

NUCLEAR REGULATORY COMMISSION


ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: :
METROPOLITAN EDISON COMPANY : DOCKET NO. 50-289
(Three Mile Island Unit 1) : (Restart)

DATE: October 3, 1981 PAGES: 23,268 - 23,371
AT: Harrisburg, Pennsylvania



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1 UNITED STATES OF AMERICA
 2 NUCLEAR REGULATORY COMMISSION

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4 In the matter of :

5 METROPOLITAN EDISON COMPANY

6 (Three Mile Island Unit 1

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DOCKET No. 50-289
 (Restart)

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

10 Saturday, October 3, 1981

11 Reopened evidentiary hearing in the

12 above-entitled matter was commenced, pursuant to notice,

13 at 9:35 a.m.

14 BEFORE:

15 GARY MILHOLLIN, Special Master,
 Atomic Safety and Licensing Board

16 Also present on behalf of the Board:

17 LAWRENCE BRENNER, Esq.
 18 Administrative Law Judge
 Legal Advisor to the Board

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1 On behalf of the Licensee, Metropolitan Edison Company:

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8 On behalf of the Commonwealth of Pennsylvania:

9 ROBERT ADLER, Esq.
10 Assistant Attorney General
11 505 Executive House
12 Harrisburg, Pennsylvania

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

14 JOHN CLEWETT, Esq.
15 The Christic Institute
16 1324 North Capitol Street
17 Washington, D.C. 20002

18 On behalf of Three Mile Island Alert:

19 LOUISE BRADFORD

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P R O C E E D I N G S

(9:35 a.m.)

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3 MR. MILHOLLIN: The hearing will come to order.

4 MR. TROWBRIDGE: Mr. Chairman, I have a preliminary
5 matter. We have been informed by the guard that around
6 10:00 o'clock there will be a fire drill. The sirens will
7 go off. We are not expected to do anything. If there is a
8 fire, the guard will come tell us.

9 (Laughter.)

10 MR. MILHOLLIN: Thank you.

11 The parties met yesterday evening to have further
12 discussions on discovery and other subjects, and the first
13 order of business today is to have your report on your
14 progress.

15 MR. TROWBRIDGE: Let me start, Mr. Chairman. What
16 we were able to accomplish yesterday evening was a meeting
17 with TMIA, primarily. The meeting with TMIA resulted in
18 total agreement on TMIA discovery requests. And we have
19 nothing to ask the Special Master to rule upon.

20 With respect to the Aamodts, it would have been too
21 late to have a fruitful conference, although I understand
22 they met with the Staff and you will have a report on that.
23 The Aamodts, of course, have travel time as well, and we
24 needed time to formulate a position. We did use the time
25 after our meeting with TMIA yesterday, we have used it since

1 then.

2 We have marked up the Aamodts' discovery request
3 and are in a position to discuss those proposed changes. I
4 am going to propose to the Special Master after you hear the
5 Staff report that we again adjourn and see whether we cannot
6 reach some agreements with the Aamodts. I do not anticipate
7 that we will have the same result as with TMIA; that is, I
8 do not anticipate total agreement. I do anticipate that we
9 may reduce the amount that we have to talk about to the
10 Special Master.

11 MS. SWARTZ: The Staff has also conferred with both
12 TMIA and the Aamodts. We have come to, with both
13 Intervenor, come to mutual agreement, discussed what it is
14 they want, and come to mutual agreement on the modifications
15 that were made.

16 These have dealt primarily with limiting the
17 information to cheating incidents at TMI since the
18 accident. And that, except in a few instances, where we are
19 going to try and go back to before the accident where the
20 Intervenor, particularly TMIA, wants to compare the way the
21 Staff did things since 1977 as compared to now, we have
22 agreed to try and get that.

23 We have mentioned to both TMIA and the Aamodts that
24 where they have asked for notes, that the Staff, under
25 2.790, cannot disclose handwritten notes. And we are going

1 to go through those. If there is anything relevant, we will
2 give those up. But we will have to go through them first.

3 The information that we are giving before the
4 accident deals with procedures and how and if procedures
5 have changed since the accident, and we are not conceding
6 that information prior to the accident is in any way
7 relevant to this proceeding.

8 Dealing with our discovery of the Lamodts, they
9 have agreed to let us know by next week, the 8th or the 9th,
10 if that is going to be the schedule, letting us know then if
11 they plan to have any other direct case on any of the other
12 issues. If they do, at that time we will present other
13 interrogatories to them on the case they plan to present on
14 other issues besides Issue 6 and Issue 10 that we have
15 already asked interrogatories on.

16 In that regard, our set of interrogatories to the
17 Lamodts contain questions on Issue 17, which is no longer an
18 issue in this case. It has been subsumed under Issue 10.
19 We have changed Issue 17 to read "Issue 10" in their
20 interrogatories, and they have agreed to answer them.

21 MR. MILHOLLIN: The agreement would be to answer
22 them by the 16th?

23 MS. SWARTZ: That is what we proposed yesterday,
24 yes.

25 MR. MILHOLLIN: They agreed to that?

1 MR. CLEWETT: Yes.

2 MS. SWARTZ: We also note that in our
3 interrogatories we discussed the fact that the -- we have
4 asked for names from the Aamodts of individuals whom they
5 believe cheated. And again we have wanted to keep the names
6 -- we have not wanted to disclose names. They feel the same
7 way. If by next week they decide they do not want to
8 disclose names, they are also going to give us that -- the
9 fact that they do not want to disclose the names. And we
10 are going to ask them questions other than "Identify by name
11 and address," questions more like, "Where does Mr. X work?
12 How did Mr. X find out this information?"

13 So we would not be getting any information that
14 they feel should be withheld for the same reasons that we
15 feel the information should be withheld. And that seemed to
16 be agreeable to them.

17 I should also note that this is not related to
18 discovery. But the Office of Inspection and Enforcement was
19 following up some leads that they had on this same cheating
20 incident in the April 1981 exams. They have completed that
21 further investigation, are in the midst of preparing a
22 report which we were told before we came up here would be
23 ready in two weeks. When that document is ready, it will be
24 served on all the parties, all the parties to this reopened
25 proceeding.

1 MR. MILHOLLIN: This is a further investigation of
2 the same incident which gave rise to the proceeding?

3 MS. SWARTZ: Right. Follow-up investigation.

4 MR. MILHOLLIN: While we are on that subject, I
5 would like to ask you a question: Is the Staff
6 investigating the possible cheating incident connected with
7 the Category T examinations?

8 MS. SWARTZ: We were told that by the Director of
9 NRR -- Assistant Director of NRR that this is something that
10 would be investigated. The extent of that investigation,
11 whether it has ever even been started, I do not know.

12 MR. MILHOLLIN: I recall the Licensee has indicated
13 in one of its filings that the Licensee is investigating
14 that incident.

15 MR. TROWBRIDGE: That is correct.

16 MR. MILHOLLIN: While we are on the subject,
17 perhaps I could ask you what is the stage of your
18 investigation?

19 MR. TROWBRIDGE: I think it is largely completed
20 and will be the subject of testimony.

21 MR. MILHOLLIN: Very well. You do not plan any
22 other formal communication with the NRC other than the
23 testimony in this case, or the testimony is the first
24 communication?

25 MR. TROWBRIDGE: We have given to the NRC and the

1 other parties here yesterday copies of the Category T makeup
2 examinations, which is what is involved. We have also given
3 them copies of the Trucnk report and supplement Trunk report
4 on his investigation. Beyond that, we have no present plans
5 for further.

6 MR. MILHOLLIN: Further communication with the
7 Staff?

8 MR. TROWBRIDGE: Yes. I should also say that I
9 think it is possible that some of the interrogatories we
10 have from the Intervenors may produce additional materials.
11 The Staff will get copies of anything we supply to the
12 Intervenors.

13 MS. SWARTZ: Something else I would like to add is
14 last evening the Staff gave to the Licensee some rephrasing
15 of interrogatories, information we feel we need to know. We
16 are going to work out with Licensee's counsel getting
17 answers to the questions that the Staff does have.

18 MR. TROWBRIDGE: I think that unlikely -- there was
19 not time. We did not receive these documents until about
20 quarter of 7:00 last night. We did not have time to include
21 a review or discussion of this document with the Staff. I
22 think it unlikely that we would have to come back to the
23 Special Master because of any differences between us and the
24 Staff on providing the information. If we do, I would think
25 it could probably be done by telephone.

1 MR. MILHOLLIN: So, in response to my question, the
2 answer would be that the Staff does not now have any plans
3 and it is not now formally investigating the Category T
4 incident, is that correct, other than the circumstances
5 which have just been communicated?

6 MS. SWARTZ: I am afraid I cannot even answer the
7 question that way. I really do not know the details. The
8 extent of their examination. I believe that is going to be
9 something that the Staff does do and will present to the
10 Board.

11 MR. MILHOLLIN: Perhaps you can enlighten us
12 further next week on the subject.

13 MS. SWARTZ: By next Friday when we meet?

14 MR. MILHOLLIN: Yes.

15 MS. SWARTZ: Fine.

16 MR. TROWBRIDGE: Judge Milhollin, we are going to
17 raise later on the question about the necessity for next
18 week along with the schedule for responses to
19 interrogatories, so we will hold open for a moment whether
20 or not there is an actual session next week.

21 MR. MILHOLLIN: I had a question for the Aamodts
22 with respect to their Issue 6. Principally, my question was
23 designed to discover more specifically what their intentions
24 were with respect to that issue. I assume that you have
25 covered that in your interrogatories.

1 MS. SWARTZ: Yes.

2 MR. TROWBRIDGE: Mr. Chairman, we have covered that
3 in our interrogatories, and we need to include this in our
4 discussions with the Aamodts. We do have an interrogatory
5 on the subject. We do have a problem over the disclosure,
6 public disclosure of any accusations.

7 MR. MILHOLLIN: Does that complete the Staff's
8 report?

9 MS. SWARTZ: Yes.

10 MR. MILHOLLIN: TMIA, do you have anything to add
11 to those reports on the progress of your negotiations?

12 MS. BRADFORD: No, we do not.

13 MR. MILHOLLIN: And the Aamodt ?

14 MR. CLEWETT: I do not believe we have anything to
15 add on the progress of these negotiations. I might add that
16 on the question of scheduling, after further reflection on
17 the proposed schedule, we would tend to agree with the Staff
18 that nondocumentary discovery could be received on the
19 16th. We would not have any objection to that.

20 MR. MILHOLLIN: Very well. I take it that the
21 parties think it would be desirable for us to recess again
22 in order to let the Aamodts and the Licensee negotiate?

23 MR. TROWBRIDGE: I think that would be the more
24 efficient process, to be able to discuss things together in
25 an uninhibited way and then present the Board with what we

1 accomplish.

2 MR. MILHOLLIN: We are all going to have to get
3 used to me not having friendly elbows up here next to me. I
4 am going to have to get used to it myself.

5 How does this affect the Staff? Are you pretty
6 much finished with your work?

7 MS. SWARTZ: Yes, we are. But sitting in on
8 discussions with Licensee and the Aamodts, since the
9 questions the Aamodts asked are very similar to -- or the
10 Licensee are very similar to those asked of the Staff, it
11 might be beneficial before we recess, I would like to ask if
12 the Aamodts mean response to the discovery in the hands of
13 the discovering party on the 16th, if that is acceptable to
14 them?

15 MR. CLEWETT: I am sorry?

16 MR. MILHOLLIN: The question is whether by
17 "receiving responses on the 16th" it is understood that that
18 means received in the hands of the discovering parties by
19 the 16th.

20 MR. CLEWETT: I would assume so.

21 MR. MILHOLLIN: The commitment is: Responses will
22 be hand --

23 MR. MILHOLLIN: In hand by the 16th. Oh --

24 MS. SWARTZ: Thank you.

25 MR. CLEWETT: As to especially the first deadline

1 of the 8th, we would like to inquire whether there might be
2 the possibility of a courier service so that there could be
3 same-day delivery of some of these things. That would
4 necessitate a commitment of funding of the courier service
5 by the Licensee, since we do not have any funds.

