
12 regulations provide for you to take such action as you deem
13 appropriate in the circumstances, and the Commission's
14 regulations provide for the recognition of privacy interests
15 in Part 9 of 10 CFR.

16 Section 9.6 of the Commission's regulations, for
17 example, specifically provides for you to make a decision
18 with respect to nondisclosure if privacy interests justify
19 it. And in any event it seems to me the question is moot
20 because the Staff has taken a position in favor of
21 nondisclosure.

22 JUDGE MILHOLLIN: So can you cite me any authority
23 for the proposition that if the Government decides to
24 disclose -- can you cite me any authority for the
25 proposition that the Government's decision to disclose is

1 subject to limitations because of the act?

2 MR. MC BRIDE: Not offhand, but I have a number of
3 them here, and I would be happy to look at them while the
4 other parties are stating their position.

5 Now, I wanted to move into a statement with respect
6 to each of the parties' positions. First of all, let me
7 summarize by saying that I think the position of the
8 Licensee, the Staff, and Mr. Cole and myself are consistent
9 in all respects.

10 The proposition advanced by the Licensee that the
11 individuals' names in question could be identified by
12 letters of the alphabet and such other individuals as whose
13 names may be disclosed by the production of other documents
14 in a similar fashion is acceptable to us, and we think
15 adequately resolves the controversy because it would permit
16 all documents to be identified vis-a-vis any particular
17 individual, which should be all that is necessary and yet
18 which also would preserve the interests of nondisclosure on
19 behalf of those individuals.

20 Now, it seems to me the Staff has done an excellent
21 job of summarizing the Freedom of Information Act in its
22 papers, and our conclusion could have been put on their
23 papers. They state that they believe that disclosure of the
24 names is not necessary and should not take place, but that
25 they have no objection to it, and we do. But the cases they

1 cite and the arguments they advance are fully supportive of
2 our position.

3 Now, with respect to the other parties, first of
4 all, as I understand the position of the Commonwealth, they
5 are not advocating disclosure at this time. TMIA argues
6 strenuously in favor of disclosure, but it does seem to me
7 that their paper in fact serves just the contrary purpose.

8 If we could, I would like to turn to what TMIA has
9 said, because I think that the arguments they make are proof
10 of the interest that our clients have in nondisclosure.
11 They say that it is impossible to assure that if a
12 protective order is issued that people that work for their
13 organization could comply with the terms of the protective
14 order, nor would it be fair to expect volunteer members of
15 TMIA to sign a protective order. No substantial reason is
16 given for that statement.

17 The fact that these individuals might not be
18 willing to sign a statement is not our problem; that is
19 their problem. Protective orders are commonplace in
20 proceedings involving confidential or proprietary
21 information. The Commission has issued them before, and the
22 Commission's rules provide for them. They have to live with
23 the Commission's rules just as all of the parties to the
24 proceeding.

25 They make statements such as the fact that for

1 purposes other than the idle curiosity of the parties would
2 be served by the disclosure of the identities, but they have
3 not really said why. They say that many witnesses will have
4 to be questioned on NRC's and management's integrity and
5 involvement in the incident, which can only be done by
6 reference to these and other employees. That simply is not
7 the case.

8 As I understand it, the Board in this proceeding at
9 an earlier stage and with respect to other issues called Mr.
10 Moseley, the deputy to Mr. Stello of the Office of
11 Inspection and Enforcement, to testify with respect to the
12 further investigation of the TMI-2 accident that was
13 conducted by the Office of Inspection and Enforcement, and
14 limited itself to calling him to satisfy whatever interests
15 were involved in the proceeding with respect to those
16 issues. The Board did not call all the individuals who gave
17 testimony in that proceeding.

18 Similarly here it seems to me that if the Board has
19 further inquiry to make with respect to the reports that
20 were issued by various divisions of the NRC, it could call
21 the persons who are responsible for those reports. It could
22 call Mr. Stello, for example. It could call the individual
23 or individuals responsible for the Office of Inspector and
24 Auditor Reports. It can call Met Ed management, and
25 presumably, Judge Milhollin, you will do that.

1 But the fact remains that with respect to Mr.
2 Cole's client and our client, who is no longer employed by
3 the company, they cannot affect the capability of management
4 to safely operate TMI-1. They are no longer employed
5 there. They are not engaged in any activity that could bear
6 on that question.

7 Similarly, with respect to our client who has been
8 removed from license activities by Met Ed, there is no way
9 that he can affect the activities of management to safely
10 operate the plant. The Board can satisfy itself of the
11 facts that I have just described and certify them to the
12 parties, and that ought to be sufficient.

13 In summary, it seems to me that the interests of
14 everyone concerned can be served adequately by disclosure of
15 documents with letters, as the Licensee proposes; and that
16 in the alternative at the very least a protective order has
17 to be issued and proceedings with respect to examination and
18 cross examination of the individuals in question can be done
19 in camera for the reasons stated by the Staff and by
20 ourselves in our papers.

21 Now, if TMIA has severe problems with the
22 conditions we propose with respect to the protective order,
23 if one should be issued, it seems to me that those
24 conditions are necessary to ensure that personal jeopardy
25 does not take place with respect to these individuals.

1 Courts have oftentimes granted requests for
2 nondisclosure or have refused to order disclosure with
3 respect to the identities of individuals when it would cause
4 them embarrassment, when it would have adverse effects on
5 their personal lives.

6 It seems to me the results have to be all the more
7 true when the person's personal jeopardy is in question.
8 And so I think the TMIA papers prove our point and
9 demonstrate the concern that we have, both for the
10 impracticality of the protective order and the jeopardy that
11 could be occasioned to our clients if their names were
12 disclosed.

13 Thank you.

14 JUDGE MILHOLLIN: Mr. Cole, do you have anything to
15 add to that?

16 MR. COLE: Yes, Your Honor. I can summarize what I
17 have to say by stating that I concur, and I reiterate the
18 law that has been stated by Mr. McBride, and just add a
19 personal note here.

20 I have lived in Harrisburg almost my entire life.
21 I was here in the area when the accident occurred. I was
22 here when the cheating situation came up in the press. I
23 know the effect that any permitting of names to become
24 available to the press or anyone else can have on these
25 families. It is just I cannot comprehend the effect that

1 might have on these families.

2 My client and his family are very fearful that
3 their names would become available to anyone. And I just at
4 a personal level want to make a plea on behalf of my client
5 that his name not in any way be permitted to be obtained by
6 these parties. While I can understand their interest in
7 obtaining their names, I just cannot feel, I do not feel
8 that their interest outweighs the interest of my client and
9 his family and the effect it may have upon them if his name
10 becomes available.

11 Thank you.

12 MS. BRADFORD: Mr. Chairman, as we stated in our
13 filing, the protective order being incredibly burdensome to
14 myself, we are a citizen organization and our members are
15 volunteers. They volunteer their time in small segments.
16 They are not sophisticated in the understanding of the law,
17 and therefore, the protective order and attendant sanctions
18 is very possibly -- will scare off people I desperately need.

19 It is very burdensome. There are other things
20 going on besides this reopened portion of the hearing. And
21 for me to alone to assume that burden would mean that we
22 could not effectively argue. And so we do not feel that a
23 protective order in the way suggested in the Staff's
24 suggestion would allow TMIA to continue effectively in this
25 proceeding.

1 JUDGE MILHOLLIN: Let me ask you whether you feel
2 that the Licensee's proposed system of letter designations
3 would be adequate?

4 MS. BRADFORD: We could certainly go along with the
5 Licensee letters. What our concern is is that later as this
6 proceeding continues, we might have a need to either depose
7 some of those individuals or call them as witnesses, some of
8 those individuals. And that is our problem with the
9 Licensee's system.

10 JUDGE MILHOLLIN: Your position is similar to the
11 Commonwealth's on that subject.

12 MS. BRADFORD: Yes, it is.

13 JUDGE MILHOLLIN: At least for the time being you
14 can go forward with the lettering system, but at some future
15 time it may become too burdensome.

16 MS. BRADFORD: Yes, correct.

17 MR. CLEWETT: We part company somewhat with the
18 other Intervenors, TMIA, on this issue. There has been a
19 great deal of talk and a great deal of ink spent on the
20 notion of essentially protecting the guilty here, protecting
21 these people who have already admitted that they cheated.
22 And I think it is important for the Board to focus on what
23 ought to be and what I assume is the real issue, which is
24 protecting the interests of everybody and finding out what
25 actually this cheating incident means to the ability of the

1 Licensee to be trusted to run this potentially very
2 dangerous technology, and whether they are assuming that
3 responsibility in an adequate way.

4 And there are certainly many theoretical
5 possibilities of ways to beat around the bush of what impact
6 this has, but there is clearly one thing that is the best
7 evidence and that is to talk to these individuals. And if
8 the Board is seriously concerned with discovering the import
9 of this cheating, it has got to allow us the chance to talk
10 to these people.

11 Now, we think there are certainly interests that
12 these individuals who have admitted cheating have in not
13 having everyone know who they are. But consider the fact
14 that criminal defendants do not get to have their names
15 hidden. Usually when someone has done something wrong they
16 have to put up with the consequences of that. And I think
17 it would be highly inappropriate for the main focus of this
18 hearing to be on the question of protecting the guilty.

19 If the Board is serious about looking into the
20 import of this cheating, they have got to actually look into
21 it, and the individuals are a real good place to start. And
22 we think that if the Board should determine that a
23 protective order, well, that is fine. I am sure there are
24 many different ways that protective orders could be worked
25 out so that these people's names would not be trumpeted by

1 the press. But in terms of actually educating evidence that
2 bears upon these questions, those people in getting not just
3 the documents, not just potentially self-serving statements
4 by Metropolitan Edison about what these people did and what
5 they did not do, but actually talking to the individuals
6 themselves is what is necessary; and we would urge that the
7 Board allow that.

8 JUDGE MILHOLLIN: Let me ask you the same question
9 I asked TMIA. For the time being do you think your needs
10 would be met by the lettering system proposed by the
11 Licensee?