6 MR. MILHOLLIN: Perhaps you could discuss that
7 during the adjournment. I intended today to rule on the
8 Staff's objections to the additional evidentiary
9 presentation. I could do that now or wait until
10 afterwards. Perhaps I should do that now.

11 For the purpose of just explaining the ruling and
12 the reasons for it, with respect first to Item C under
13 Issues 2 and 10, the word "training" should be changed to
14 "testing." We have discussed that already.

15 With respect to the last three sentences, those
16 sentences were intended to be examples of the general
17 question posed in the first sentence. That is, the Category
18 T examination would be an example of the overall question of
19 to what extent does NRC monitor the Licensee's testing
20 program? Perhaps we should say, in addition to monitor,
21 "evaluate, does the NRC evaluate or monitor?"

22 And then in the fourth line, as you have indicated,
23 it would be accurate to use the word "evaluate" rather than
24 the word "monitor." So the order which you will receive
25 after the prehearing conference will contain those changes.

1 MS. SWARTZ: Fine.

2 MR. MILHOLLIN: With respect to Item D under Issues
3 2 and 10, the reference to "fresh analysis" in the middle of
4 that paragraph and the reference to "coaching" and the
5 reference to "the bank of questions," all those references
6 are designed to discover whether the Licensee's candidates,
7 any candidates taking the exam can defeat the purpose of the
8 examination by devices such as the ones mentioned.

9 In general, the intention is to look at the
10 administration of the examination as distinguished from its
11 technical content, to see whether the method by which the
12 exam is administered is such that the purpose of the
13 examination can be defeated; that is, is it possible for an
14 incompetent operator to pass the examination because of the
15 way it is administered, not because of its technical
16 inadequacy with respect to the technology it is measuring,
17 the knowledge of the technology it is measuring.

18 So I think from what I have said, it is clear that
19 your objection cannot be sustained to Item D.

20 The same idea -- that is, the idea that it is
21 important to assure that the method of giving the test or
22 administering it is such that -- I am speaking now, excuse
23 me, of the oral test -- that item is there because of the
24 same general intention. Again, the emphasis is on the
25 administration of the oral test, not the technical content.

1 With respect to Item F, the intention with respect
2 to Item F is this: that the attitude of the Staff is
3 important in determining or, shall I say, evaluating -- I
4 should say evaluating -- the issue which we have originally
5 listed under Issue 12, or I should say which you have listed
6 under -- I am sorry, Issue 11, excuse me, Issue 11. That
7 is, Issue 11 refers to the adequacy of the examination
8 process which the Licensee plans to use in the future. That
9 is going to be one of the issues in the proceeding, whether
10 NRC's planned licensing procedures are adequate.

11 MS. SWARTZ: Excuse me, you just said Issue 11 was
12 the adequacy of the Licensee's examination.

13 MR. MILHOLLIN: Excuse me, I misspoke. I mean to
14 say NRC. I am sorry.

15 MS. SWARTZ: All right.

16 MR. MILHOLLIN: Issue 11 refers to the adequacy of
17 NRC's plans for administering examinations in the future.
18 And the intention of Item F here is that NRC's attitude is a
19 relevant item, it is relevant to determining the adequacy of
20 NRC plans in the future.

21 MS. SWARTZ: Okay.

22 MR. MILHOLLIN: So that is the intention behind
23 Item F. My purpose in explaining it to you is simply so you
24 will know now to the greatest extent possible what the
25 intention is.

1 If you have questions about that, now is the time
2 to ask.

3 MS. SWARTZ: We have one question back on paragraph
4 D, also on page 3, "bank of questions maintained by NRC."
5 The Staff would ask that you let us go back and find out
6 exactly what is kept and how and report back to the Board.

7 MR. MILHOLLIN: That is a good proposal. I think
8 it is going to be necessary for us to confer further on the
9 arrangements by making the questions available.

10 MS. SWARTZ: I am sorry?

11 MR. MILHOLLIN: It is going to be necessary for us
12 to confer further for the arrangements for making the
13 questions available.

14 MS. SWARTZ: I will arrange to report back to the
15 Board by next Friday on exactly how, if there is a bank of
16 questions and what is done with it.

17 MR. MILHOLLIN: The interest is -- the intention
18 again is to discover whether the questions are repeated from
19 exam to exam, to what extent they are available to the
20 training personnel. And in that connection, the mock --
21 well, the preceding sentence refers to "mock and actual
22 examinations being compared." It is all part of the same
23 concern.

24 MS. SWARTZ: What I was going to report back to the
25 Board on is how the Staff maintains its questions. But we

1 will answer your concern.

2 MR. MILHOLLIN: There is going to be a problem of
3 confidentiality with respect to the questions, which I can
4 easily perceive. So we will have to come up with some
5 arrangement for handling that.

6 MS. SWARTZ: Right.

7 MR. CLEWETT: Judge Milhollin, before we break, we
8 would like to also meet very briefly again with the NRC, if
9 we might, in reviewing the questions that they had
10 propounded to us. We think that there may be a problem as
11 to one of them, and we would just like to meet briefly with
12 them.

13 MS. SWARTZ: That is fine.

14 MR. CLEWETT: With the NRC Staff.

15 MR. MILHOLLIN: A couple of other housekeeping
16 matters before we break. I was asked yesterday about the
17 service list and the question of who should be served with
18 what documents.

19 For the time being at least, we will have the
20 following policy: The persons now on the service list will
21 receive all the legal filings -- that is, motions and so
22 forth, just the standard, everyday, ordinary filings in the
23 case will still go to everybody on the service list.
24 Discovery, however, will be limited to the parties to this
25 proceeding.

1 MR. TROWBRIDGE: Those who are here.

2 MR. MILHOLLIN: Yes.

3 MR. TROWBRIDGE: ANGRY is not.

4 MR. MILHOLLIN: That is right. Those who are
5 participating in this proceeding are the only parties who
6 will be served with discovery. The same is true with
7 respect to rapid communications. If it is necessary to have
8 telephone conferences or to decide upon procedures and short
9 notice, only the parties to this reopened proceeding will be
10 included in the notifications.

11 MS. SWARTZ: Excuse me. We are wondering if the
12 Aamodts or their attorney would like to be served with
13 discovery documents and also whether we should contact him
14 rather than them in any kind of communication?

15 MR. MILHOLLIN: Did the Aamodts understand the
16 question?

17 MR. CLEWETT: Yes, I think we do. The question is
18 whether they should be served on me or on them.

19 MR. AAMODT: We have the problem that we are not in
20 the same place always. We are just getting it together. It
21 would be terribly helpful to be served -- to have them
22 served on both.

23 MR. MILHOLLIN: Perhaps you can work out something
24 yourself. If you cannot, you can come back to me and we can
25 resolve it.

1 MR. CLEWETT: There is one other matter relating to
2 the general procedure which the Board set out of allowing
3 discovery as to some of the issues that were not accepted as
4 issues, if there were some threshold showing of relevance
5 that discovery in those areas be done. And we received late
6 yesterday a document that may constitute such a showing. It
7 might be best if Mr. Aamodt discusses the actual item and
8 its relevance.

9 MR. MILHOLLIN: If it is going to form the basis
10 for a discovery request, then perhaps it would be more
11 efficient for you to first discuss it with the Licensee and
12 the Staff. And if there is difficulty, a practical
13 difficulty in meeting the request, then you can discuss it
14 with me.

15 MR. AAMODT: Mr. Chairman, that is what we would
16 like to do. We would propose discussing it first with the
17 Staff and the Licensee. But we just wanted to let you know
18 what we were doing here.

19 What we have is a transcript from -- what is this
20 called -- the Advisory Committee on Reactor Safety. It is a
21 transcript from internal discussions that postdates the last
22 communication that we have received on the record from them
23 in which the statement appears: "A more recent event which
24 indicates the atmosphere in the cheating on operator
25 exams."

1 In other words, the question greatly parallels
2 yours on attitude of the NRC. This discusses the question
3 of attitude of the Licensee. And we would like to discuss
4 this with the parties here, and then perhaps this would be
5 the basis for some further work on our part.

6 MR. MILHOLLIN: If there are no further matters
7 before we break, we will adjourn. Shall we report back at
8 11:00 o'clock?

9 MR. TROWBRIDGE: Yes.

10 MR. MILHOLLIN: I will be available here in case
11 you finish early.

12 (Whereupon, at 10:10 a.m., the Board recessed, to
13 reconvene at 11:00 a.m.)

14 MR. MILHOLLIN: We are now ready to reconvene.
15 Reports from the parties concerning progress.

16 MR. TROWBRIDGE: We are in the midst of discussions
17 still with the Aamodts, and have come back to take care of
18 other matters. And then we will continue with the Aamodts.

19 MR. MILHOLLIN: Very well.

20 MR. TROWBRIDGE: I had a couple of matters, Mr.
21 Chairman. I want -- yesterday you read off a list of
22 individuals which the Board and yourself would like to talk
23 to. We understood that to mean you would like them to
24 appear as witnesses in this hearing.

25 MR. MILHOLLIN: Yes, that is correct.

1 MR. TROWBRIDGE: We want to make sure --

2 MR. CLEWETT: I wonder if I might ask that you
3 speak a little bit louder.

4 MR. TROWBRIDGE: Yes. Excuse me.

5 We would like to make sure that you have some
6 appreciation of the -- particularly in light of the two-week
7 estimate that someone made -- for the schedule of the number
8 of people you are talking about.

9 You are, I think, talking somewhere as far as just
10 Licensee personnel are concerned, never mind the NRC
11 proctors or others, I think you are talking somewhere in the
12 neighborhood of at least 36 individuals. And you are
13 talking in the neighborhood of 25 out of the 36 original
14 candidates for RO and SRO licensing included in that
15 figure.

16 That includes two individuals who were terminated
17 for cheating and who are no longer within the company's
18 control. I make that observation hoping that you will
19 reflect on it.

20 I would like to make a little comment on discovery
21 response schedule. Since all of us understood -- or
22 misunderstood -- that yesterday was the day for filing
23 discovery requests of all character, there are indeed a lot
24 of interrogatories and documents involved. They will even
25 be somewhat difficult to sort out as to some interrogatories

1 will refer to documents which are being supplied at the same
2 time.

3 We are somewhat doubtful that there is a need for
4 as prompt a response schedule as is called for in your
5 schedule. And we put out for discussion the proposition
6 that discovery responses be due on the 16th with the
7 possibility of the 17th if anybody requests it for the
8 discussion of any additional follow-on or other kinds of
9 discovery.

10 MR. MILHOLLIN: Do you mean are you proposing that
11 to be substituted for the 8th?

12 MR. TROWBRIDGE: Yes. That does not mean that we
13 are not going to continue the process as we develop them.
14 We intend to complete the delivery to the Aamodts, for
15 example, and to TMIA, as well of the

16 remaining exams. And there may well be other
17 documents. Along with the exams, one of the interrogatories
18 to us is for the answer key to the exams; that is, the
19 grader will have what whoever is administering the exam
20 considers to be the proper answer or subparts to the
21 question, and he will use this as a device for grading.

22 We will supply answer lists. I am just giving you
23 the illustration of the kind of document we will not be
24 waiting until the 16th on.

25 MR. MILHOLLIN: So you are saying that the volume

1 of documents requested is such that it is going to be
2 difficult for you to meet the deadline of the 8th?

3 MR. TROWBRIDGE: I think it will be almost
4 impossible to meet the 8th on the documents requested,
5 depending somewhat on Board rulings. And there are going to
6 have to be some Board rulings on some of the Aamodts'
7 requests.

8 MR. MILHOLLIN: If that were the case and we were
9 to change the date of the 8th to the 16th or the 15th, would
10 there be time left for additional submissions if it were
11 decided that additional submissions were necessary?

12 MR. TROWBRIDGE: I think so. Bear in mind we would
13 turn around any further requests -- I think further requests
14 would come largely to us -- turn them around, back on the
15 26th. That would be our expectation. If we have to ask for
16 special relief, we will have to ask for it. But that is a
17 target date. That is the date we have to meet, unless the
18 Special Master rules otherwise.

19 MR. MILHOLLIN: Do the other parties have response
20 or a position with respect to that suggestion?

21 MS. SWARTZ: The Staff would go along with that.
22 We would, of course, try to get documents to people as soon
23 as we possibly could, as I am sure the Licensee would, too.
24 They mentioned that just a minute ago.

25 The only thing that we had sort of tied to the end

1 of next week, the 8th or the 9th, is the agreement that we
2 had with the Aamodts that they were going to let us know if
3 there were other issues that they intended to present a
4 direct case on, at which time they told us Thursday they
5 were going to present a direct case, for example, on Issue
6 2. Then at that time we would present them with
7 interrogatories on Issue 2 that they would respond to. I
8 guess at that point that is by the 26th of October.

9 And then also by the end of next week they were
10 going to let us know if they had a problem giving us the
11 identities, names and addresses of people they were going to
12 present on Issue 6. And if they did, then we were going to
13 come up with some slightly changed questions, finding out
14 what those individuals know, but not knowing their
15 identities. We would ask that that be kept for the end of
16 next week.

17 MR. MILHOLLIN: So, in general, your position is
18 you can meet the requirements which have been made of you by
19 the 8th; is that right?

20 MS. SWARTZ: No.

21 MR. MILHOLLIN: All right.

22 MS. SWARTZ: We are planning to respond to the
23 interrogatories that we were given yesterday and today by
24 the 16th.

25 MR. MILHOLLIN: Yes.

1 MS. SWARTZ: We intend to provide the documents
2 that have been requested certainly by the Licensee's
3 schedule. It gives us a little more breathing room. We
4 would try to provide them as soon as possible, definitely by
5 the 16th.

6 MR. MILHOLLIN: My question is could you provide
7 the documents by the 8th?

8 MS. SWARTZ: We committed to that yesterday. I
9 would say "Yes."

10 MR. MILHOLLIN: So, for your purposes, it would be
11 convenient to keep the 8th because it would not create a
12 burden in supplying the documents but it would have the
13 advantage of maintaining the deadline for your agreements
14 with the Aamodts; is that right?

15 MS. SWARTZ: We committed yesterday --

16 MR. MILHOLLIN: Concerning their further requests.
17 That is what I understand you to be saying. Or have I
18 misunderstood you again?

19 MS. SWARTZ: I am not sure I understood you just
20 now.

21 MR. MILHOLLIN: Explain to me again why it is that
22 the 8th would be convenient for you to be kept with respect
23 to your agreements with the Aamodts?

24 MS. SWARTZ: We would ask that our agreements with
25 the Aamodts be kept because we do not want to wait until the

1 16th to find out that they are going to present other
2 issues. It is really in all fairness to them. We do not
3 want to wait until the 16th to find out that they are going
4 to have other issues.

5 We would rather know by the end of next week if
6 they are going to present other issues, give them our
7 interrogatories on those issues at that time, and then give
8 them a two-week period of time to answer our
9 interrogatories. That is why we would ask that the dates
10 for the Aamodts be kept.

11 We would certainly prefer more time to get all the
12 documents and the -- we have already committed to the 16th
13 for answers to interrogatories. We would certainly prefer
14 more time. There are a great deal of document requests. We
15 are going to have a great deal of difficulty getting all
16 those documents to people by the end of next week. We said
17 yesterday that we could meet that. We would prefer more
18 time, of course, and even if we were given until the 16th,
19 we would get documents to people as soon as we possibly
20 could.

21 MR. MILHOLLIN: You anticipate that there would be
22 a need for a meeting with me next week for any disagreements
23 you might have over the adequacy of the responses or other
24 items?

25 MS. SWARTZ: Not at all. I see by the end of next

1 week the Aamodts letting us know their plans, we present
them with interrogatories, we could work out on the phone
any problems we had with interrogatories. We have not had
any problems really thus far. I cannot anticipate any at
the end of next week. If we did, we could arrange a
conference call with you.

7 MR. MILHOLLIN: So as far as you are concerned, it
8 is not likely that I will have to rule on anything with
9 respect to your discovery next week?

10 MS. SWARTZ: Not at all.

11 MR. MILHOLLIN: Very well.

12 MR. TROWBRIDGE: Mr. Chairman, may I make one
13 amendment? I said the 16th, and that is fine for us. With
14 respect to our discovery to the Aamodts, one of our
15 interrogatories essentially says, "All right, now you have
16 all the exams, you have reviewed them. What have you found
17 that you think is cheating? That interrogatory we would not
18 have the Aamodts respond to until the 26th. They need some
19 turnaround time.

20 MR. MILHOLLIN: The other parties?

21 MS. BRADFORD: I do not have any problem with the
22 newly proposed schedule as long as both Licensee and NRC are
23 committed to providing as many documents by the 8th as they
24 can meet. So I do not think we will have any problem with
25 that.

1 MR. CLEWETT: We have no problem with meeting by
2 the 8th those items that the NRC Staff just referred to that
3 we had committed to letting them know by that point. And we
4 feel, in general, that it would be useful to have a little
5 bit more breathing time on meeting these various discovery
6 requests.

7 We are somewhat concerned that we may be exchanging
8 breathing time now for breathing time later, especially to
9 the extent that that follow-on discovery is necessary. In
10 light of the comments that Mr. Trowbridge made about the
11 potential problems of fitting the number of witnesses that
12 the Board and the Master and the parties want to present
13 within two weeks, we are concerned that there may be a need
14 to rework the schedule in general. And especially to the
15 extent that that is necessary -- we would hope not -- the
16 Special Master would also consider extending the discovery
17 perhaps by another week so that there is still the potential
18 for having enough time to do follow-on discovery if that is
19 necessary from the submissions that we get to the first
20 round of discovery.

21 MR. MILHOLLIN: The Licensee has said that they
22 think that they can comply with follow-on requests, that
23 they should be made on the 16th; that is, that they can
24 comply with them by the 26th. Do you think you will have an
25 opportunity to make additional requests if we adhere to our

1 schedule of meeting on the 9th? That is, would it be an
2 advantage to you to make additional requests on the 9th?

3 MR. CLEWETT: I think, in general, it is better for
4 us if the schedule is extended to the 15th or the 16th
5 rather than the 8th or the 9th. The question of follow-on
6 discovery is at this point unfortunately somewhat
7 hypothetical because we do not know yet what the responses
8 would be to the discovery requests that we would make on the
9 16th.

10 To the extent there is a need for follow-on
11 discovery, we would hope that that could be accommodated
12 either within the schedule as it currently is or within some
13 slightly modified schedule.

14 Maybe the best point to address that would be at a
15 later point, but I wanted to raise the issue to the extent
16 that you are reworking the schedule that you consider also
17 maintaining the original amount of breathing space between
18 the date for the first production of documents and other
19 responses with respect to the total end of discovery.

20 MR. TROWBRIDGE: Mr. Chairman, may I make some
21 comments on that? One, let us not ignore that discovery can
22 be done, as some of it already has been done, by telephone
23 calls and agreement to supply. This process should go on.

24 My other comment is I would not like to build in at
25 this point in the schedule room for the possibility that

1 further time would be needed for further discovery. I would
2 rather propose that the date October 26th be kept with the
3 understanding that any party -- and I made allowance for us
4 as well as for you -- can for good cause ask the Special
5 Master to change the date. But I would keep the date and
6 put a burden on the parties to try and meet it.

7 MR. MILHOLLIN: Are there other matters?

8 MR. TROWBRIDGE: Yes, a couple of others, Mr.
9 Chairman. One of the items on your list was consolidation.

10 MR. MILHOLLIN: Yes.

11 MR. TROWBRIDGE: We only have two at the moment,
12 and I am not sure how much consolidation is necessary. I
13 think in the nature of things I would hope the Aamodts and
14 TMIA would do some discussing about how they divide up. I
15 think the Special Master will, if necessary, prevent
16 unnecessary repetitious cross examination, but I do not
17 anticipate from past experience that that is going to be a
18 serious problem.

19 MR. MILHOLLIN: We should probably select someone
20 to be the contact for rapid communications among the two of
21 you -- perhaps you could agree upon that -- just for
22 notification purposes.

23 MS. BRADFORD: You mean who would then get to the
24 other party?

25 MR. MILHOLLIN: Yes.

1 MS. BRADFORD: It seems John is going to do it.

2 MR. CLEWETT: I guess I would be that person.

3 I should also, just for the record, note that we do
4 intend to coordinate as much as possible with TMIA so that
5 we would try to avoid all repetition in questioning and --

6 MR. MILHOLLIN: Have you worked out among
7 yourselves the problem of service among the Aamodts?

8 MR. TROWBRIDGE: No, we have not discussed that
9 yet.

10 MR. MILHOLLIN: All right.

11 MR. TROWBRIDGE: The last item, Mr. Chairman, is
12 that we had offered to take the NRC documents thus far that
13 have been supplied only to the Board and put letters on
14 them. The Staff informed us that they would prefer to do it
15 the other way around. We will provide them with the
16 letters, and they will do the --

17 MR. MILHOLLIN: I am sorry, I did not hear what you
18 said.

19 MR. TROWBRIDGE: Staff would prefer, as I
20 understand it, to do it the other way around. We will
21 provide them with the letters, and they will do the
22 expurgating, the substituting of letters for names, and
23 distribution to the parties of the documents which have been
24 furnished to the Board.

25 MR. MILHOLLIN: Very well. Are there other

1 matters?

2 MR. TROWBRIDGE: Not on my mind at the moment. We
3 will have a few more between us and the Aamodts when we get
4 back.

5 MR. MILHOLLIN: Other parties have matters n. to
6 discuss?

7 MS. SWARTZ: The Staff was wondering when you are
8 planning to rule on the discovery schedule

9 MR. MILHOLLIN: You mean the one that has just been
10 proposed?

11 MS. SWARTZ: Right.

12 MR. MILHOLLIN: Is that going to affect your
13 discussions?

14 MS. SWARTZ: Not really. We just want to know.

15 MR. MILHOLLIN: I assume we are going to adjourn
16 and have further discussions.

17 MR. TROWBRIDGE: Yes.

18 MR. MILHOLLIN: Probably including -- during lunch
19 or at least around the lunch period, and we are going to
20 come back this afternoon. I think I would prefer to reflect
21 upon the proposal during that time and then rule on it this
22 afternoon when we reconvene.

23 MS. BRADFORD: Mr. Chairman, I have one item that I
24 would like to raise now. We had a problem with transcripts
25 before, and since this is projected to be just a two-week

1 period. The problem we had was the transcripts were placed
2 in local PDRs, and there was usually a two-to-three-week
3 time lapse.

4 What I am wondering is is there a way that the
5 Intervenor could have the benefit of following-day service
6 that we could share a copy of the transcript?

7 MR. MILHOLLIN: That subject must have come up
8 during the hearing itself before the Licensing Board.

9 MS. BRADFORD: There was a copy of the transcript
10 in the hearing room, and since I was so close, I had a key
11 to the hearing room and other Intervenor would call me if
12 they needed to use the transcript. I do not know if, you
13 know, that kind of an arrangement could be set up, or even a
14 more convenient arrangement, since the Aamodts are so far.
15 It was always a problem for the Aamodts to use the
16 transcript.

17 MR. MILHOLLIN: Perhaps that is a subject you could
18 discuss also among yourselves. If you cannot resolve it,
19 then you can bring it back and we will discuss it together.

20 MS. SWARTZ: We should note for the record that
21 under the GAO determination and the Commission's
22 determination that the Staff is forbidden to give any kind
23 of assistance like that to the Intervenor, our hands are
24 tied.

25 MS. BRADFORD: I was merely asking for a copy to be

1 available, not to be taken out but to be available somewhere
2 with the same kind of rapid service that the other parties
3 have access to.

4 MR. MILHOLLIN: This is something that you might be
5 able to work out privately off the record more expeditiously
6 than on the record.

7 Other matters at this time?

8 (No response.)

9 MR. MILHOLLIN: No?

10 There was a request by the Staff that the date of
11 November 2 be moved to November 4. When you made that
12 suggestion, we did not discuss it. Could you say why it is
13 that you would like to change that date?

14 MS. SWARTZ: Yes, we did. We, before we came up
15 here, discussed with our technical staff how quickly they
16 could prepare answers to discovery to the questions and
17 prepare testimony. We were given the figure they would like
18 two weeks, would need two weeks to answer discovery
19 requests, would need three weeks between the end of
20 discovery and the filing of testimony.