12 MR. CLEWETT: I do not think so. It is one thing
13 to be able to know that a particular test was not taken by
14 the same person that took another test, but in terms of
15 actually being able to interview these people or having the
16 chance to call them as witnesses, we have got to know who
17 they are.

18 I mean, you know, there might conceivably be some
19 way to, you know, call these people to the stand with a bag
20 over their head or something; you know, have it be Mr. A.
21 But in lieu in some extraordinary procedure like that, we
22 need the names.

23 MR. TROWBRIDGE: I am going to do this by way of
24 commenting on TMIA's comments first and then the Aamodt's
25 comments.

1 Apparently TMIA has apparently accepted for the
2 time being a letter system, but I would like to make one or
3 two observations or perhaps corrections with respect to
4 TMIA's comments.

5 TMIA quotes on the page 2 of its comments on our
6 September 25 response on the subject of confidentiality, but
7 suggests both that we have no legal basis for claiming the
8 confidentiality or apparently intend to pursue the question
9 if it comes to later involvement of individuals in the
10 hearing itself.

11 As to the first item, we did state in a footnote
12 that there well may be -- I think probably there are rights
13 that the individual, possibly the company, might assert
14 under the privacy act or in the Commission's own privacy
15 regulations for the protection of the disclosure of
16 government documents, investigative documents which would
17 reveal their names.

18 Our problem was twofold with that. One, the Staff
19 proposal up to this point has been limited to two
20 individuals, the two individuals who admitted to cheating on
21 the NRC examination. There are other individuals we think
22 whose names ought to be protected until there comes a time
23 when there is a need to know those names or a need to recall
24 or talk to.

25 There is, as counsel for one of the individuals

1 pointed out, a third individual not included in the
2 Commission's order involved in a July '79 incident. There
3 are others who are the subject of rumors, and there may well
4 be others yet to come who will be the subject of allegations
5 by Intervenor's of cheating, possible cheating. At least
6 that is the purpose of their proposed discovery is to find
7 out about that.

8 So we felt that the protective order relating only
9 to the disclosure of the Government documents was not even
10 adequate with respect to all of the individuals identified
11 in the Government's documents.

12 JUDGE MILHOLLIN: Mr. Trowbridge, excuse me. We
13 are, as you know, laboring here without a public address
14 system of any kind. I would ask you to speak up a little
15 bit.

16 MR. TROWBRIDGE: I will speak up better.

17 The other problem with the staff protective order,
18 as we saw it, is that it does not do anything with respect
19 to company documents. I think all of the names that we are
20 concerned with, those three that have been identified,
21 others that we are concerned with, could all be obtained
22 through company documents for which we know of no privacy
23 act.

24 JUDGE MILHOLLIN: Excuse me. You are saying if the
25 names were obtained directly from you --

1 MR. TROWBRIDGE: We do not have a privacy act.

2 JUDGE MILHOLLIN: Then the arguments made
3 concerning the privacy act would simply not apply.

4 MR. TROWBRIDGE: That is right.

5 JUDGE MILHOLLIN: And the names could be obtained
6 by other --

7 MR. TROWBRIDGE: I will come back to the privacy
8 act. I think this Board -- I will say it now -- I think
9 this Board has enough discretion to run the proceeding on
10 the basis of the need to know the names, if it serves a
11 purpose that needs to be served to fully litigate the issue
12 before the Special Master and the Board.

13 I think the Board in exercising that discretion,
14 the Special Master in exercising that discretion could and
15 should take into account the policy reflected in the Freedom
16 of Information Act and the Commission regulations on
17 privacy. That is not the same thing as saying that there is
18 a statute that entitles the company on its own behalf or on
19 behalf of individual employees to protect its records short
20 of the authority of the Special Master and the Board to do
21 so.

22 JUDGE MILHOLLIN: Your position is that I have
23 discretion.

24 MR. TROWBRIDGE: You have the discretion.

25 JUDGE MILHOLLIN: All right.

1 MR. TROWBRIDGE: The burdensomeness argument should
2 be looked at very hard. With the lettering system we have
3 proposed any number of helpers can get in the act. We
4 propose no restriction on access to the lettered documents
5 by any volunteers or otherwise that the Intervenor get to
6 review the examination that we have been providing to them
7 and are going to provide to them. So I do not see any
8 interference with that process.

9 Later on we will have to face the question as to
10 whether by way of deposition or witness or testimony one or
11 more individuals has to come forward as a witness. We have
12 anticipated and we still anticipate that this will not be a
13 problem with respect to many individuals. That is, we
14 anticipate that -- and I hope this turns out to be the case
15 -- that most of the Licensee personnel will voluntarily
16 appear without claiming confidentiality or asking for
17 special treatment. We certainly cannot say that is true as
18 to everyone, and we certainly cannot say it is true as to
19 the two departed operators.

20 We have suggested that we postpone this problem
21 until we are up against real live examples that can be
22 wrestled with on their own merit, on their own problem. We
23 have not discarded the possibility they may have to be
24 called as, let's say as a witness, in which case at that
25 time we may very well propose to the Board a protective

1 order, which we would try to work out with the Intervenors,
2 and have in camera sessions.

3 But here again, we are not now talking about a
4 large group of helpers. The protective order for that kind
5 of a hearing need only involve the people participating in
6 the hearing, which may be no more than those sitting at this
7 table, maybe not that many. By "this table" I mean the
8 collection of tables.

9 We would see no reason -- I have not read or
10 digested with as much care as I should have the comments of
11 Mr. McBride on the Staff protective order or his suggestion
12 for the changes in it. But from where I sit I cannot see,
13 for example, why we would need -- what Ms. Bradford is
14 worried about, to include the whole TMIA organization in the
15 scope of a protective order. Since Ms. Bradford is the only
16 one, let's say, who is here for an in camera session, Ms.
17 Bradford would do it. That is the subject of the protective
18 order.

19 I will pass to the Aamodt's contention -- comments
20 in which they seem to find an inconsistency between what
21 might be necessary examination of individuals and
22 nondisclosure of their names, by which I mean nonpublic
23 disclosure. That is not necessarily an inconsistency.

24 As we have indicated, if it becomes necessary that
25 individuals become witnesses, that can be done. Obviously

1 the parties at any session at which they were witnesses
2 would know their names. That would be the first thing out
3 of their mouths when they take the stand.

4 But that does not necessarily mean there has to be
5 public disclosure. One can have examination of these
6 individuals, full examination, without public disclosure.

7 I am not now advocating that a lot of these people
8 be called. I am simply saying it is possible. And if you
9 go down the road of the lettering system, it does not
10 preclude a further, and to my view not burdensome, system of
11 protective order and in camera session.

12 JUDGE MILHOLLIN: Let me ask you a question before
13 you go on.

14 MR. TROWBRIDGE: Yes.

15 JUDGE MILHOLLIN: If it were decided today that for
16 purposes of expediting discovery that the lettering system
17 should be used for the time being, would it be possible for
18 the letters to be supplied rapidly by you?

19 MR. TROWBRIDGE: Well, let me answer you this way,
20 Mr. Chairman. I would have told you this when we came to
21 discuss discovery anyhow.

22 I think you already know we have supplied lettered
23 examinations, the Kelly examinations, including the original
24 Category T examinations and the ATTS, the mock exam. These
25 have already been delivered to the Aamodts with letters

1 substituted for names.

2 Today, if we have not already done so, we will
3 deliver to the Aamodts the Kelly makeup examinations. We
4 will also supply to the Aamodts with letters substituted for
5 names the Trunk report on the original Kelly examinations
6 and makeups on Category T, a supplemental Trunk report on
7 the same subject, and a further Trunk report which covers
8 his review of the ATTS examinations to the extent that they
9 were not covered in the original NRC review. NRC reviewed
10 some of the ATTS; we reviewed the rest.

11 So I think we are in the process of assembling one
12 of a set. We are rather confident we can have them supplied
13 by not later than the 9th of October. These are the Kelly
14 makeups in non-Category T areas, all lettered. So the
15 answer is I think we can do this rather fast.

16 I might add we have offered more in the matter of
17 mechanical assistance than otherwise to the extent that the
18 NRC investigative reports or for that matter the NRC
19 examinations may get distributed. We have offered to do the
20 same piece of mechanics and distribute them to the NRC,
21 although this would require a degree of cooperation between
22 us and I&E to get the letters and the names straight.

23 JUDGE MILHOLLIN: I was anticipating that
24 particular project when I asked the question, because as
25 things now stand, the parties do not have the I&E report

1 keyed into any system of keeping track of --

2 MR. TROWBRIDGE: As I understand it, up until today
3 there has been no even informal discovery request for the
4 April NRC examinations. But when you see today's discovery
5 I think we may have a different -- but there was no such
6 request at our meeting with the Intervenor on September 21,
7 although there was a request for the TMI-2 examinations.

8 JUDGE MILHOLLIN: Staff.

9 MS. SWARTZ: We agree entirely with the proposition
10 that a lettering system be used. We think that would
11 protect the privacy interests of the individuals involved as
12 well as allowing the Intervenor to get all the information
13 they need. When and if the Intervenor feel they want to
14 interview any of the people involved, that situation can be
15 dealt with at the time.

16 We do have a few comments on the Aamodts' brief and
17 TMIA's brief and also some of the comments that Mr. McBride
18 made.

19 With respect to the Aamodts' brief, they really do
20 not go into -- have no discussion of why they feel they need
21 the identities before they go to hearing in discovery or at
22 hearing.

23 We argued in our brief that having the names of the
24 individuals is really not necessary to a proper decision as
25 the regulations say for a decision in this proceeding. Page

1 8 of our brief we argue that the public and the parties
2 involved here have an interest in many aspects of the
3 management capability and in the way NRC conducts its
4 exemptions. But these interests are not furthered by
5 knowing the names at this point in time of the individuals
6 involved in the incidents at TMI.

7 As I said before, the Staff's proposal does not
8 preclude examining the individuals at the hearing -- excuse
9 me -- the Licensee's proposal for using letters does not
10 preclude having those people testify later, as the Aamodts
11 in their brief argue.

12 Something else that the Aamodts say and that was
13 brought up in oral argument a few minutes ago, it is
14 analogous with a situation with criminal defendants. These
15 individuals are not criminal defendants. No charge has been
16 brought against them at all.