21 Yesterday you gave us your schedule for the
22 reopened proceeding. We called back and said this is the
23 schedule. This would give a much shorter time than what he
24 wanted. We want the three weeks. We need the three weeks,
25 go for 2-1/2.

1 We are trying to split the difference. That is why
2 it is two more days.

3 MR. MILHOLLIN: The difficulty, of course, is that
4 if the testimony is in hand on the 4th and the hearing
5 begins on the 10th, that is a very short period of time to
6 absorb it for parties who must cross examine.

7 MS. SWARTZ: True.

8 MR. MILHOLLIN: My inclination would be to say that
9 that is too short a period. It is a short period for me to
10 absorb it.

11 MS. SWARTZ: The Staff's problem is that they have
12 a great deal of other work to do on TMI, including
13 preparation and the giving of the oral exams at TMI. The
14 people who are going to be giving the oral exams are people
15 who are going to be preparing testimony for this
16 proceeding.

17 For the oral examinations, as I understand it, they
18 are going to have seven examiners and four proctors, eleven
19 people, up at the Island. They cannot take people off those
20 exams to work solely on testimony or solely on discovery
21 responses because they need them up at the Island. That is
22 one of our constraints in preparing testimony.

23 MR. MILHOLLIN: Since we are only talking about a
24 couple of days, perhaps you could think about expediting
25 service of process -- I am sorry -- expediting service of

1 this in some way so as to get it to us a day or so earlier.
2 If the 4th is requested because of lead time necessary to
3 deliver, it might be possible for you to deliver the Board's
4 copy, for example, a day later than the copy to the other
5 parties.

6 I just encourage you to think about the possibility
7 of cutting a day or two off of that period by whatever
8 means. And what means I am suggesting is a more expeditious
9 service arrangement.

10 MS. SWARTZ: We were considering, when we gave our
11 date of the 4th, of expeditious service, that that would
12 include express mail. And cutting from the 4th to the 2nd
13 is only two days, but it is four or five days when you
14 consider that the Staff really felt that they needed three
15 weeks to do this and that they were cutting back their three
16 weeks to 2-1/2. So cutting it back even two more is really
17 cutting it back from their original estimate of how much
18 time they would need to adequately prepare testimony.

19 MR. MILHOLLIN: All right. I will consider that
20 one as well while you are conferring.

21 Are there other matters before we break again?
22 Yes.

23 MR. CLEWETT: One other question, since we are
24 probably at some point today going to be discussing the
25 import, if there is any, of this Advisory Committee on

1 Reactor Safeguards transcript which we received late
2 yesterday, we only have one copy of this, because we have
3 not had time to copy it. But I was wondering whether the
4 Special Master might wish to see this just to familiarize
5 himself with it, perhaps during our break that we are about
6 to start, and then at some convenient point could return it
7 to us.

8 MR. MILHOLLIN: Have the other parties seen the
9 document?

10 MR. CLEWETT: No, the other parties have not seen
11 it at this point.

12 MR. MILHOLLIN: I think it might be more helpful
13 for them to see it first. Do you anticipate that I will
14 have to rule on that today?

15 MR. CLEWETT: I am not sure, actually, whether it
16 will be necessary. It may bear upon some of the current
17 discovery requests as to which there appears to be a slight
18 disagreement among the parties as to the proper scope of the
19 discovery requests. It might bear on that.

20 MR. MILHOLLIN: If it does bear upon the propriety
21 of discovery, I think it is more efficient for you to give
22 it to the other parties and tell us what your position is
23 and discuss it with them before you come to me.

24 MR. CLEWETT: Fine.

25 MR. MILHOLLIN: So I decline to take it from you at

1 this time. And I encourage you to share it with the other
2 parties and also share your position on discovery with
3 them.

4 Other matters before we break?

5 MR. TROWBRIDGE: Mr. Chairman, we expect and hope
6 to meet November 2. If we do, the Board and the other
7 parties will have their plates full for some period of
8 time.

9 MR. MILHOLLIN: Probably a day.

10 MR. TROWBRIDGE: I would hope at least a day. I
11 simply suggest you take that into consideration.

12 MR. MILHOLLIN: In deciding the Staff's request.

13 MR. TROWBRIDGE: Yes.

14 MR. MILHOLLIN: How much more time do you
15 anticipate you will need for discussions before the
16 productivity declines to the point where it would be more
17 efficient to rule than to discuss?

18 MR. TROWBRIDGE: I think some of the discussion we
19 have not got into yet, the discovery request itself, I am
20 guessing, will not take more than more than another at most
21 half-hour. But then we have other matters to discuss:
22 service and -- I am not sure that the Board would not do
23 well to decide now to take a break long enough to include
24 lunch.

25 MR. MILHOLLIN: Yes, I was intending to do that.

1 MR. TROWBRIDGE: And come back at --

2 MR. MILHOLLIN: Why don't we have you come back at
3 2:00 o'clock and report? And if an additional recess is
4 necessary, we will take an additional recess.

5 MR. TROWBRIDGE: I think 1:30 would be adequate.

6 MR. MILHOLLIN: 1:30 would be adequate.

7 MR. TROWBRIDGE: Might be adequate to include some
8 kind of lunch.

9 MR. MILHOLLIN: I assume we have use of the room
10 for the afternoon. So we will agree then to reconvene at
11 1:30. So we now adjourn until 1:30.

12 (Whereupon, at 11:32 a.m., the Board recessed, to
13 reconvene at 1:30 p.m., this same day.)

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AFTERNOON SESSION

(1:30 p.m.)

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MR. MILHOLLIN: We will now come to order.

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I am ready for reports from the parties on their progress so far.

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MR. TROWBRIDGE: Well, I think we will wait for the Aamodts to arrive before we discuss the discovery differences. Let me ask whether Mr. Clewett feels comfortable without the Aamodts present in discussing what we have decided about the timing of response to our first set of interrogatories?

12

Here they are, so that is --

13

MR. CLEWETT: It is moot now.

14

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MR. TROWBRIDGE: You do not need to answer the question.

16

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MR. CLEWETT: We are ready to discuss any matters that the Special Master wishes us to discuss.

18

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MR. TROWBRIDGE: Let me start out our first set of interrogatories to the Aamodts and the first set -- we have a first and second set only because we visualize there might be different timing on the responses to them.

22

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25

The first set inquires into, with respect to Issue 6, what is the incident of cheating involving management operation -- involving management at TMI-2 -- TMI-1 that you are talking about, and a series of questions designed to

1 ascertain the name of the witness and more details of the
2 incident and the people involved in the incident.

3 So far as we are concerned, if we were talking only
4 about preparations to talk about that incident at the
5 hearing, we would be willing to wait until the time for
6 prepared testimony to learn for sure whether the Aamodts are
7 going to pursue this matter and the details that they are
8 talking about. In other words, we will find out from our --
9 and what we think happened. That would give us time.

10 We are not, however, prepared to wait that long if
11 this incident is going to be used as a threshold example,
12 say, for inquiring further, say, into nonlicensed
13 personnel. In other words, we would want a much earlier
14 response to that interrogatory if that incident is to be the
15 basis as discussed by the Board yesterday, a threshold
16 showing of a reason to go beyond essentially the NRC
17 examination and our qualification and mock examinations.

18 MR. MILHOLLIN: I take it that that point is not
19 one of the points which you plan to take up in order and
20 which seem to be listed on documents you have given to me
21 already?

22 MR. TROWBRIDGE: No, that is not on the documents.
23 That is a different matter.

24 MR. MILHOLLIN: So, were you anticipating that the
25 Aamodts would make a response at this time to your question

1 whether --

2 MR. TROWBRIDGE: Yes, I think we need it, because
3 we have to set a discovery schedule. And let me just say it
4 this way: We would want a prompt answer unless there is an
5 understanding that it will not be used as a threshold excuse
6 -- threshold basis for expanding on the scope of
7 examinations or tests to be inquired into.

8 MR. CLEWETT: Well, we think that is a reasonable
9 concern for the Licensee to have. We would certainly be
10 prepared to answer these requests by the time normally
11 required for such answers if we intend to argue that this is
12 a threshold matter that would allow further discovery. And
13 we would intend to make those discovery requests at that
14 time, along with answering these, if we should decide that
15 we want further discovery.

16 MR. TROWBRIDGE: This seems to me a different kind
17 of question, further discovery. This is a question of what
18 are the issues to be in this proceeding and whether the
19 Special Master under the Board's rewrite, as we understood
20 it, of Issue 1 would have the authority, the discretion, if
21 you like, to go into nonlicensed examinations, the TMI-2
22 examinations. That is a determination which the Special
23 Master ought to make fairly early in the game, not October
24 17 or whenever we come back.

25 MR. MILHOLLIN: As I understood Mr. Clewett's

1 response, it was that either he would respond on the 16th --
2 or the 15th, I guess I should say -- to your
3 interrogatories.

4 MR. TROWBRIDGE: Right.

5 MR. MILHOLLIN: Or what I understand his response
6 to be: If he does not, that means he has agreed that the
7 response would not be used as a threshold for an inquiry
8 into nonlicense activities.

9 Is that correct?

10 MR. CLEWETT: That is correct, yes.

11 MR. TROWBRIDGE: And I am --

12 MR. MILHOLLIN: Is that satisfactory to you?

13 MR. TROWBRIDGE: No. I am suggesting I think that
14 is too late in the game to put before the Special Master to
15 what extent are we going to expand the areas of inquiry.

16 MR. CLEWETT: If I may comment, the discretion of
17 the Special Master would extend up until, if not beyond, the
18 end of discovery. That discretion is absolute.

19 MR. TROWBRIDGE: I have not argued against that.
20 But on the other side, I think there is once a problem is
21 known, once we know it, we should address it quickly. It
22 may be something comes up two weeks from now or three weeks
23 from now that requires perhaps the ruling of the Special
24 Master. We have something right now that I think ought to
25 be acted on real quickly.

1 MR. MILHOLLIN: Well, this brings us back to this
2 question of scheduling, in my mind.

3 MR. TROWBRIDGE: Yes.

4 MR. MILHOLLIN: Presumably, if you are prejudiced
5 by the failure to answer timely to your interrogatory, then
6 you could request relief; of some kind or if the question of
7 the scope were properly presented at a session at which I am
8 present, I could rule on that. The reason --

9 MR. TROWBRIDGE: I want to --

10 MR. MILHOLLIN: Let me finish. The reason for the
11 suggestion that we postpone it until the 16th was in my
12 impression that issues such as the one you are talking about
13 could then be decided, because by then presumably Mr.
14 Clewett either would be in a position of making a threshold
15 presentation of some kind or he would agree by not
16 responding at that point to abandon that position.

17 I am having trouble seeing how you are prejudiced
18 by that response -- by that arrangement, I should say.

19 MR. TROWBRIDGE: Well, I think, let us say, that
20 this is put forward by Mr. Clewett as a threshold item under
21 which we are going to look into the examination and testing
22 of nonlicensed personnel. That is a degree of preparation
23 for us that we need to get started on.

24 MR. MILHOLLIN: So you are now sying the time
25 between the 16th -- if the response to your interrogatories

1 like on the 15th, that would mean he is planning to use or
2 may use this information as a threshold showing on the issue
3 of whether we go into nonlicensed personnel? It is your
4 position that that would be too short a time between that
5 and the hearing to allow you to prepare? I am having
6 trouble understanding your prejudice --

7 MR. TROWBRIDGE: That was my position. I think we
8 need to know whether we are going into nonlicensed personnel
9 or not sooner than that.

10 MR. CLEWETT: It would seem that, to the extent
11 there would be prejudice, we would be, if you will,
12 prejudicing ourselves by virtue of having limited the amount
13 of time available to examine any such materials that might
14 be forthcoming in response to further inquiry. It is
15 difficult to see any prejudice to the Licensee.

16 MR. MILHOLLIN: Do you have information now which
17 you plan to tender at the appropriate time, or are you
18 waiting for that to be received, or do you have part of it?
19 What is the situation which you are in now?