17 Going to TMIA's brief, they seem to argue that
18 sanctions are burdensome, and if a protective order were
19 issued, sanctions would be burdensome. Well, it seems to
20 the Staff sanctions only come into play when the protective
21 order is violated, and the protective order itself, just
22 keeping some information to yourself, is not unduly
23 burdensome.

24 Something Mr. McBride said, he was arguing that the
25 Freedom of Information Act controls in this instance. The

1 Staff would submit that the Freedom of Information Act does
2 not apply. No Freedom of Information Act request has been
3 submitted. This is really discovery. As we argued in our
4 brief, under Section 2.790 information can be withheld.
5 There are exemptions under 2.790 that have exactly the same
6 wording as the regulation that implements the Freedom of
7 Information Act.

8 In our brief we took the law regarding the Freedom
9 of Information Act and attempted to apply it to the exact
10 same wording in Section 2.790, feeling that since the
11 wording was exactly the same, the same arguments could be
12 used.

13 One other analogous point, maybe it was just a
14 mistake. Earlier people were talking about the Privacy Act
15 and how that applied. To our knowledge the Privacy Act does
16 not apply at all in this instance, since that deals with
17 records that were in an agency's possession. And I cannot
18 cite you any cases right now, but I believe that
19 investigatory records such as the I&E report and the FOIA
20 report are not records within the definition of that act. I
21 believe the Freedom of Information Act is the analogous
22 statute, not the Privacy Act.

23 One other point that the Licensee makes, stating
24 that other individuals' names ought to be protected, we
25 would agree with that. We believe that only the individuals

1 who were involved in the cheating incident at TMI have the
2 -- we view our regulations have the legal right to have
3 their names not disclosed; that the other individuals who
4 have not been involved at this at all really have no legal
5 right to have their names withheld.

6 JUDGE MILHOLLIN: I have a couple of questions for
7 you.

8 Why do you say that there is a difference in the
9 legal entitlement of persons who have been accused of
10 cheating than persons who have simply been mentioned in the
11 investigatory report, if the grounds for confidentiality is
12 that existence of evidentiary -- I am sorry -- investigatory
13 records -- do you follow my question?

14 MS. SWARTZ: I think so.

15 JUDGE MILHOLLIN: If your position is this is a
16 record of the investigation and that is the reason why it
17 comes under the Freedom of Information Act, how can you say
18 that one person's name in the record is different from
19 another's?

20 MS. SWARTZ: It is an investigatory record, and
21 that is the position we took in our brief. However, under
22 both 2.790 and the FOIA investigation, it is an
23 investigatory record because it would be an unwarranted
24 invasion of personal privacy.

25 We do not think releasing the name of an individual

1 who took the oral exam on April 23rd is any kind of invasion
2 of that individual's privacy. It may be a matter of public
3 record now that the applications for those -- I do not know;
4 I am getting beyond --

5 JUDGE MILHOLLIN: Isn't it somewhat -- the people
6 accused up to now --

7 MS. SWARTZ: I am sorry. I did not hear.

8 JUDGE MILHOLLIN: I guess I -- I think I understand
9 your position. Let's put it that way.

10 The second question I have, the question I asked
11 Mr. McBride, which is how do you respond to the following
12 idea: the Freedom of Information Act justifies the position
13 of an agency which decides not to disclose information.

14 Is there any limitation, however, on the discretion
15 of the agency to disclose if it decides to do so? For
16 example, if I should decide that all the names should be
17 disclosed, does the Freedom of Information Act limit my
18 discretion in any way, assuming that my act would be the
19 agency's act at that point?

20 MS. SWARTZ: It is my understanding that a
21 balancing has to be done under the Freedom of Information
22 Act exemptions, and that if you do the balancing of private
23 interest and public interest and you decide public interest
24 outweighs private interest, that is your decision and that
25 is the agency's decision.

1 I am saying you would have a discretion. As I
2 understand the Freedom of Information Act, you would have
3 discretion.

4 JUDGE MILHOLLIN: Well, my question is, one more
5 time around, my question is, well, let's take two
6 situations. Situation number one would be the situation
7 where I decide, acting for the agency, not to disclose, and
8 someone seeking the information under the Freedom of
9 Information Act then could take that somewhere for redress
10 or review. That is the normal pattern for litigating these
11 questions.

12 MS. SWARTZ: Yes.

13 JUDGE MILHOLLIN: But suppose I decide to
14 disclose. Then what possible remedy exists for someone who
15 would be unhappy with my decision to disclose other than
16 from the agency?

17 MS. SWARTZ: I would assume that a person could go
18 to court and get a stay of your decision to release these
19 names.

20 JUDGE MILHOLLIN: My question is does the act limit
21 the decision to disclose?

22 MS. SWARTZ: I am afraid I cannot --

23 JUDGE MILHOLLIN: It obviously does not limit the
24 decision not to disclose. It obviously does limit the
25 agency in its power to refuse to disclose. The question is

1 does it limit the agency's power to disclose, which is a
2 different question.

3 MS. SWARTZ: Right. I am afraid I cannot answer
4 that question at this point.

5 JUDGE MILHOLLIN: You do not know.
6 Would the Licensee have any views on that?

7 MR. TROWBRIDGE: No, sir.

8 JUDGE MILHOLLIN: Okay. You agree that it is a
9 relevant question.

10 MR. TROWBRIDGE: Yes, yes.

11 JUDGE MILHOLLIN: Okay.

12 Mr. McBride.

13 MR. MC BRIDE: I think I can shed some light on
14 your question, as I have had the chance to think about it.
15 On the one hand we have Providence Journal v. FBI, which is
16 cited in our papers and which I referred to earlier, where
17 Mr. Patrarca was permitted to intervene. Admittedly in that
18 situation he was defending the proposition that the records
19 in question with respect to him not be disclosed. But it
20 does seem to me it would be an odd result when a person can
21 only intervene on -- that can only intervene to defend and
22 not intervene to oppose publication.

23 On the other hand, I am trying to be helpful to
24 you, and I seem to have some recollection that at the
25 tailend of last year's term in the Supreme Court they

1 decided a case with respect to reverse FOIA questions:
2 whether a company, for example, could go to court to block
3 disclosure. I confess I am not sure what the result was,
4 but it seems to me that the Court ruled against reverse FOIA
5 cases. Not happily as far as I am concerned, but it does
6 seem to me that was the result. I believe there is law on
7 the question, but I just do not have it with me.

8 If I can address some of the points that have been
9 made by the other parties.

10 JUDGE MILHOLLIN: We have a lot of business to do
11 today.

12 MR. MC SAIDE: I'm going to try to wrap this up in
13 about five minutes or less.

14 Mr. Clewett made the point that what we are talking
15 about here are individuals who he characterized as guilty,
16 and I think we are talking about anything but that. It
17 seems to me that there is nothing more appropriate to
18 protect from disclosure than raw law enforcement files,
19 which these are under the Freedom of Information Act.

20 No one has been charged with a crime. No one has
21 had their deeds adjudicated. Action was taken by their
22 employer which mooted the necessity for any action by the
23 government.

24 This is really analogous to a situation in which a
25 person goes before a grand jury or is investigated by a

1 grand jury, and the grand jury decides not to indict or
2 issue a report. In that event the records of the grand jury
3 are not disclosed. We have the same situation here.

4 Now, with respect to your question, your
5 hypothetical, first, when the agency in question decides not
6 to disclose versus the second one when they do, it seems to
7 me that the agency has decided not to disclose here. Mr.
8 Stello decided not to disclose their client's names. On my
9 request his staff notified me on or about the time that
10 these materials were provided to Staff counsel. Staff
11 counsel has taken the position against disclosure.

12 With all due respect, you are in the position of
13 adjudicating the matter. Your views can be appealed, but I
14 believe the views of the persons in the agency possessing
15 the documents are the persons in the agency who speak on
16 behalf of the agency with respect to disclosure, and their
17 position is against disclosure.

18 Now, you ask what happens if you rule in favor of
19 disclosure. I do not think that is the end of the line. I
20 assume you did not mean to imply that. Your decision can be
21 reviewed by the Board, the Appeal Board, either the
22 Commission or a Court of Appeals, et cetera, and the balance
23 can be struck.

24 And finally, I would just like to refer you to some
25 newspaper articles that I have collected about this matter

1 just as an illustration of the kind of publicity this matter
2 has already occasioned, even including publicity that
3 apparently was contributed to by the Intervenor and the
4 Amodts in this case: an article about cheating on NRC
5 tests, a banner headline in the local paper on the 29th of
6 July, "TMI Test Checked for Cheating."

7 It seems to me that these kinds of articles -- and
8 there have been a number of them -- are the best evidence
9 there is, along with the position of TMIA that the interests
10 of our clients would be adversely affected by disclosure of
11 their names.

12 JUDGE MILHOLLIN: I think in the interest of time I
13 am going to indicate that I have heard enough on the subject
14 of confidentiality. Before we reconvened this afternoon I
15 was informed that the parties are productively engaged in
16 discussing the schedule and discovery, so --

17 MR. TROWBRIDGE: In reverse order, we have gotten
18 -- we were making progress in discussing the scope of
19 discovery requests and the meaning of --

20 JUDGE MILHOLLIN: You did not yet reach the
21 schedule? Very well. It might be in the interest of time
22 to take another adjournment so those discussions can be
23 resumed. I think I recall being told that a half hour might
24 do, but I am skeptical of that. I would think an hour would
25 be more appropriate.

1 MR. TROWBRIDGE: Why don't we report back in an
2 hour as to where we stand?

3 JUDGE MILHOLLIN: Very well. We will stand
4 adjourned until 4:00.

5 (Recess.)

6 MR. TROWBRIDGE: May I make a progress report?

7 JUDGE MILHOLLIN: Certainly.

8 MR. TROWBRIDGE: Not very much. Because the
9 Commonwealth had a limited number of discovery requests, we
10 did go over with the Commonwealth both the intent and
11 acceptability of their contentions. That applies to their
12 discovery of Licensee and their discovery of Staff, so I
13 think we are through with the Commonwealth.