20 MR. CLEWETT: It is not possible to say yet whether
21 we would be pursuing this. It is still in a formative
22 stage.

23 MR. MILHOLLIN: This is Issue 6 we are talking
24 about; is that right?

25 MR. TROWBRIDGE: Yes.

1 MR. MILHOLLIN: That is Issue 6 on page 2 of the
2 scope of the issues. This, in turn, refers to paragraph 7
3 of the response to the Board's order of August 20th. On
4 page 5 of the submission by the Licensee, which contains the
5 agreed-upon issues, there is a statement concerning Issue 6
6 under evidentiary matters. This document is dated September
7 24, 1981. And the part I am referring to is on page 5 of
8 that document.

9 And under Issue 6 it states that the Amodts will
10 present one or more witnesses to testify to management's
11 involvement in cheating of personnel on a test given at
12 TMI-1 since the TMI-2 accident.

13 I think the question -- well, I think you probably
14 can ask them in an interrogatory what test you have in
15 mind. Is that not the case?

16 MR. TROWBRIDGE: Yes, that is one of the
17 questions: Who is the witness? What is the test? Who are
18 the people?

19 MR. CLEWETT: Yes.

20 MR. MILHOLLIN: I think you have been asked in
21 interrogatories to be more specific about that. Is your
22 position now that you do not know whether you can be more
23 specific?

24 MR. CLEWETT: No. The question, as we understand
25 it, is whether this incident would be considered a threshold

1 showing to form th basis for further discovery; for
2 instance, whether there are other cheating incidents on this
3 test or on other similar tests.

4 There is another aspect to this, which is that we
5 are reluctant to jeopardize the safety of this individual
6 any earlier than we need to and before we have our case on
7 this aspect completely together. And it is for that reason
8 that we would like to avoid having to disclose his identity
9 any earlier than necessary.

10 We can understand it if we intend to use this as a
11 threshold inquiry, it is appropriate at some time before the
12 beginning of the hearing to let the Licensee know what our
13 plans are with respect to this. But given the legitimate
14 interest in the safety of the individual, we are reluctant
15 to disclose this any sooner than we have to.

16 MR. MILHOLLIN: Well, my reaction is as follows:
17 Either on the 9th or on the 16th, when we meet, it seems to
18 me it would be appropriate at that time for your response to
19 the interrogatories to be delivered. And at that time, if
20 the Licensee is unhappy with the information the Licensee
21 has received, the Licensee can make an appropriate motion
22 and we will resolve it at that time.

23 MR. TROWBRIDGE: Mr. Milhollin, I would leave open
24 the possibility for the reasons that Mr. Clewett has given
25 -- they do not want to disclose this information earlier

1 than possible -- I would still leave it open to the
2 possibility that they make up their minds and deliver the
3 testimony on the due date for written testimony.

4 But it can no longer then, unless presented on the
5 occasion you are talking about, whether it is the 9th or the
6 16th, unless presented then, it can be no longer used as the
7 basis for opening up other nonlicensed personnel exams.

8 MR. MILHOLLIN: Well, if that is --

9 MR. TROWBRIDGE: We are not insisting on an earlier
10 answer. We are giving them all the time they need to --

11 MR. MILHOLLIN: As I understand it, he has said
12 "Yes" to that question.

13 MR. CLEWETT: That is correct.

14 MR. TROWBRIDGE: "Yes" to --

15 MR. MILHOLLIN: To your question. He said "Yes" to
16 your proposition, which is that if he does not furnish an
17 answer by the 16th, you can assume that when you get the
18 testimony in writing, that it may or may not serve as a
19 threshold for further inquiry. Is that right? Or perhaps I
20 misstated that.

21 MR. CLEWETT: As I understand it, the proposition
22 would be that if we intended to use this as a threshold
23 showing for further inquiry into these sorts of matters, the
24 response would have to be made by the 15th or the 16th or
25 whatever the date is, and that if we did not reply to it by

1 then, we could submit the written testimony by the date for
2 the submission of written testimony but it could not be used
3 as a threshold.

4 MR. MILHOLLIN: It seems to me we are borrowing
5 trouble for the time being.

6 MR. TROWBRIDGE: We accept that proposition.

7 MS. SWARTZ: Excuse me. The Staff has a comment on
8 that. For one thing, if testimony is filed concerning this,
9 it is our understanding it deals with nonlicensed
10 operators. If it is not going to be used to go into
11 something else, then it is beyond the scope of this hearing,
12 and we would object to the testimony.

13 But if they do have a valid allegation, the NRC
14 Office of Inspection and Enforcement is going to want to
15 look into it to find out exactly what went on. And we
16 should know about it as soon as possible, too, in order for
17 that office to begin its inquiries.

18 MR. CLEWETT: It is specifically within the scope
19 of the hearing by virtue of having been one of the issues
20 designated by the parties by agreement and by the Board
21 through order as being within the scope of the hearing.

22 MS. SWARTZ: But it says now -- all it says now is
23 management involvement in cheating, or what you have said
24 you will present, evidence on management involvement in
25 cheating of personnel on a test at TMI-1 since the TMI-2

1 accident. If you had evidence of cheating by operating
2 personnel on a test given at TMI since the TMI-2 accident,
3 we would agree that that is within the scope of the
4 proceeding as outlined by the Licensing Board yesterday.

5 MR. MILHOLLIN: That is what page 5 says. It says,
6 as I read it, "Since the TMI-2 accident."

7 MS. SWARTZ: Right. But it does not say -- we are
8 assuming -- we view this as within the scope of the
9 proceeding only if it is operating personnel. If it is
10 nonlicensed personnel, as we argued yesterday --

11 MR. MILHOLLIN: Are you suggesting that October
12 16th is too late a date to discover what the Aamodts intend
13 to do? Is that the problem?

14 MS. SWARTZ: The Aamodts told us that they would
15 let us know by next Thursday or Friday whether they intended
16 to go ahead with this, as I explained earlier. If they did
17 intend to go ahead with it, then their answers to our
18 interrogatories asking for name and address would be due on
19 the 16th.

20 MR. MILHOLLIN: It seems to me that is satisfactory
21 unless the Licensee can show prejudice in having to wait a
22 week for that information.

23 MR. TROWBRIDGE: We are not claiming prejudice,
24 waiting a week. In fact, I hope we will hear at the same
25 time Ms. Swartz hears whether the Aamodts intend to pursue

1 this.

2 MR. TROWBRIDGE: We conceded just a moment or two
3 ago to the 16th as a date for the receiving of the material
4 if it is going to be used as a threshold item.

5 MR. MILHOLLIN: I do not think we have a
6 disagreement then on that subject, do we?

7 MR. CLEWETT: I do not believe we do.

8 MR. MILHOLLIN: All right.

9 MR. TROWBRIDGE: I wish to raise another quite a
10 different aspect of the same -- I would presumably -- may I
11 take a moment to confer?

12 (Counsel for Licensee conferring.)

13 MR. TROWBRIDGE: Mr. Chairman, I withdraw the
14 further discussion.

15 MR. MILHOLLIN: This brings us to a report by the
16 parties then on the progress of their negotiations.

17 MR. TROWBRIDGE: You have before you, Mr. Chairman,
18 I think, two documents, one from the Licensee, the Licensee
19 version with mark-ups.

20 MR. MILHOLLIN: Yes, I have that document.

21 MR. TROWBRIDGE: It indicates wording of
22 interrogatories that Licensee will be willing to accept. In
23 some cases, this wording has been accepted by the Aamodts.
24 But where it has not you will find the word "Disagree" in
25 the left-hand margin. And I think you will find a total of

1 five "Disagrees" plus a note opposite Issue 11, which will
2 require some explanation, which is: We have something to
3 say to you about it.

4 MR. MILHOLLIN: The other document which I have is
5 the same document except with interlineations supplied by
6 the Aamodts.

7 MR. TROWBRIDGE: The other document, as I
8 understand it, the wording which the Aamodts propose, and to
9 the extent it varies from the original version, that means
10 that we have come together to that extent.

11 MR. MILHOLLIN: I see.

12 MR. TROWBRIDGE: I would suggest as a way of going
13 at this, Mr. Chairman, that we identify the differences on
14 all of these five disagreed items, largely because there is
15 a very common thread to all of them as to the scope.

16 MR. MILHOLLIN: Before we get into that, I would
17 like to ask the Staff whether the Staff and the parties with
18 whom the Staff has conferred will have any need for rulings
19 by me on questions similar to the ones we are now
20 considering for the Aamodts?

21 MS. SWARTZ: No.

22 MR. MILHOLLIN: So this is the only list of
23 disagreements?

24 MR. TROWBRIDGE: The only list that I am aware of.

25 MR. MILHOLLIN: Very well. Go ahead.

1 MR. TROWBRIDGE: I will go through the list, but
2 let me explain the theme that does run through these. The
3 question as to whether discovery runs past the NRC license
4 examinations, which are not much a part of it as far as
5 discovery is concerned, and past the qualification and mock
6 examinations which have occurred since the accident for
7 TMI-1 and which are delineated in Issue 1.

8 You will recall the Board did some rewording of
9 Issue 1, but the net effect was to say all NRC examinations
10 since the accident and all mock and qualification
11 examinations by the Licensee since the accident, naming
12 several by name: Kelly, ATTS, makeup Category T.

13 Many of the issues in disagreement, for the most
14 part, the discovery request goes beyond those examinations,
15 seeks to inquire into nonlicense examinations or TMI-2
16 examinations or examinations prior to the accident and
17 without, in our view, any threshold showing that would
18 justify the Special Master in exercising his discretion to
19 open these further examinations to discovery and to
20 testimony.

21 As we understood the Board's statements yesterday,
22 the threshold requirement would be a requirement both for
23 discovery and for evidence at the hearing.

24 Now, where is Mr. Blake? You had better sit down
25 with me here. In case I make a mistake, you can correct

1 me.

2 MR. CLEWETT: If I may, we disagree with the
3 characterization which has just been offered which suggests
4 that our version would require a threshold showing and that
5 it is going beyond the issues that have been propounded by
6 the Board.

7 I might just briefly direct the attention of the
8 Special Master to the scope of issues as stated by the Board
9 in the preamble to that to the extent that it is related to
10 cheating, the issue of Licensee's management integrity is
11 specifically mentioned as an issue.

12 Issue 5 refers to the extent of Licensee
13 management, among other things, encouragement of or
14 negligent failure to prevent the cheating in the
15 specifically mentioned examinations. And as can be fleshed
16 out by the discussion of individual issues, we believe that
17 if there has been a pattern of cheating on examinations in
18 general, that this certainly -- this management attitude of
19 condoning cheating -- would certainly be directly related to
20 the sort of atmosphere and encouragement of and the failure
21 to prevent cheating on specifically mentioned examinations.
22 And I just wanted to bring that perspective before the
23 Special Master as well.

24 MR. TROWBRIDGE: We can have further argument on
25 that. However, I think the opening paragraph, the statement

1 of issues, needs to be read in its entirety, with one of the
2 principal points being nexus to cheating on the NRC
3 examination.

4 And I think the Board had that very clearly in mind
5 when it drew the line that discovery of evidence in certain
6 areas without a threshold showing -- but now let us identify
7 where the differences are and the disagreed issues without,
8 for the moment, trying to argue or comment on them.

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1 The differences in issue one are, I believe, in
2 our version getting to the end of the third line, in any
3 qualification or mock examinations administered by
4 Licensee, and in the addition at the end since the TMI-2
5 accident, and also referring in the last line to TMI
6 operators, TMI-1 operators.

7 Those three, I believe, represent the
8 differences between Licensee and the Aamodts on that
9 issue.

10 On the next page, item two, which is under
11 issue five, we propose to delete the entire discovery
12 item which talks about testing arrangements for weekly
13 examinations given during the accelerated
14 requalification program.

15 We have added the note, "See five below", and
16 if you look at five below, it is a description of
17 testing arrangements for all administered tests on
18 Kelly, including Category T by Licensee.

19 Some of those retests did occur in the course
20 of weekly training test on examinations, and to that
21 extent weekly examinations would be included, but only
22 to that extent.

23 So the differences between us is the difference
24 between Item Five, which we are all agreed upon, and the
25 broader statement in Item two.

1 Item nine, I believe the differences between us
2 are in the limitations we would place on the language;
3 namely, qualification and mock examinations of TMI-1
4 licensed operated candidates, and in the limitation we
5 would place at the end of Issue Nine since the TMI-2
6 accident.

7 I propose to skip issue eleven for the moment
8 and we -- because it is of a wholly different character
9 and needs some discussion.

10 JUDGE MILHOLLIN: With respect to Issue Nine,
11 my copy reads in the last line, "How these differ from
12 past practices since the TMI accident."

13 MR. TROWBRIDGE: Yes. That is not the way the
14 Aamodt's version reads.

15 JUDGE MILHOLLIN: I know that. To me that is
16 confusing. I do not understand what that means.

17 MR. BLAKE: Judge Milhollin, it may very well
18 be confusing because of an accommodation, an attempt to
19 get a point across that may take as much of their
20 language as possible.

21 What was intended there was that -- our
22 willingness to provide not only the current plans,
23 procedures and policies, but those so that they get a
24 feeling that over time what they had been, but back over
25 time in our view extended only back to the time of the

1 accident and not back further in history, and that is
2 all that was intended.

3 JUDGE MILHOLLIN: Perhaps a person drafting
4 this should take another try at expressing that idea.
5 Okay, go ahead.

6 MR. TROWBRIDGE: Under the third page, under
7 "General" again, I believe the differences between us
8 are represented by our addition of "A limitation to
9 qualification and mock examinations administered by
10 Licensee" to the striking out of "TMI-2" and to the
11 addition of "since the TMI-2 accident."

12 Finally, in Three --

13 JUDGE MILHOLLIN: When you say Three, you are
14 referring to the comments under the "General" heading.
15 Isn't that right?

16 MR. TROWBRIDGE: Correct. The main differences
17 between us again relate to where this item used the
18 words, "other personnel" at the end. We would
19 substitute "TMI-2 license operators" or "candidates
20 since the TMI-2 accident," and we also at the end of the
21 second line, I believe, insert "Operator mock
22 examinations or qualification tests" to make sure we are
23 not talking about other examinations happened to be
24 taken by operators, but not peculiar to them.

25 JUDGE MILHOLLIN: I think I understand the

1 points of disagreement. Perhaps it would be most
2 efficient for the Licensee to speak with respect to each
3 individual one its position, or should I say the grounds
4 for its objection to the request by the Aamodt's, and
5 then the Aamodt's can respond to Licensee's objections.

6 MR. TROWBRIDGE: I think I would say very
7 simply the grounds for our objections stem in large part
8 from our understanding of the Board's rulings yesterday,
9 that while the special master has the discretion to go
10 beyond as far as company exams are concerned beyond the
11 mock and qualification tests that have been given since
12 the accident, discovery not be had, evidence not be
13 produced for that as sufficient showing that there is a
14 threshold case that needs following up, and that
15 something that the intervenors have in hand now to
16 justify this inquiry.

17 JUDGE MILHOLLIN: I understand now your point.

18 MR. TROWBRIDGE: I am talking now individually
19 now about the additional burden of the Licensee in
20 responding to some of these, and perhaps I will have to
21 do that as I go along, but I do remind the Board that we
22 have a lot of work to do between now and the sixteenth,
23 answering this and other interrogatories, producing
24 documents, when we submit answers, that they be
25 submitted by and accompanied by an affidavit by somebody

1 who represents that he has done this sufficient work and
2 investigation to make sure that his answer is correct.
3 That is a responsibility which individuals in our past
4 experience take very seriously.

5 JUDGE MILHOLLIN: Thank you. I understand your
6 position. Before we get into the response by the
7 Aamodt's to your position, it might be well for us to
8 make sure that we all have the same list of the example
9 examinations asked by the Board's Issue One; that is,
10 Issue One was amended by the Board this morning.

11 MR. BLAKE: Did you say this morning, Mr.
12 Milhollin?

13 JUDGE MILHOLLIN: I am sorry. Yesterday
14 morning, excuse me. Yesterday morning the Board amended
15 Issue One by adding specific examinations to the ones
16 which were originally specified in Issue One. Let's
17 make sure we all understand which additional
18 examinations were described by the Board yesterday
19 morning.

20 Would you, Mr. Trowbridge, read to us from your
21 copy?

22 MR. TROWBRIDGE: I can read and without total
23 confidence as to how the words -- where the words fit
24 in, but as I understand it, I think what we are to --
25 including where we had made the certain Kelly Category T

1 and ATTS examinations, it was the Board's ruling that
2 any other company administered qualification or mock
3 examination or NRC administered examination since the
4 accident. I think the full change -- I do not have the
5 full version here.

6 My best recollection is that the Board
7 indicated the intent of what -- I think the limitation
8 would be what the special master in his discretion said
9 it would be.

10 JUDGE MILHOLLIN: I am aware of that.

11 MR. TROWBRIDGE: But that at a minimum, it
12 would be these items, and then explained its notion of
13 threshold showing before we got into discovery, or
14 testimony on these.

15 JUDGE MILHOLLIN: I would like to ask if the
16 other parties agree upon the list which has just been
17 described. We all have the same notion as to what has
18 already been included by the Board, don't we?

19 MR. SWARTZ: Yes, the Staff does.

20 JUDGE MILHOLLIN: That accords with Staff's
21 understanding?

22 MR. SWARTZ: Yes.

23 JUDGE MILHOLLIN: With the Amodeo's
24 understanding?

25 MR. CLEWETT: I believe that is correct. The

1 specific examinations listed on the original copy were
2 also specifically referred to by the Board, were they
3 not?

4 MR. TROWBRIDGE: Yes.

5 MR. CLEWETT: Yes.

6 MR. TROWBRIDGE: Yes.

7 JUDGE MILHOLLIN: Mr. Clewett, would you like to
8 respond to the objection by the Licensee to your request
9 with respect to Issue One?

10 MR. CLEWETT: Yes, I would. The focus of Issue
11 One as it is stated is the extent of cheating. Now, the
12 sort of inquiry that we are attempting to engage in with
13 respect to these specific examinations is to answer that
14 question at how extensive cheating was, and that
15 involves going back to the tests themselves and
16 attempting to compare answers to see whether there
17 appear to be irregularities.

18 We believe that the discovery requests for our
19 position differs from that of the Licensee is looking at
20 a quite -- it is not the same stuff. We are not asking
21 to see the raw materials. We are not asking to go back
22 to the tests themselves. Rather, we are trying to
23 address the question of the Licensee management
24 integrity as it relates to cheating.

25 Now, if they through the history of events that

1 transpired at TMI have created an atmosphere so that it
2 is clear to people there that management condones
3 cheating, that in our view is quite relevant to the
4 inquiry of the Board, and for instance, on the first of
5 these, to the extent that there are -- that the Licensee
6 has suspected cheating, if they know about cheating or
7 suspect cheating on any examination, that is highly
8 relevant to the atmosphere that they have created,
9 whether they are condoning cheating.

10 It may well be that this particular discovery
11 request could also go under Issue Five, which refers to
12 the extent of Licensee management among other things,
13 encouragement of or negligent failure to present
14 cheating.

15 It may be that it fits better there than it
16 does under Issue One, but the basic point is that we are
17 not attempting to reach back to the actual
18 examinations. We are not attempting to create new
19 evidence about the extent of cheating on all of these
20 tests which Licensee has indicated may be on the order
21 of 12,000 examinations.

22 We just want to know what they already knew
23 about cheating.

24 JUDGE MILHOLLIN: So the word, records, in your
25 request would refer to instances in which existing

1 documentation occurs -- in which there is existing
2 documentation.

3 MR. CLEWITT: Yes.

4 JUDGE MILHOLLIN: So you are saying you are not
5 asking the Licensee to go back through all the exams and
6 re-examine them and see if there is any change so that
7 the person involved could certify that there was no
8 cheating and therefore no record of it?

9 MR. CLEWITT: That is correct.

10 JUDGE MILHOLLIN: Is that your position?

11 MR. CLEWITT: Yes.

12 JUDGE MILHOLLIN: Broadly read, the word,
13 record, I suppose could include the existence of
14 examinations which were similar enough so that someone
15 holding them could say that cheating might have
16 occurred. Is that correct?

17 MR. CLEWITT: I imagine that that reading might
18 be possible. We did not intend to imply that, and we
19 would like to clarify the record if that
20 misunderstanding exists.

21 JUDGE MILHOLLIN: So you are interested only in
22 personnel records or other records which might indicate
23 that cheating occurred, was discovered by the Licensee,
24 and has been documented in some way. Is that right?

25 MR. CLEWITT: Yes.

1 JUDGE MILHOLLIN: And you would be interested
2 in having any records concerning operators. Is that
3 right, or is it better than that?

4 MR. CLEWITT: Well --

5 JUDGE MILHOLLIN: Operators or operator
6 candidates?

7 MR. CLEWITT: Operator candidates, yes.

8 JUDGE MILHOLLIN: Mr. Trowbridge, would you
9 like to explain why it is that that is inappropriate?

10 MR. TROWBRIDGE: Well, one, I would like to
11 observe that I did not hear anything that Mr. Crewitt
12 did not argue yesterday before the Board. I would also
13 remind the special master that this is an example of
14 what I am talking about. What we are talking about as a
15 practical matter is that someone in a responsible
16 position at Metropolitan Edison is going to have to sign
17 an affidavit which says in effect, "I have done a
18 sufficient amount of checking of the records and people
19 to talk to the possibility or to certify that we have no
20 record of suspected cheating or actual cheating on any
21 examination of any type given to a TMI-1 or 2 operator,"
22 and I think that is an unreasonable burden in light of
23 the quantity of material that is available for
24 inspection, and we have to go through ourselves on the
25 qualification and mock examinations that are at issue on

1 this point.

2 JUDGE MILHOLLIN: Your proposed change would
3 limit the scope of that language to qualification or
4 mock examination.

5 MR. TROWBRIDGE: Right.

6 JUDGE MILHOLLIN: First of all, there are
7 several limitations which you propose, but qualification
8 or mock examination is the first limitation.

9 MR. TROWBRIDGE: Which includes -- which is
10 shortened for including the name, Kelly, ATTS, Kelly
11 makeup, all of those. All of those are either
12 qualification or mock examinations.

13 JUDGE MILHOLLIN: So you think it would be too
14 burdensome for your personnel to look at records of
15 suspected cheating because such records are not kept in
16 all of one place?

17 MR. TROWBRIDGE: I never heard of a cheating
18 file in the company. I do not know what the search --

19 JUDGE MILHOLLIN: Well, if you think that this
20 is too broad, I will have to admit that I think that I
21 am inclined to not agree with you, so I would encourage
22 you to make some kind of a qualifying suggestion. If
23 you think the time spent which is covered is too broad,
24 it would be I think perhaps good if you would submit
25 just a cutoff date.

1 My inclination is to think that if you have
2 records which can document instances of cheating that
3 is a reasonable request.

4 MR. TROWBRIDGE: If we had such a document,
5 which I do not know of other than the cheating incidents
6 that have already surfaced in connection with this
7 proceeding -- I am not trying to hide a document that I
8 know exists or that I think anybody else knows it. It
9 is just I am talking about a responsible certification
10 or affidavit under oath to this Board --

11 JUDGE MILHOLLIN: I realize that.

12 MR. TROWBRIDGE: That a sufficient search has
13 been done to uncover such records, and how one would go
14 about a search short of talking to a lot of people,
15 examining files for a needle in a haystack. You do not
16 --

17 JUDGE MILHOLLIN: Again, we are talking about
18 records which already contain documented instances in
19 which cheating is either suspected or has been actually
20 observed.

21 MR. TROWBRIDGE: You took --

22 JUDGE MILHOLLIN: I am inclined not to agree
23 with you.

24 MR. TROWBRIDGE: You suppose these documents
25 are all on a shelf and we can pick them off, but that is

1 not what is involved here. If all I have to do is go to
2 Mr. Arnold and say, "Mr. Arnold, do you know of any
3 records in this company which reflect cheating or
4 suspected cheating," and he says no, that is the end of
5 it, fine. That is not what normally an answer to a
6 discovery request entails.