14 We have been talking for a considerable period of
15 time with the Aamodts, and we are trying to do it in
16 essentially two bites: one, that we first understand -- and
17 we have some difficulty -- what the discovery request is
18 intended to be or encompass. We have completed essentially
19 that first step with the Aamodts. We have not completed the
20 second step, and it is going to take some discussion among
21 us as to the position we will take, where we will oppose or
22 where we will suggest, on the basis of what we understand
23 they want, some intermediate document requests.

24 We have not started on this process at all with
25 TMIA, nor have we heard from either the Aamodts or TMIA, and

1 I do not know whether this is going to be any problem or
2 not, whether they understand or argue with our discovery
3 requests.

4 Finally, we have not discussed schedule. I see no
5 alternative, Judge Milhollin, but that we continue the
6 process this afternoon and into the evening to the extent
7 people can and resume in the morning.

8 JUDGE MILHOLLIN: Do other parties have any remarks?

9 MS. SWARTZ: The Staff would be much happier if we
10 could conclude this evening, if we had to go late this
11 evening. Everybody here now is familiar with the
12 information in front of them, and if it takes a while, it
13 takes a while, but at least get it done tonight so we would
14 not have to come back tomorrow.

15 MR. TROWBRIDGE: Well, I am making a prediction
16 that it is going to take our efforts for the rest of the
17 afternoon and into a part of the evening to complete the
18 process in which we are engaged, and I think in the end this
19 effort -- and it is an effort to include accommodation among
20 the parties, at least to a faster and as well as better
21 solution than discussions and arguments with the Special
22 Master where we find ourselves talking at cross purposes or
23 not understanding and not having made an effort at that time
24 to see what can be agreed upon, even if it is only to agree
25 as to where we agree and where we disagree.

1 MS. SWARTZ: We agree -- I am sorry. Are you
2 through?

3 MR. TROWBRIDGE: Yes.

4 MS. SWARTZ: We agree it is a great deal of help to
5 discuss the discovery requests, and yes, we will go along
6 with the discovery requests: we are not sure what you mean
7 by this, what exactly do you want here. That has been very
8 favorable.

9 We have gone through with TMIA just about half or
10 maybe even more than half of their discovery requests and
11 have been able to get a great deal of understanding. We do
12 not think our discussion with the Aamodts will take any more
13 than half an hour, and we have already completed our
14 discussions with the Commonwealth. We think it really could
15 be completed this evening.

16 JUDGE MILHOLLIN: How much more time do you
17 anticipate with TMIA?

18 MR. TROWBRIDGE: You have not made allowance for
19 schedule discussions.

20 MS. SWARTZ: That is true, but we think TMIA will
21 be about another 15 minutes.

22 MR. TROWBRIDGE: I am sorry. What have you done?
23 I was not aware of any discussions with TMIA. Their
24 discovery requests o' you and yours of them or both?

25 JUDGE MILHOLLIN: Could you try to address me?

1 MR. TROWBRIDGE: Yes. I was asking for
2 clarification as to whether the Staff discussions with TMIA,
3 which I was unaware of, encompassed their Staff
4 interrogatory requests or TMIA's discovery requests or both.

5 JUDGE MILHOLLIN: Do you understand the questions?

6 MS. SWARTZ: Yes. And in trying to speed things
7 along we were talking with TMIA while Licensee was talking
8 with the Aamodts, and we were talking about TMIA's questions
9 of us. We have not discussed the questions we asked of
10 TMIA. I believe the only interrogatories we have of TMIA
11 dealt with issue 13 which is no longer in this proceeding.

12 We have not talked about the questions with the
13 Aamodts. We had, I believe, about 15, maybe 20 questions of
14 them dealing with their issue 6. The other interrogatories
15 we asked dealt with issues that are no longer in this
16 proceeding, so those fall away.

17 JUDGE MILHOLLIN: Could you, TMIA, indicate now
18 whether you are going to object to the interrogatories by
19 the Staff?

20 MS. BRADFORD: No, we are not.

21 JUDGE MILHOLLIN: Your plans are not to object.

22 MS. BRADFORD: I do not anticipate that, although I
23 have not studied them.

24 JUDGE MILHOLLIN: My question is designed to find
25 out how much time is going to be necessary. I take it there

1 will not be a difficulty in your replying to the
2 interrogatories by the Staff.

3 MS. SWARTZ: We are withdrawing our interrogatories
4 since they only dealt with issue 13.

5 JUDGE MILHOLLIN: So it appears then that the Staff
6 and TMIA can conclude mutual discovery very quickly, and
7 then the Staff would be able to talk to the Aamodts.

8 I think it would be preferable to finish this
9 evening. We will have to discuss the schedule. Do you feel
10 it would be prudent to switch your discussions to the
11 schedule, or do you think it would be best to finish
12 discovery and then discuss the schedule?

13 MR. TROWBRIDGE: I think we should finish our
14 discussion of the discovery.

15 JUDGE MILHOLLIN: That would make the --

16 MR. TROWBRIDGE: We could have more concrete
17 discussions.

18 JUDGE MILHOLLIN: Very well. Shall we then adjourn
19 for another period of time?

20 MR. TROWBRIDGE: How late do we have access to this
21 room?

22 JUDGE MILHOLLIN: That is something we will have to
23 find out during our adjournment. Let's assume we will have
24 it until 5:00, and so why don't we have a report at 5:00.
25 Do you anticipate it will take at least an hour?

1 MR. TROWBRIDGE: At least. I anticipate that it
2 will take a good deal more than an hour.

3 JUDGE MILHOLLIN: Well, why don't we see how things
4 stand in an hour? It could be that it would be prudent or
5 more efficient at some point simply to agree on things that
6 you have not been able to negotiate, and then I can simply
7 rule if it appears that negotiations are not leading
8 anywhere.

9 I might say that on the question of confidentiality
10 I will make a ruling right now, and that is, for the time
11 being we are going to adopt a lettering system. And if it
12 becomes necessary for some activity to be undertaken which
13 would require explicit disclosure of a name, then I will
14 make a further ruling at that time. But for purposes of
15 expediting discovery, it is important that the documents be
16 furnished quickly, and the only system I can see for doing
17 that is the lettering system.

18 That is going to include furnishing letters for the
19 Staff's investigatory documents if those documents are
20 required by other parties.

21 MR. TROWBRIDGE: I understand it is something -- we
22 could obviously supply a lot of letters. We'd have an
23 investigative report from the staff where the interviewee
24 said well, I sat next to blank-and-blank. We cannot
25 necessarily do that. We will have to cooperate with the

1 Staff. We have nothing of their submission on seating
2 arrangements, who was in the room.

3 MS. SWARTZ: We will get that taken care of.

4 JUDGE MILHOLLIN: I assume the two of you can work
5 it out.

6 MS. SWARTZ: Right.

7 MR. TROWBRIDGE: Assuming that they are to be
8 supplied.

9 JUDGE MILHOLLIN: So for the time being you can all
10 assume that the ruling is that documents will be furnished
11 with the lettering system which has been used before in the
12 hearing, and that will be the ruling for the time being.
13 Should it become necessary to make further rulings, those
14 rulings will just occur when the time for them arises -- the
15 need for them arises, I should say.

16 MR. TROWBRIDGE: We will be back at --

17 JUDGE MILHOLLIN: I will see you here at 5:00.

18 MR. TROWBRIDGE: At 5:00. Are you going to
19 designate somebody that is responsible for finding out the
20 availability of the room?

21 JUDGE MILHOLLIN: I will take care of that.

22 (Recess.)

23 JUDGE MILHOLLIN: We are ready to reconvene.

24 Perhaps we can start by having a progress report from the
25 parties.

1 MR. TROWBRIDGE: Let me speak from where we ended,
2 how far we have gotten.

3 We have gotten through with both TMIA and the
4 Aamodts the process of understanding what the discovery
5 requests are. There has been some discussion along the way,
6 but no definitive discussion along the way about what might
7 be our position.

8 There has been a genuine need to understand,
9 particularly in the case of TMIA, what was being requested.
10 We have had on our part no opportunity for Mr. Blake and
11 myself to sit down and discuss what position we would like
12 to take on each of the, more much less discuss with the
13 other parties what accommodations might be made. Therefore,
14 if we proceed to discuss it, we are going to go through the
15 painful process of Mr. Blake and I, short, I hope,
16 conferences, and state off the top of our heads our
17 objections where there are some, some of which will be heard
18 for the first time by TMIA and the Aamodts.

19 That is a process which I think will be lengthy.
20 If the Special Master wants it that way, then that is the
21 way we would have to proceed.

22 As far as talk about schedule and the Board's
23 outline, we are prepared to talk to the Board's schedule.
24 We are prepared to comment on the Board's -- but there has
25 been no discussion whatsoever among the parties, and this

1 includes Staff as well as ourselves, I believe, of the
2 schedule.

3 We would be voicing our views without any
4 discussion. And I would like to renew in the form of a
5 motion to the Special Master that we adjourn for the day and
6 that we resume in the morning, and that to the extent the
7 Intervenor are able to do so, physically or otherwise, we
8 continue to cover some of the areas that we have not yet
9 covered.

10 I would hope some of the other parties would
11 express their views.

12 JUDGE MILHOLLIN: I am interested in having the
13 views of all the parties.

14 How does the Staff feel about their progress?

15 MS. SWARTZ: We have gone pretty much through what
16 the Aamodts have given us, have not gone through what
17 requests we made of the Aamodts. They indicated to us that
18 they did not think that would take too long. We are through
19 with our discussions with TMIA and the Commonwealth. We do
20 not see any problem in just now discussing schedule. The
21 Licensee can say what schedule they want, what schedule we
22 want, what TMIA wants, what the Aamodts want, get it on the
23 record, and you could rule.

24 We are also prepared at this time to discuss your
25 additional minimum evidentiary presentations and make

1 whatever motions are necessary and again have you rule. And
2 we are also willing to stay tonight to get as much done on
3 the record as we can, and if we have to go tomorrow morning
4 then at least have it be a short session tomorrow morning.