7 JUDGE MILHOLLIN: Let me ask Mr. Crewitt if
8 that is what he intends by this request.

9 MR. CLEWITT: Well --

10 JUDGE MILHOLLIN: If you receive a
11 certification that no such records exist, that is a
12 response, isn't it?

13 MR. CLEWITT: Well, yes, to the extent no such
14 records exist and we are not -- we do not intend to
15 engage in Watergate burglary of the offices of the
16 Licensee to determine if records exist. If they certify
17 that none exist, that will have to be as far as it goes.

18 I would also like to observe, however, that to
19 the extent in this issue were instead limited in the
20 fashion that the Licensee requires, it would also be
21 necessary to examine files to the extent that all such
22 records would not be kept in the same place. It might
23 be still necessary to examine a number of individual
24 files if they, for instance, would have to check
25 personnel files or something. I do not know exactly how

1 they would do it.

2 JUDGE MILHOLLIN: If we -- as I said before, if
3 we limit the word, records, to mean instances which have
4 already been documented of cheating or suspected
5 cheating, then I will rule that your request will be
6 reasonable, and the objection is not allowed.

7 MR. CLEWITT: Thank you.

8 MR. TROWBRIDGE: I did not hear your -- I did
9 not understand what you are proposing. I hope it is a
10 proposed ruling.

11 JUDGE MILHOLLIN: I think it is going to be a
12 ruling. The ruling is that if a record is limited, as I
13 have stated, by records in this request, we mean only
14 instances in which documentation now exists of cheating
15 or suspected cheating in your records, then I think the
16 request is reasonable because I do not interpret the
17 request to require you to review files to determine
18 whether cheating occurred.

19 MR. TROWBRIDGE: No, I understand that. To
20 review files to determine whether such a record exists.

21 JUDGE MILHOLLIN: Yes, I am assuming that
22 request means that you must furnish records which
23 document cheating or suspected cheating which aren't in
24 your possession.

25 MR. TROWBRIDGE: Mr. Chairman, I have lost

1 completely the connection to what I understand the Board
2 to say yesterday about the threshold test for discovery,
3 the threshold requirement for discovery. But I think I
4 asked the question or essentially asked the question, if
5 all that was involved -- if I went to Mr. Arnold and
6 said, "Do you know of any such records?" -- your
7 question to Mr. Crewitt was, "Well, if the Licensee says
8 there are none, does that answer your interrogatory?"
9 That is not an answer for me. That is giving me no
10 notion.

11 I assumed that if we answered the interrogatory
12 no, that is what Mr. Crewitt wants. No. But it is not
13 as simple as that.

14 JUDGE MILHOLLIN: I am afraid the ruling is
15 that the request is proper, as I have indicated, that
16 the words, records, shall be construed. So I think now
17 it is time to go on to the next one, which is Issue
18 Three. Is that right? Is that the next one which is
19 contested?

20 MR. CLEWITT: I believe that the next one that
21 is contested would be under Issue Five, question number
22 two.

23 MR. TROWBRIDGE: Before we go on, Mr. Chairman,
24 I have to decide at this point whether I am going to ask
25 the Board to reconsider and go to the Licensing Board or

1 not. I therefore would like the record to show whether
2 or not you have made this ruling without a requirement
3 for any threshold showing of cheating.

4 JUDGE MILHOLLIN: I will explain my ruling one
5 more time.

6 MR. TROWBRIDGE: I know what the ruling was.

7 JUDGE MILHOLLIN: And I will give you a small
8 amount of additional information about it, and that is
9 that I think that the request number one under Issue One
10 falls within the issue of management integrity because
11 the request is limited to existing records, and it does
12 not require a general search of examination files.

13 If it required a general search of examination
14 files, then I would be disposed to require the threshold
15 showing. Since it is not and since it is only directed
16 at you, records assume that there has already been a
17 search of files and some conclusion that has already been
18 drawn. Then I think it falls squarely within management
19 integrity and is proper.

20 MR. TROWBRIDGE: Thank you for the additional
21 explanation. I will reserve for a moment the question
22 of whether -- I am not exactly sure what the Board --

23 JUDGE MILHOLLIN: We assume that anyone has
24 rights to which --

25 MR. TROWBRIDGE: The Board attached special

1 conditions to any interrogatories, one of which was you
2 have to try out again on the special master before you
3 can do us.

4 JUDGE MILHOLLIN: Very well. If you decide
5 that you wish to explore that sometime, I am sure you
6 will. So we are ready for number two under issue five.
7 Is that right? Is that correct? I am reading from some
8 rather rough documents, so if I misinterpret something
9 that you have written in, I assume you will correct me.

10 MR. CLEWITT: I believe on our copy which we
11 gave to you, and perhaps also on the copy which the
12 others gave to you, each area of disagreement is clearly
13 noted. I believe that on our copy, in each instance it
14 is denoted by the words, "Objection by Licensee."

15 JUDGE MILHOLLIN: Yes, I see that, and the next
16 one I come to is Item Two under Issue Five.

17 MR. CLEWITT: Yes.

18 JUDGE MILHOLLIN. So perhaps we can begin with
19 the Licensee and have the Licensee state the ground for
20 the objection.

21 MR. TROWBRIDGE: Mr. Chairman, this Item Two
22 under Issue Five, I am reminding the Board first of all
23 that Item Five under Issue Five represents an area where
24 we are in agreement and where there may be some retest
25 on Kelly and Category T which were done in the form of

1 weekly tests during the weekly training program.

2 To that extent we are prepared to talk about
3 weekly tests, to that extent only. Now, what this calls
4 for are testing arrangements. Testing arrangements are
5 more defined in Issue One than under Issue Five. Item
6 One, Issue Five, room size, placing of chairs, lists of
7 candidates in each room, position of proctors, time
8 proctor present during tests, whether examinees were
9 allowed to leave the room at will, more than one at a
10 time. This is included in the term, testing
11 arrangements, without any threshold showing.

12 The Aamodt's now wish to require that Licensee
13 develop the information to the extent it is available to
14 supply information on testing arrangements for weekly
15 training quizzes not included in the mock or
16 qualification exams which are spelled out in Issue One.
17 That seems to me a totally unreasonable arrangement,
18 unreasonable request, burdensome, out of all proportion
19 to it, even if there were not a threshold showing.

20 JUDGE MILHOLLIN: Can you explain the burdens
21 to which you refer more completely?

22 MR. TROWBRIDGE: Going through our records to
23 determine what, if anything, do we know about the room
24 in which each weekly quiz was taking, the size of the
25 room, what we know about whether chairs were placed, or

1 whether we know about the number of candidates who sat
2 in the room, who remembers where the proctors were, who
3 remembers where -- how long they were present; who
4 remembers whether examinees were allowed to leave the
5 room and more than one at a time, spanning a period
6 going back to 1973 for two reactors?

7 JUDGE MILHOLLIN: The Item Two mentions the
8 accelerated and requalification training. How many
9 weekly examinations would you estimate would be included
10 in this request for accelerated requalification training?

11 MR. TROWBRIDGE: Let me confer a moment to see
12 if I can get a better estimate than I personally can
13 give, but do not forget what we are talking about here
14 is people who did not pass with the requisite grade, 80
15 percent in each section. A qualification test would
16 then go through either a requalification program of
17 training, or if they do not do well enough on that, they
18 are put through an accelerated training program, and I
19 am going to try to get some notion as to how many.

20 JUDGE MILHOLLIN: Very well.

21 (Counsel for the Licensee conferring.)

22 MR. TROWBRIDGE: Mr. Chairman, let me explain
23 that the accelerated and requalification training, I
24 described some of it for the fellow who did not pass the
25 qualification. I should have included in addition the

1 people looking forward to the next test who may very
2 well would have to go through the training and weekly
3 quizzes.

4 The essential answer is there is a quiz every
5 week for one or another shift. We are talking about as
6 many weeks as there are in a year or whatever period of
7 time this goes back.

8 JUDGE MILHOLLIN: Mr. Clewitt?

9 MR. CLEWITT: The essence of our inquiry here
10 is to determine the extent to which the way these weekly
11 tests were run, the extent to which that bears upon the
12 basic issue of management integrity revolving around the
13 question of cheating. I would imagine as to a great
14 number of aspects to these answers that bear would be --
15 or at least there should be some sort of general company
16 policy if, for example, proctors were not required at
17 all. That would be general policy. If proctors were
18 required to be there all the time, that would be general
19 policy.

20 It may be also that as to a great proportion of
21 this data, that they simply do not know and they could
22 certainly say that. But as I understand it from the
23 record, the OARP accelerated training was judged by the
24 Licensee to be adequate on the basis of these weekly
25 tests, and since these were preparation for the

1 licensing exams themselves, they would certainly bear on
2 the question of how to approach an examination.

3 And if these weekly examinations were set up in
4 such a fashion that they encouraged or condoned
5 cheating, that we believe is relevant and again, we are
6 not asking them to go back to the raw materials and to
7 find out what questions were asked and what the scores
8 were and everything like that. We are trying to get
9 some handle on how this was done and whether the company
10 met its minimum standard of integrity in running these.

11 Now, as I understand it from the record,
12 Collins at the NRC showed some concern about these
13 weekly examinations and the way the testing was done.

14 JUDGE MILHOLLIN: Excuse me, Mr. Clewitt. The
15 Reporter has asked me to ask you, the parties, to try to
16 reduce the background noise as much as possible because
17 it is hard for the Reporter to hear.

18 Go ahead, Mr. Clewitt.

19 MR. CLEWITT: In summary, our inquiry is aimed
20 at determining whether the company created a climate in
21 these tests that encouraged or condoned cheating, and
22 especially to the extent the testing program was well
23 run. We do not believe that this would be excessively
24 good in some of these records, and if they do not exist,
25 they can say they do not exist.

1 MR. TROWBRIDGE: Judge Milhollin, may I make
2 two observations? One, under Item Five, we are going to
3 get a sampling of weekly quizzes. More than that, I
4 think I explained to the Board -- I think it was
5 yesterday -- if not, I certainly have explained it since
6 in informal sessions with the Aamodt's that we are
7 talking about a very mixed -- a great mixture of types
8 of quizzes.

9 I explained that much of the training. A
10 program may have been designed to teach -- to ascertain
11 whether teaching was getting across, and that it could
12 include in some cases open book exercises. It could
13 include in other cases take-home exams, open book or
14 non-open book. It could include written quizzes.

15 We are talking about a large assortment of
16 tests and quizzes according to the purpose which they
17 were intended to serve at the time.

18 JUDGE MILHOLLIN: My disposition on this --
19 shall I say, the special master's disposition on this is
20 to agree with the Licensee that this is very broadly
21 drawn. I am afraid it is not going to be possible to
22 interpret it as narrowly as was the case at the previous
23 matter, contested matter, so I am going to hold it as a
24 threshold showing to a particular weekly exam would be
25 identifiable about which you may have suspicions or

1 about which you may want further information or absent a
2 more narrowly drawn request concerning company policies,
3 that I feel this is simply too burdensome to justify the
4 slight relevance of it.

5 So I agree with the Licensee that this should
6 be excluded as it is now drawn.

7 MR. CLEWITT: We infer from your comments that
8 the opportunity would be open at some later date such as
9 the sixteenth, to pose a more limited inquiry in this
10 area, and if it was sufficiently limited, that we might
11 at that point be able to reach these matters.

12 JUDGE MILHOLLIN: That interpretation of my
13 remarks is probably not accurate. I would recommend to
14 you that if you hope to pursue this, the more profitable
15 avenue would be to consult with the Licensee in greater
16 detail to see whether you could work out a mutually more
17 acceptable language, language which would be mutually
18 acceptable, but I do not promise you that if you come up
19 with something new on the sixteenth, that it would
20 survive an objection of some kind.

21 MR. CLEWITT: Thank you for that
22 clarification. Could we consult just for one minute,
23 please?

24 (Counsel for the Aamodt's conferring.)

25 We will meet with the Licensee after the ruling

1 on these others if they agree to see whether there is
2 some accommodation we can reach. Our aim with this
3 question is more toward the general policy on perhaps --
4 I might in fact propose it now. There may not be any
5 agreement -- I mean, any disagreement now to an inquiry
6 as to whether the general policies and procedures were
7 for these weekly examinations.