5 MR. CLEWETT: We would support the approach
6 articulated by Mr. Trowbridge. We feel that the hour is
7 getting late and to the extent that there may be extensive
8 discussion of the areas that we do not agree on, it would be
9 better for all parties if we could do it when we are fresh.

10 I think we would be prepared to talk about
11 scheduling now, if that is how you would like to proceed,
12 but we would greatly appreciate a chance to adjourn for the
13 day and come back tomorrow when we have had a chance to get
14 some sleep.

15 MR. ADLER: As stated by the other parties, I have
16 no more discovery business to conduct, and I do not plan to
17 engage in whatever evidentiary or discovery-related
18 arguments that the other parties will conduct. So my only
19 preference is that if we could possibly discuss schedule
20 this evening, I would appreciate it since there would be no
21 need for me to return tomorrow.

22 MS. BRADFORD: We have no problems with coming back
23 tomorrow if that seems to be necessary.

24 JUDGE MILHOLLIN: In that case I think it would be
25 best for us to spend the rest of this evening on the

1 response by the Licensee and the Staff concerning the
2 additional issues which I distributed and also to talk about
3 the schedule.

4 I have some other announcements which I will make
5 also and then tomorrow we can meet again. Perhaps it would
6 be best to wait until tomorrow to decide exactly what we are
7 going to do tomorrow.

8 Are you disposed to meet together further this
9 evening?

10 MR. CLEWETT: Yes.

11 JUDGE MILHOLLIN: This should not last beyond 6:00.

12 Could I ask the parties to indicate what their
13 plans are for meeting this evening?

14 MR. TROWBRIDGE: We are prepared to meet the entire
15 evening.

16 MS. SWARTZ: Oh, we are able to meet the entire
17 evening, too.

18 MR. TROWBRIDGE: We would propose to go have supper
19 and come back.

20 JUDGE MILHOLLIN: Very well. Is that agreeable to
21 the other parties?

22 MR. CLEWETT: That would be for the discussion of
23 the scheduling and the additional issues?

24 JUDGE MILHOLLIN: I would anticipate we could
25 discuss the additional issues and scheduling before we break

1 for dinner.

2 MR. CLEWETT: And then would the effort be to
3 continue all business later this evening?

4 JUDGE MILHOLLIN: No. My understanding is that you
5 have agreed you are going to meet together without me.

6 MR. CLEWETT: Ah, yes.

7 JUDGE MILHOLLIN: Throughout the evening. And I
8 would simply ask you what your plans are for meeting.

9 MR. CLEWETT: I think we would be able to do at
10 least some of that, but because of the hour at which we had
11 to get going this morning, we had quite a drive to get here;
12 we really are genuinely beginning to get tired, and we have
13 a long drive ahead of us this evening as well. So we are
14 prepared to do some further meeting, but I would not want to
15 promise the Special Matter that there might not be some
16 loose ends that are not tied up.

17 JUDGE MILHOLLIN: I would assume that not everyone
18 among you has the same hour of adjournment this evening in
19 mind. I could probably assume that if you agree among
20 yourselves to meet that you could probably work out among
21 yourselves the time when it would best to adjourn, so I will
22 leave that to you.

23 I was just hoping you could give me some idea
24 generally of what your plans were. I take it that your
25 collective intention is to meet after dinner for some period

1 of time and that your effort would be to agree upon those
2 things you can agree and separate those things you cannot
3 for my ruling tomorrow.

4 MR. CLEWETT: It has just been suggested that it
5 might be better to do this before dinner, but I imagine we
6 can arrange this among ourselves.

7 JUDGE MILHOLLIN: You all can arrange it among
8 yourselves. I just was interested in knowing whether you
9 plan to meet this evening, and the answer is yes; so that is
10 sufficient for my purposes.

11 Perhaps we could then move on to the question of
12 meeting in the morning. I would be disposed to convene at
13 9:00, so we will begin at that time in this room.

14 MR. CLEWETT: Is there any -- excuse me. I am
15 sorry.

16 JUDGE MILHOLLIN: There is the fact that the
17 Capital Street entrance apparently is the only one
18 accessible now for leaving the building and tomorrow morning
19 for returning to the building.

20 MR. CLEWETT: Is there any possibility that we
21 might begin at 10:00 in lieu of 9:00.

22 JUDGE MILHOLLIN: Nine would be far more efficient.

23 MR. AAMODT: As far as leaving at 7:00 to get here,
24 if we work late this evening it is pretty, you know -- we
25 would like to do a decent job and be efficient tomorrow, so

1 --

2 MR. TROWBRIDGE: The Aamodts have a two-hour drive.

3 JUDGE MILHOLLIN: Shall I make it 9:30? We will
4 convene at 9:30 in the morning.

5 Perhaps I should make some announcements now so you
6 can have my announcements in mind during your discussions.

7 The members of the Licensing Board have identified
8 certain witnesses whom they wish to question themselves.
9 These witnesses are the following: Arnold, Boger, Davis --
10 Davis is the person who graded the SRO examinations --
11 Hukill, Kelly, Newton and Ross.

12 MR. SILVER: Which Ross?

13 JUDGE MILHOLLIN: Mr. Ross.

14 Also, the Board members would like to question the
15 people who administered the ATTS examination and the
16 Licensee's mock examination, all NRC proctors at the TMI
17 examinations, and all the SRO examinees.

18 This is a preliminary list. The Board may decide
19 later to add some names.

20 To the Board's list I have just given you I will
21 now add at this time some additional witnesses that it is
22 very likely I will want to call: Mr. Husted; the persons
23 who took the NRC examinations and the mock examinations in
24 rooms where cheating appears to have occurred; the person
25 whose work appears to have been copied from on the makeup

1 Category T examination; and any other persons who appear to
2 have cheated on this latter examination.

3 Again, this is an initial list. It is possible
4 that I will decide to add other witnesses later.

5 MS. SWARTZ: Excuse me. Could we have
6 clarification? Did you want to interview all people who
7 were in the room where cheating occurred?

8 JUDGE MILHOLLIN: Yes.

9 MS. SWARTZ: That includes the proctors and people
10 who substituted and --

11 JUDGE MILHOLLIN: Yes. And other persons who may
12 have been present for other periods of time.

13 MS. SWARTZ: Okay.

14 MR. TROWBRIDGE: All other candidates?

15 JUDGE MILHOLLIN: Yes. All candidates who were
16 present in the room where it is alleged that cheating
17 occurred.

18 MR. CLEWETT: May we ask for a clarification -- you
19 mentioned a person named Husted -- he would be or she would
20 be --

21 JUDGE MILHOLLIN: He is an employee of the Licensee.

22 MR. CLEWETT: Thank you.

23 MR. BLAKE: Might I get a clarification where you
24 indicated persons who administered the ATTS and Licensee
25 mock exams?

1 JUDGE MILHOLLIN: I meant that to be the persons
2 who administered the ATTS examination and the persons who
3 administered the mock examination.

4 MR. BLAKE: That is one and the same in our
5 parlance. That is why I asked.

6 JUDGE MILHOLLIN: Those persons are the same
7 persons?

8 MR. BLAKE: The ATTS exam was the mock exam
9 administered just prior to the NRC exam in April.

10 JUDGE MILHOLLIN: I was not aware that they were
11 the same exam.

12 MR. BLAKE: All right.

13 MRS. AAMODT: Are you referring perhaps to the IQS
14 examination, the mock examination? That was often referred
15 to as the mock.

16 JUDGE MILHOLLIN: I am referring to the mock
17 examination upon which it appears the same type of cheating
18 occurred as on the NRC -- the same type of cheating as
19 appeared on the NRC examination.

20 We are ready now to entertain your reactions to the
21 additional issues specified by me earlier today. Since the
22 lion's share of those additional issues are directed to the
23 Staff, we might start with the Staff first.

24 MS. SWARTZ: That is fine. We seek two
25 clarifications on issues 1, 3 and 5 in general and then also

1 again on issues 2 and 10 in general on page 2.

2 You talk about qualified personnel sitting for the
3 NRC exams, personnel that are qualified for their
4 positions. We wonder if by that do you mean qualified, they
5 did not cheat or otherwise divert the process, as opposed to
6 they were trained well enough and are therefore qualified?

7 JUDGE MILHOLLIN: The intention is to focus on the
8 question whether the process by which they are examined is
9 adequate, not the process by which they are trained.

10 MS. SWARTZ: Right.

11 JUDGE MILHOLLIN: Does that answer your question?

12 MS. SWARTZ: I think so.

13 Going to where you have a discussion of issues 2
14 and 10 on page 2, under A, down toward the bottom you ask
15 about what instructions were the NRC proctors given by their
16 superiors.

17 We do not believe that is relevant to the cheating
18 that occurred or the possibility of cheating, and thus is
19 not appropriate here.

20 You go on and say what instructions did they give
21 to the examinees. That is certainly relevant. What they
22 did do is of concern. What they were told to do is perhaps
23 not, or we feel is not.

24 JUDGE MILHOLLIN: If you look at item F, a person
25 could say that that is a -- the reason I put it in is I

1 thought it would be fair to let you know what my concern is
2 already at this time; and that is that my concern is whether
3 the process by which NRC administers its examinations is
4 adequate.

5 In my view that would include instructions given to
6 proctors, because that would determine presumably if they
7 follow instructions what kind of proctoring exists, which in
8 turn would certainly affect the integrity of the examination
9 process.

10 MS. SWARTZ: We would argue the reason this hearing
11 was reopened was to investigate the cheating that occurred.
12 The cheating that occurred perhaps occurred because the
13 proctors were not attentive enough, that they did not obey
14 the instructions given by their supervisors or they did.
15 But it really does not make any difference to the fact that
16 these people cheated or to the fact that it bears no
17 relation to the reason why this hearing was reopened, which
18 is to investigate cheating and the impact that cheating may
19 have on the issue of management capability and operator
20 testing and licensing. So we would pose our objection to it.

21 JUDGE MILHOLLIN: Very well. I think you can
22 probably determine by now that my view of the scope of the
23 proceeding is different from the one you have just set
24 forth, and so I would not, if it is in the form of a motion
25 then -- I am afraid it would be denied.

1 MS. SWARTZ: What we are using as a basis of our
2 view of the scope of the proceeding is what Chairman Smith
3 said this morning. Maybe you could explain what your view
4 of the scope is.

5 JUDGE MILHOLLIN: As I just said, I think the
6 instructions given to the proctors is part of the general
7 question of the adequacy of the examination system at NRC.

8 MS. SWARTZ: Yes.

9 JUDGE MILHOLLIN: And I would view that as properly
10 within the scope of these proceedings, even though arguably
11 it could or could not be determinative if cheating in fact
12 occurred.

13 MS. SWARTZ: The next problem we have is under C
14 with other monitoring under issues 2 and 10. We have
15 problems with that entire paragraph, "To what extent does
16 the NRC monitor the Licensee's training program?"

17 In our view the question was already looked at and
18 determined in the hearing that was held before, and the
19 Licensee's training program, the Staff's review or lack of
20 review of the Licensee's training program was already an
21 issue, now litigated, and which the Licensing Board made
22 determinations on in their partial initial decision. And we
23 believe that Mr. Smith this morning made it clear that
24 investigation into training should not be allowed.

25 JUDGE MILHOLLIN: Would that be more acceptable to

1 you if the word "training" were changed to "testing?"

2 MS. SWARTZ: That would be fine. Should I do that?

3 JUDGE MILHOLLIN: I was simply asking you a
4 question for informational purposes.

5 MS. SWARTZ: The next part where it says NRC was to
6 have monitored the Category T examination, it was our
7 understanding, it is our belief that NRC agreed to review
8 the Category T examination, just the examination, not to
9 monitor the taking of the examination, the administration of
10 it, but just to look at the examination. And this was under
11 a separate agreement that the Licensee worked out with the
12 Commonwealth whereby NRC would look at these examinations
13 and analyze their sufficiency. We had not agreed to monitor
14 the Category T examinations.

15 So thus the NRC's procedure for doing so and would
16 NRC have detected cheating on the Category T examination,
17 those would fall away because we did not monitor, we did not
18 grade any Category T examinations.

19 JUDGE MILHOLLIN: What was the extent of your
20 monitoring responsibility for the Category T exam?

21 MS. SWARTZ: I believe we had none. Maybe I am
22 wrong. On page 129 of the Board's partial initial decision
23 in their finding 230 they state that the Category T testing
24 issue has been resolved to their satisfaction. The Licensee
25 commits to exam prior to restart on the subject matter of

1 Category T examinations for the remaining individuals of the
2 36 who the Licensee has certified for NRC licensing
3 examination prior to restart of TMI-1.

4 Further, all previous Category T examinations will
5 be evaluated by the NRC prior to restart. The determination
6 by NRC that any Category T examination utilized by Licensee
7 was unacceptable will require that another examination
8 acceptable to NRC be constructed and administered to all
9 Licensee's operators who had passed the unacceptable
10 examination.

11 So we did not have any control over the giving of
12 the Category T examinations. We did not monitor them at all
13 and were not required to.

14 JUDGE MILHOLLIN: Your position is you were not
15 required to oversee the administration of the examination.

16 MS. SWARTZ: The Category T examinations, yes.

17 JUDGE MILHOLLIN: Yes. Go ahead.

18 MS. SWARTZ: On to page 3, also under issues 2 and
19 10, letter D, integrity of the examination, we are fine
20 except down to "Do responses to the questions require fresh
21 analysis by the examinee or can the responses be memorized?"
22 and then on down the rest of number D.

23 That seems to us to really go to the substance of
24 the NRC exam -- is the NRC exam constructed so that the
25 responses are such that they can be memorized -- and again,

1 we feel that the substance of the NRC exam is not a subject
2 to be discussed in this reopened proceeding. That was not
3 an issue left open by the Board in its partial initial
4 decision.

5 One question we do have, again under D, "The bank
6 of questions maintained by NRC is to be furnished together
7 with the examinations mentioned in issue 1 above," we are
8 not sure how public those questions are, and if there is
9 such a bank that they use to plug into other exams, we might
10 have problems with that, giving it to all the parties, just
11 because then other NRC exams would be compromised in the
12 future.

13 And on E we do not believe the oral tests that are
14 scheduled to be given and graded have anything to do with
15 cheating. They have not even been taken yet. There cannot
16 be any cheating on it if they have not been taken, and thus,
17 it has no relevance to this reopened proceeding.

18 And letter F, we feel that this, too, is beyond the
19 scope of the reopened hearing. The allegations that were
20 made in the Kemeny Report were something that was the
21 subject of testimony in the original hearing. The testimony
22 was presented on it, cross examination, the parties made
23 findings and the Board also made findings with respect to
24 operator training and the NRC giving of exams.

25 The way NRC gave exams is an issue that was left

1 open, but the attitude of the people giving it we do not
2 think is within the scope. It is not an issue here. The
3 NRC's attitude could not have been seen to have caused the
4 operators to cheat on this exam and does not really seem to
5 have any relevance.

6 The Board this morning said that any issues in this
7 proceeding should have a clear nexus to cheating since
8 cheating was the reason this hearing was reopened, and we do
9 not think -- to reiterate, we do not think the attitude of
10 NRC has anything to do with the cheating.

11 We would move that our objections be noted and that
12 on page 2 under "Other Monitoring," the first sentence was
13 changed to read, "To what extent does NRC monitor the
14 Licensee's testing program? Is NRC's interest confined to
15 its own examination?" and the remainder deleted.

16 On page 3 under "Integrity of the Examination,"
17 from "Do responses to the questions require fresh analysis"
18 to the end of that paragraph be deleted. And that
19 paragraphs E and F also be deleted.

20 JUDGE MILHOLLIN: Thank you.

21 Licensee?

22 MR. TROWBRIDGE: Mr. Blake will undertake to
23 comment, Mr. Chairman.

24 MR. BLAKE: Judge Milhollin, most of mine are in
25 the nature of comments or really seeking clarification from

1 you rather than objections.

2 On page 1 in your lead-in to the subissues where
3 you refer in the second line of that lead-in to "Is the
4 examination certification program adequate," it is the word
5 "adequate" that gives me trouble.

6 I wonder if what you mean by that is from the
7 standpoint of minimizing or eliminating the threat that
8 cheating could defeat the system?

9 JUDGE MILHOLLIN: I think it would be fair to say
10 the concern is whether the system can be defeated by devices
11 such as cheating -- by devices. Cheating would be one
12 device.

13 But if the integrity of the process is undermined
14 by devices which would not be thought of as cheating in the
15 ordinary usage, I think that would be included. What is not
16 included is rededication of the adequacy of the training
17 program, for example.

18 I will give you an example. If you had a system in
19 which the questions given on the examination were accessible
20 before the examination, some people would say that is not
21 cheating; but I would say that is a device which undermines
22 the integrity of the examination system and would be fairly
23 included in this proceeding.

24 MR. BLAKE: But what you are not looking for here
25 is a substantive view as to the technical adequacy of either

1 the training or of the scope or detail of the questions in
2 the exam.

3 JUDGE MILHOLLIN: That is right.

4 MR. BLAKE: Very well.

5 My next question comes at the top of page 2 on your
6 subissue C, and it is a similar type of question. Again, I
7 am seeking a clarification.

8 Is what you would seek there is evidence on the
9 administering of re-examinations, the process of
10 administering re-examinations from the standpoint again of
11 minimizing cheating or the potential, or defeating the
12 integrity, if you will -- similar words to what you used on
13 the prior explanation.

14 JUDGE MILHOLLIN: I think what I have in mind there
15 is this: does the policy or the practice that you have of
16 allowing re-examination amount to a device for undermining
17 the integrity of the examination process, which is different
18 from the question as you characterized it in your question
19 to me.

20 MR. BLAKE: Yours is broader.

21 JUDGE MILHOLLIN: Yes.

22 MR. BLAKE: Than the way I characterized it.

23 JUDGE MILHOLLIN: Yes.

24 MR. BLAKE: Dropping down further on that page,
25 again in your lead-in, the language at the beginning of the

1 second line, to ensure that operating personnel are
2 qualified.

3 JUDGE MILHOLLIN: You are referring to issues 2 and
4 10?

5 MR. BLAKE: I am. My question again is similar. I
6 may well have the answer by this point. Again, it is with
7 respect to the integrity of the process and not with respect
8 to the technical content or validity or substantive worth of
9 the tests themselves.

10 JUDGE MILHOLLIN: Yes, that is right.

11 MR. BLAKE: Under B, therefore, subissue B,
12 grading, on that same page, has it been adequate in the
13 past, the grading, and that is grading to uncover
14 indications of cheating. Is that what you had in mind?

15 JUDGE MILHOLLIN: Yes.

16 MR. BLAKE: I would -- presumably, then adequate
17 would follow for the same for the future for the next one
18 under C. I would adopt the Staff's view. I think maybe
19 some encompassing a good deal more by way of NRC --

20 JUDGE MILHOLLIN: As I understand what the Staff
21 said, they have said that their responsibility for the
22 Category T examination was limited to looking at its
23 technical adequacy and not to -- and their responsibility
24 did not include that of monitoring the administration of
25 that examination, is that right?

1 MS. SWARTZ: Exactly. The review we were to do, as
2 I understand it, was after the fact, after they had tested
3 them, after the tests were already taken and to see if those
4 exams were good enough. If they were not good enough, then
5 they were going to -- the Licensee was going to retest those
6 people.

7 JUDGE MILHOLLIN: Would that include the detection
8 of cheating by duplicate answers?

9 MS. SWARTZ: No. We looked at the question, not
10 the answer.

11 JUDGE MILHOLLIN: Very well.

12 MR. BLAKE: I have no more clarifications.

13 JUDGE MILHOLLIN: That disposes of the parties'
14 reactions to the additional minimum evidentiary
15 presentations, which brings us to the schedule. It is
16 necessary to decide the scheduling question as quickly as
17 possible because of the need to reserve hearing space in
18 Harrisburg.

19 Perhaps the Licensee would like to begin comments
20 on scheduling.

21 MR. CLEWETT: If I may before that, especially to
22 the extent there may be difficulty in finding hearing space
23 in Harrisburg, would the Special Master consider the
24 possibility of holding these hearings in Lancaster or York
25 or some place like that which might be close to the area

1 affected by the accident, or there might be a greater chance
2 of finding a hearing room there. I do not know. That is an
3 option to be considered.

4 MS. BRADFORD: I would have to object to that. I
5 am sorry. I do not drive, and it would be almost impossible
6 for me to get to Lancaster or York using public transit.

7 JUDGE MILHOLLIN: We will take that suggestion
8 under advisement. So, responses to the schedule.

9 MR. BLAKE: Judge Milhollin, I will address this
10 one as well.

11 Let me say in general we have no problems and our
12 own thoughts on a schedule were quite close to this. And we
13 had come prepared to propose our own schedule, but we are
14 going to work from yours and provide some comments.

15 Under the October 2 time frame I would anticipate
16 that we will go away tomorrow with Board rulings on any
17 objections to discovery requests on documents, and that it
18 is your position at this point that all document requests
19 are to be provided by the parties today and tomorrow absent
20 some later time. Of course, there is always available a
21 good showing.

22 JUDGE MILHOLLIN: That is correct.

23 MR. BLAKE: I am not prepared -- the next October 9
24 date is an opportunity for other types of discovery
25 requests; that is, they can be filed up until October 9, and

1 that the same -- when you say that the Special Master will
2 be available to rule to the extent that there are
3 objections, we would be getting together on that time frame
4 so that again you could react to objections.

5 JUDGE MILHOLLIN: Yes. After having considered the
6 matter further, I think it might be a good idea for us to
7 change the 9 to an 8 so that the documents would be
8 furnished on the 8th, and the other discovery requests would
9 be furnished on the 8th, so that you would all have an
10 opportunity to read the submissions which you have received
11 and evaluate the other parties' requests on the 8th and
12 possibly meet together on the 8th to discuss them, or
13 perhaps you could wait until the 9th to meet.

14 We might, if the 9 is changed to an 8 -- and I am
15 disposed to change it to the 8th -- we could meet perhaps in
16 the afternoon on the 9th for purposes of my ruling on
17 objections, and you might be able to meet on the morning of
18 the 9th.

19 MR. BLAKE: You may have answered the other
20 question that I had. By way of furnish documents you mean
21 by that to each party who is providing documents to another
22 ought to have in the hands of the requesting party those
23 documents by now October 8.

24 JUDGE MILHOLLIN: Yes. That is a good question.
25 "Furnish" means in hand. And I am sure that in Harrisburg

1 veteran litigators such as yourselves can exchange documents
2 by hand very reliably.

3 MR. BLAKE: There is some problem in the spread
4 between Washington and here, but I understand.

5 JUDGE MILHOLLIN: So we will amend that to mean
6 furnish meaning in hand delivery of documents by the 8th.
7 Of course, if you deliver them early on the 8th, that is
8 going to make the discussion on the 8th much better, if you
9 decide to have one. I would encourage you to get together
10 on the 8th, perhaps in the afternoon, to meet. Failing
11 that, the parties probably should be ordered to meet
12 together on the 9th in the morning at a minimum to discuss
13 the submissions which will have been received on the 8th,
14 and then I would be available on the afternoon of the 9th or
15 could be available.

16 MR. BLAKE: You are anticipating noticing a
17 prehearing for the afternoon of the 9th in an order that
18 would direct the parties to get together on the morning of
19 the 9th, and the prehearing would take place only if there
20 was a need for it?

21 JUDGE MILHOLLIN: Yes. That is my general
22 thought. I hope to have some responses from you on this
23 subject and perhaps suggestions. But yes, that is my
24 general thought would be to order you to meet on the 9th in
25 the morning and then make myself available in the

1 afternoon. Of course, if you resolve everything in the
2 morning, there would be no need for me to be present in the
3 afternoon.

4 MR. BLAKE: My next observation is with respect to
5 your October 26th item. Again, by complete discovery what
6 you intended, Judge Milhollin, is that all discovery
7 requests will be answered such that responses are in the
8 hands of the requesting parties by October 26.

9 JUDGE MILHOLLIN: Yes. The intention is to give
10 the parties the information they need to begin to draft
11 written testimony by that date, and that would imply that
12 the materials will be delivered by October 26th.

13 MR. BLAKE: Here I should observe that we
14 anticipated the possibility that that time frame might be
15 somewhat shorter, but not having even resolved yet between
16 ourselves the discovery requests, I am not prepared at this
17 point to advocate a shorter period of time.

18 With respect to the November 2 item, again that is
19 written testimony received not only by the Board but by all
20 parties to this proceeding on that date.

21 JUDGE MILHOLLIN: Yes, that is right.

22 MR. BLAKE: And the outlines even of parties who do
23 not anticipate putting on an affirmative case but rather
24 relying on cross examination for their case would be made
25 available to all parties on that same time frame; that is,

1 received by parties, all parties by November 2.

2 JUDGE MILHOLLIN: You are speaking now of trial
3 plans?

4 MR. BLAKE: I am. Particularly the trial plan
5 where there is no prepared testimony by that party, all
6 trial plans.

7 JUDGE MILHOLLIN: I am prepared to hear arguments
8 that trial plans should be made available only to me, so you
9 cannot assume that I mean in there trial plans given to all
10 the parties. I think you have to assume that is undecided.

11 MR. BLAKE: You will not hear that argument from
12 me, because we will rely necessarily almost entirely on
13 prepared testimony, and in fact you will hear the opposite
14 argument from me, that my only hope of understanding the
15 other side's case will be if you require that those trial
16 plans be made available.

17 JUDGE MILHOLLIN: Well, for the time being I think
18 you will have to assume it is ambiguous. I may decide to
19 require trial plans, that they be distributed to everyone,
20 but so far that has not been decided.

21 MR. BLAKE: With regard to the November 7 to 21
22 time frame, you refer in the second item to cross
23 examination plans filed by November 10. I have two
24 observations -- one, question; two, an observation.

25 My question is whether or not it was your intent

1 that the cross examination plans be filed with you as the
2 Licensing Board did throughout the proceeding, a practice
3 which we are now familiar with in this setting?

4 JUDGE MILHOLLIN: Yes, that is right.

5 MR. BLAKE: My observation is it appears that what
6 you had in mind was that by November 10 parties would be
7 required to file cross examination plans for all testimony
8 throughout the two-week period. Actually, while I am not
9 privy to those and it may not make much difference to me in
10 terms of intelligence, but as a practical matter it may be
11 that the course of the proceeding dictates that you might,
12 quite frankly, take a different tack on cross examination.
13 And my sense was that the Board found it quite satisfactory
14 obtaining just one day's or so in advance of an individual
15 witness appearing the cross examination plans by the other
16 parties.

17 It offered the Board an opportunity to review the
18 cross examination plans and prepare itself for the next
19 day's affair. But I would like to suggest that you consider
20 relaxing what I understood here to be an all on November 10
21 requirement to one day in advance of when the witness is
22 anticipated.

23 JUDGE MILHOLLIN: My intention was not to require
24 all cross examination plans on November 10. That simply
25 indicates what the first cross examination plans are due at

1 the beginning of the hearing.

2 MR. BLAKE: So it is somewhat in anticipation of
3 each witness.

4 My final observation is with regard to the final
5 schedule, the Master's report and the opportunity for the
6 parties to comment, and then replies to the responses.

7 I wish here we had an opportunity to discuss this
8 with the other parties before I make this observation, but I
9 will make it now.

10 I would consider and I would hope at least the
11 other parties consider as well whether or not we might even
12 waive that time frame. I understand that the regulations
13 allow this, but I would have the parties consider since we
14 go through a proposed findings schedule with the Master,
15 since there are at least currently available opportunities
16 for continued argument before an Appeal Board ultimately on
17 the reliability of an initial decision, since there are
18 opportunities afforded at this juncture, at least with
19 regard -- before any decision that is going to be allowed to
20 become immediately effective to address the Commission on
21 it, I wonder whether or not we really need to go through and
22 take up the time that is necessary to go through a proposed
23 finding schedule before you and get another opportunity for
24 comments before the Board, and then finally still standing
25 exceptions before an Appeal Board.

1 For goodness sake, we have many, many layers
2 involved in there, and I would at least ask the other
3 parties to consider whether or not we might waive that
4 schedule.

5 JUDGE MILHOLLIN: I might say that that schedule is
6 in here simply, well, as guidance. It is a prediction
7 rather than a prescription. Technically speaking, I
8 suppose, it is really up to the Licensing Board rather than
9 up to me to decide whether there will be comments by the
10 parties, and if so how long it will be allowed for them.

11 MR. BLAKE: My recollection is that at least in one
12 Licensing Board order they had referred to that opportunity.

13 JUDGE MILHOLLIN: All right.

14 MR. BLAKE: They at least used the phrase.

15 MR. TROWBRIDGE: They said there would be such an
16 opportunity. What we are talking about is on doing that.

17 JUDGE MILHOLLIN: Does the Staff care to comment on
18 schedule?

19 MS. SWARTZ: Yes. We agree with the schedule
20 entirely when it comes to the start of the hearing. We have
21 a few changes in the middle. We would ask that discovery
22 that is filed today, responses to that discovery be in the
23 hands of the parties who filed the discovery the 16th of
24 October, and then the rest of discovery, I guess that was
25 just filed on the 8th and ruled on the 9th, will be filed on

1 the 26th; so discovery still would be completed by the
2 26th. And then --

3 JUDGE MILHOLLIN: By that you would say -- all
4 right. You do not mean documents. You mean discovery other
5 than documents.

6 MS. SWARTZ: What I mean is we filed
7 interrogatories today and the Aamodts filed interrogatories
8 today; TMIA has. We would answer those questions so they
9 were in the hands of the parties on the 16th. We would ask
10 that their interrogatories also be answered on that day.
11 Document requests of course would be due on the 9th.

12 JUDGE MILHOLLIN: On the 8th.

13 MS. SWARTZ: On the 8th, as this schedule states.

14 Then we would ask that testimony be received by all
15 parties on the 4th of November. I realize it is only two
16 days, but the Staff really would like two and a half to
17 three weeks from the end of discovery to when testimony has
18 to be filed, and then the remainder would stay the same,
19 hearings start November 10 to continue through the 21st.

20 We would also make a plea, as Licensee did, for
21 expedited mail service, that by all these dates these things
22 are in the hands of the parties.

23 That is all.

24 MR. BLAKE: Judge Milhollin, we are located in
25 Washington, but we have throughout this proceeding allowed

1 service to be made on us either at our offices at the firm
2 in Washington or at Three Mile Island through Mr. Wilson.
3 The parties have done that on occasion. That process still
4 allows it to reach us up here or there.

5 JUDGE MILHOLLIN: Very well.

6 TMIA.

7 MS. BRADFORD: I have a couple of points of
8 clarification I need. We have now moved to the October 8
9 day, and I am wondering how long we will have for followon
10 discovery.

11 JUDGE MILHOLLIN: That will be one of the subjects
12 I should imagine we will discuss on the 9th. How do you
13 respond to the 16th as a date for making interrogatories due?

14 MS. BRADFORD: Since TMIA does not have any
15 response, we do not have a problem with that. Our one issue
16 --

17 JUDGE MILHOLLIN: Oh, yes. Do you have other
18 comments on the schedule?

19 MS. BRADFORD: No. Our other point was on the
20 cross examination plan, but that has already been covered.

21 JUDGE MILHOLLIN: Very well.

22 MR. CLEWETT: We have several points. I think it
23 is a very useful procedure to have the documents and other
24 discovery that has been asked for at this point in time on
25 the 8th so that there is some time to evaluate the documents

1 and other discovery that there might be at that time before
2 having to make the other discovery requests on the 9th, so
3 there is some time in between to at least work during the
4 day of the 8th to clarify what other discovery requests we
5 might have.

6 We would be in favor of having all of the things
7 that have been requested today and tomorrow be due on the
8 8th so that there is the possibility of further followon
9 discovery in this somewhat longer period between the 8th and
10 the 26th. For instance, if we should by way of
11 interrogatories discover the need to ask further
12 interrogatories, we would like to have enough time so there
13 was at least the possibility of some followon discovery.

14 I am not sure of the extent to which the Special
15 Master and all of us are under extreme time pressure here.
16 We would urge that there be a somewhat longer period for
17 discovery, because of the need to understand a great deal of
18 information, especially speaking for myself having become
19 involved in this proceeding very recently. So we would urge
20 that the Special Master consider an extension of the period
21 for discovery.

22 Another point where it would seem to us that some
23 additional time would be very useful is the period of time
24 in between the final deadline for completing discovery and
25 the deadline for the submitting of written testimony.

1 As it currently stands that would be about six
2 days, and if mail is involved in there, it might boil down
3 to the writing of a great deal of testimony in a short time.

4 JUDGE MILHOLLIN: How much written testimony do you
5 anticipate presenting?

6 MR. CLEWETT: It is unclear, but I understand there
7 will probably be quite a bit.

8 JUDGE MILHOLLIN: How many witnesses?

9 MR. CLEWETT: Well --

10 MR. AAMODT: We are in the process of developing
11 that now, Mr. Chairman. We are attempting to form a panel
12 for one. We are in the process -- as I believe you are
13 aware, we are analyzing an awful lot of documents for
14 similarity, the cheating. Of course, if we should find
15 several cases early on, why that gives us more time.

16 On the other hand, the amount of time involved
17 here, we do not have any amount of time involved -- we do
18 not have enough time to make it acceptable testimony, so we
19 just do not know. And the need for additional discovery is
20 something we just do not know.

21 MR. CLEWETT: We would --

22 MR. AAMODT: If I might just ask one thing, we have
23 had some indication already in the analysis we have done
24 that the analysis can be truthful.

25 JUDGE MILHOLLIN: So to summarize your remarks up

1 to this point, you would prefer for all discovery requests
2 which have been filed today to be answered by the 8th, is
3 that right?

4 MR. CLEWETT: Yes.

5 JUDGE MILHOLLIN: Including what? What do you have
6 in mind specifically? Interrogatories?

7 MR. CLEWETT: Well, to the extent that there have
8 been interrogatories propounded at this point, as well as
9 the documents.

10 JUDGE MILHOLLIN: Perhaps it would be in the
11 interest of orderly proceeding to ask how the other parties
12 would respond to that request.

13 MR. TROWBRIDGE: We had understood from the
14 beginning, erroneously apparently, that both interrogatories
15 and document requests were due today. We have prepared our
16 own discovery requests on that basis. They are a mixture of
17 interrogatory and documents. So have Intervenors, so has
18 the Staff, and so has the Commonwealth.

19 It would be mechanically possible but time
20 consuming to try and sort them out. We would be prepared to
21 answer interrogatories, just as we are prepared to furnish
22 documents.

23 JUDGE MILHOLLIN: So you could comply with that
24 request, that all discovery requested today be delivered by
25 the 8th, all responses.

1 MR. TROWBRIDGE: That is a little bit different
2 answer in terms of not having an agreement, a ruling on
3 discovery requests. We have gotten in all the discovery
4 that has been asked of us, if it is granted by the Board and
5 insisted upon by the Intervenors, we cannot make October 8.

6 JUDGE MILHOLLIN: Very well. So it appears that
7 what I should do now is simply take under advisement the
8 various requests. Then after we decide upon what discovery
9 will be required tomorrow, we can go back over the dates.

10 MR. TROWBRIDGE: That is right.

11 MS. SWARTZ: Could I just make a point on what they
12 suggested?

13 JUDGE MILHOLLIN: Yes, you may.

14 MS. SWARTZ: The Staff would have a great deal of
15 difficulty -- I am not even sure we could respond to the
16 interrogatories that we received today by the 8th. That
17 would require mailing on the 7th, which as somebody pointed
18 out to me is three working days.

19 Also, it was our understanding we were going to
20 have a discovery period. People could get the information
21 they needed, write testimony, go to hearing. It seems what
22 the Intervenors are proposing is we will have a teeny little
23 bit of discovery now, and then based on that we will have a
24 whole lot of discovery. We will spend the discovery period,
25 then a while later we will write testimony, and a while

1 later we will go to hearing; and that was not our
2 understanding of what this proceeding was going to be about.

3 We thought it was going to be moving along at quite
4 an expeditious pace, and the schedule that you proposed is
5 that, and we feel the modifications we have made are still
6 expeditious, but it is also still something we can meet.

7 JUDGE MILHOLLIN: You can meet the 16th for
8 interrogatories?

9 MS. SWARTZ: Yes.

10 JUDGE MILHOLLIN: But not the 8th.

11 MS. SWARTZ: We doubt it.

12 JUDGE MILHOLLIN: Go ahead.

13 MR. CLEWETT: We only have two other small points.

14 On the question of cross examination plans, I am
15 happy to hear the clarification that they are not all due on
16 November 10.

17 JUDGE MILHOLLIN: Yes.

18 MR. CLEWETT: And as to the events that would occur
19 after the Special Master's report, just for the record, even
20 if there is no binding decision to be made today or
21 tomorrow, we would appreciate the opportunity to make
22 comments, because as a practical matter given the resource
23 problems of Intervenors, our opportunities as a practical
24 matter are somewhat more limited in terms of the number of
25 opportunities and the number of different options we have to

1 comment. So it would be useful to preserve the ability to
2 comment on the Special Master's report before it goes to the
3 Board.

4 I do not know the extent to which this schedule
5 would be taken by the Board as the presumptive schedule for
6 this, but to the extent that the first period, which is
7 currently scheduled for January 18, for receiving comments
8 by parties, that would amount, given the time for mailing,
9 would amount to only a very few days for comments. To the
10 extent that might be somewhat, you know, on the order of two
11 weeks instead of one, that would be very useful to us.

12 I guess that concludes our comments on the schedule.

13 MR. ADLER: I have two comments.

14 First, with respect to October 9, if the parties
15 are to be ordered to meet, that will pose a scheduling
16 conflict for me, and I would simply like to note that Mr.
17 Dornside will be acting on behalf of the Commonwealth with
18 your permission. This was a practice that the Board
19 accepted during the regular hearing.

20 Second, I would like a clarification with respect
21 to the trial briefs as to whether that necessarily applies
22 to the Commonwealth. As an interested participant under 10
23 CFR 2.715C, the Commonwealth does not necessarily have a
24 case-in-chief, and we will intend to participate by cross
25 examination and may develop positions on the record as it

1 unfolds. Certainly if we feel that there are positions that
2 we are going to take prior to the hearing, we will indicate
3 that in a trial brief.

4 JUDGE MILHOLLIN: Does that conclude the comments
5 by the parties on the schedule?

6 MR. CLEWETT: If I might make one other request for
7 clarification, in the meeting on October 8 would we be
8 directed to meet at a particular time in a particular place,
9 or would it be just a matter of seeing to it that all of the
10 material had arrived by that point to the respective
11 addresses of the parties?

12 JUDGE MILHOLLIN: If you are going to meet this
13 evening, and I take it you are, then perhaps you could
14 discuss the question of how most efficiently to get together
15 on the 8th or the 9th, and we could discuss that again
16 tomorrow.

17 As I said before, I think a meeting during the
18 morning of the 9th among you would be absolutely necessary
19 at a minimum, but you might find it useful to meet on the
20 8th. I am reluctant to require you to meet on the 8th, but
21 I would encourage you to agree among yourselves to meet if
22 you think it is mutually beneficial.

23 Are there any further matters?

24 (No response.)

25 Then we stand adjourned until 9:30 a.m. tomorrow

1 morning.

2 (Whereupon, at 6:46 p.m., the prehearing conference
3 was recessed, to be reconvened at 9:30 a.m., the following
4 day, Saturday, October 3, 1981.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
ATOMIC SAFETY AND LICENSING BOARD

in the matter of: Metropolitan Edison Company (TMI Unit 1)

Date of Proceeding: October 2, 1981

Docket Number: 50-289 (Restart)

Place of Proceeding: Harrisburg, Pennsylvania

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

David S. Parker

Official Reporter (Typed)



(SIGNATURE OF REPORTER)