8 That would seem to be significantly less
9 burdensome.

10 (Pause.)

11 I might note in this respect there is some
12 cause for concern about the weekly tests since an NRC
13 employee by the name of Collins apparently did in a
14 letter indicate that there was concern about the conduct
15 of these weekly exams.

16 So there would seem to be some basis for
17 inquiring at least into the general policies that the
18 Licensee had.

19 MR. TROWBRIDGE: Could you identify where it is
20 that this letter is, as part of the record in this
21 proceeding, whether it is evidence in by anybody?

22 (Counsel for the Aamodt's conferring.)

23 JUDGE MILHOLLIN: Rather than going into the
24 existence or the availability of this letter, perhaps
25 you could answer first the question of whether the

1 proposition is to you acceptable.

2 MR. TROWBRIDGE: We would like to get home to
3 Washington at some point this evening. We have never
4 refused to sit down with intervenors to discuss this or
5 any other question.

6 JUDGE MILHOLLIN: So your response would be it
7 is too sudden for you to decide and perhaps you would
8 want time after the hearing to discuss it?

9 MR. TROWBRIDGE: I am sorry. I did not realize
10 there was any other proposition on the table.

11 JUDGE MILHOLLIN: The proposition is that this
12 Item Two under Issue Five be changed so as to refer only
13 to your general policies and procedures for weekly
14 examinations.

15 MR. TROWBRIDGE: Let's see it in words in a
16 session after this.

17 JUDGE MILHOLLIN: Very well. We then come to
18 Issue Nine. Is that correct?

19 MR. TROWBRIDGE: Correct.

20 MR. CLEWITT: Yes.

21 JUDGE MILHOLLIN: Mr. Trowbridge?

22 MR. TROWBRIDGE: Mr. Chairman, I think -- let
23 me ask you a question first. I am not quite certain as
24 to what the Mamodt version that you have of this reads
25 what changes, if any, were made in the original

1 typewritten copy of this.

2 JUDGE MILHOLLIN: On the Aamodt version which I
3 have before me, the word, plan, is deleted in the first
4 line.

5 MR. TROWBRIDGE: Right.

6 JUDGE MILHOLLIN: In its place is substituted
7 the following quote, "Present policies, plans and
8 procedures."

9 MR. TROWBRIDGE: Right.

10 JUDGE MILHOLLIN: Then in the second line of
11 the Aamodt's version, the word, "plans" is deleted.

12 MR. TROWBRIDGE: Right.

13 JUDGE MILHOLLIN: Those are the only changes in
14 the Aamodt's version.

15 MR. TROWBRIDGE: Right. I am sorry. I thought
16 there might have been one other change that I was
17 unaware of.

18 Mr. Chairman, I think our problem here is
19 primarily in the relevance -- well, let's talk about
20 first of all the breadth of the discovery request. It
21 refers without limitation to all Licensee administered
22 tests.

23 I explained yesterday that in the last two and
24 a half years, this would come to about 20,000 written
25 tests of a wide variety, varying very widely in their

1 purpose and character.

2 JUDGE MILHOLLIN: Mr. Trowbridge, before you
3 continue, perhaps it would be a good time to have a
4 break.

5 MR. TROWBRIDGE: Very good.

6 JUDGE MILHOLLIN: So shall we return at 3:15?

7 (A brief recess was taken.)

8 JUDGE MILHOLLIN: The hearing will come to
9 order. On issue nine, before we go forward with the
10 discussion, perhaps I could ask a question. The words,
11 "Since the TMI-2 accident" up here at the end of the
12 typed portion, what does the word, since, modify?

13 (Pause.)

14 MR. TROWBRIDGE: This may not be a gem in
15 draftsmanship, but it was intended to modify past
16 practice. It starts out, what are the present policies,
17 plans and procedures, and in general, how have they
18 changed since the accident?

19 JUDGE MILHOLLIN. I see. So the request is to
20 compare your present policies, plans and procedures with
21 the policies, plans and procedures --

22 MR. TROWBRIDGE: Which were in effect at the
23 time of the accident which may have --

24 JUDGE MILHOLLIN: And since --

25 MR. TROWBRIDGE: And since --

1 JUDGE MILHOLLIN: Insofar as the present ones
2 are modifications of any of those others?

3 MR. TROWBRIDGE: Yes. That is what we -- that
4 is what our addition means. That is our addition.

5 JUDGE MILHOLLIN: Is that your understanding of
6 the Licensee's addition, Mr. Clewitt?

7 MR. CLEWITT: Yes, that would be our
8 understanding of the word.

9 JUDGE MILHOLLIN: And your disagreement then,
10 Mr. Trowbridge, is based upon --

11 MR. TROWBRIDGE: I was in the midst of stating
12 my disagreement.

13 JUDGE MILHOLLIN: Let me make sure I understand
14 it before you make an argument in favor of it.

15 MR. TROWBRIDGE: I was only halfway through
16 with my disagreement when you called for a recess.

17 JUDGE MILHOLLIN: I am aware of that. I assume
18 that you want to limit the tests which are referred to
19 to qualification and mock examinations of the TMI-1
20 licensed operators and candidates. Is that right?

21 MR. TROWBRIDGE: Right.

22 JUDGE MILHOLLIN: My copy is not very easy to
23 read, so before we have a discussion, it is usually good
24 that people know what is being discussed.

25 Very well. Go ahead.

1 MR. TROWBRIDGE: The observation I first made
2 was that we were talking here about all Licensee tests,
3 and I had reminded the Board that as we indicated
4 yesterday, there have been two and a half years after
5 the accident, we estimate some 20,000 tests of one kind
6 or another.

7 When I jumped to the possibility that these
8 tests could be narrowed to operator tests, to tests
9 peculiar to operators, that is obviously a much lesser
10 burden, but it still puts us in the position of
11 describing what I consider in large part irrelevant.

12 We are back with the weekly training quizzes
13 which are of a a considerable variety, and would differ
14 from one test to another.

15 Excuse me. I do not think Mr. Blake understood
16 me. So you probably did not -- we are assuming this
17 test is peculiarly limited to operators, not radiation
18 worker tests for example.

19 JUDGE MILHOLLIN: So you would like to limit
20 this in two ways, first in respect to the examination
21 which are referred to. You would like to limit those to
22 operator examinations and second, you would like to
23 limit it in time.

24 MR. TROWBRIDGE: To examinations peculiar to
25 operators.

1 JUDGE MILHOLLIN: All right. And you would
2 like to limit it in time to the period beginning with
3 the accident so that you would not be required to
4 describe your policies and procedures for periods before
5 the accident. Is that right?

6 MR. TROWBRIDGE: Those are two of the
7 limitations, as written. We would also limit the weekly
8 quizzes.

9 JUDGE MILHOLLIN: Mr. Clewitt?

10 MR. CLEWITT: Well, once again we are
11 attempting to address the issue.

12 MR. TROWBRIDGE: Excuse me, Mr. Chairman. I am
13 reminded that there is another limitation which is
14 TMI-1, which is in our language.

15 JUDGE MILHOLLIN: Yes.

16 MR. CLEWITT: Once again, we are attempting to
17 address the question of management integrity and the
18 extent to which management of the Licensee has
19 encouraged or condoned cheating, and we believe that
20 their practices and their policies on these matters as
21 it relates to any test are relevant.

22 For instance, in the radiation worker tests
23 that were referred to, if the general policy were to
24 provide a crib sheet for the answer setup test -- I do
25 not know if that is the case. If I were forced, I would

1 imagine that it were not, but if a crib sheet were
2 provided for that test, that would be highly relevant.
3 It would show the incoming workers that the management
4 took a rather lax attitude towards the question of
5 honesty in taking tests, and that would bear on the
6 degree to which they encourage and condone cheating on
7 all of the tests.

8 Now, it strikes me in reviewing the current
9 phrasing of this request, that it may be that the word,
10 procedures, in particular suggests that what we are
11 after is a detailed blow-by-blow account of what time
12 each and every test that has ever been given started,
13 and a detailed, blow-by-blow account of everything that
14 transpired in that test.

15 That is not what we are after. If it would
16 clarify this, we would strike "plans and procedures" and
17 just leave it as being "policies". What we are after is
18 the general policy.

19 I would be surprised if the Licensee objected
20 to disclosing what its general policies were, unless
21 there were some elephant under the bedsheets there,
22 because it would be pretty clear that if their policy
23 were one of -- that involved assurances of valid
24 testing, I would imagine that there would be no
25 objection to it.

1 In terms of a burden of this, I do not think
2 there would be that great a burden. There cannot be
3 that many different types of tests, and even if they had
4 a different policy, a different set of protocols that
5 they would follow for each type of test, it still might
6 only aggregate five sets of policies, maybe a dozen.

7 I do not know how many different types of tests
8 there are, but we are not talking about anything very
9 burdensome, and I would imagine that the Licensee would
10 have policies as to these tests, and that they would be
11 willing to provide them to us.

12 MR. TROWBRIDGE: Chairman Mulhollin, may I have
13 a few moments to locate in my briefcase the listing
14 which I used in part yesterday to explain some of the
15 kinds of tests the company gives?

16 JUDGE MILHOLLIN: While you are doing that, I
17 plan to ask Mr. Clewitt a question or two. The Licensee
18 proposes to limit this to first of all, TMI-1 operator
19 candidates. It seems to me that that is a reasonable
20 limitation, and it seems to me that if we are going into
21 the question of management integrity, that in theory at
22 least everything that management has done recently could
23 reflect on management integrity.

24 So that by its nature is a rather unbounded
25 thing for purposes of discovery.

1 MR. CLEWITT: Well, by way of response, the
2 preamble of the listing of issues by the Board refers to
3 the possible nexus to the question of cheating, or to
4 the cheating incident in the NRC examinations, and so it
5 is not merely a question of everything that management
6 does being involved, but it would seem to be a question
7 of what management does around the question of testing,
8 and whether it condones cheating on any sort of test or
9 encourages or requires cheating on any tests, regardless
10 of the nature of the tests.

11 This is a much more limited inquiry than one
12 which would require an examination of everything that
13 management has ever done, although the issue of
14 management integrity without that nexus to the cheating
15 incident could well be expanded that broadly.

16 So our position would be that this is a limited
17 request that is quite, quite closely tied to the key
18 issues which are being examined which include the
19 relationship to the cheating incident of management
20 integrity.

21 So we feel this is a valid request for that
22 reason..

23 JUDGE MILHOLLIN: The wording is not drawn as
24 narrowly as you have just indicated that it might be.
25 It does not limit itself to cheating or procedures for

1 preventing cheating. It includes the policies, plans
2 and procedures for all examinations, which is a very
3 broad subject.

4 MR. CLEWITT: Well, the -- I do not believe --
5 I doubt that there would be any specific general policy
6 that had been articulated by the Licensee that would say
7 "Thou shalt go and encourage cheating," and to the
8 extent -- to the extent that the Licensee is encouraging
9 cheating, it would be -- the evidences of this would be
10 in the various details of how the tests were
11 administered.

12 If there were no proctors, if people were
13 always allowed to sit close enough to see each other's
14 answers, things of that nature -- and it is those
15 indications of what the management's attitude towards
16 cheating might be that we are interested in.

17 JUDGE MILHOLLIN: My inclination is to accept
18 the Licensee's limitations as reasonable because it does
19 bound the inquiry in such a way to focus upon TMI-1
20 licensed operators and candidates. It seems to me that
21 it is a reasonable limitation, and with respect to past
22 practice, if I have to choose between an unbounded
23 reference to past practice and one that is bounded by
24 the occurrence of the accident, I think that one bounded
25 by the occurrence of the accident is the more reasonable.

1 MR. CLEWITT: May I address that question? One
2 alternative possibility to that which has been mutually
3 accepted in more than one instance on the request the
4 the MIA has posed to the Licensee is to limit the
5 inquiry to events since 1977 or since the beginning of
6 1977, and we would offer this as an alternative way to
7 limiting the scope of this.

8 We do think it important to examine at least a
9 limited period of time before the accident, especially
10 to the extent that the actions of the Licensee before
11 the -- in other words, what I am trying to say is if the
12 actions of the Licensee before the accident may have
13 contributed to the accident and were immediately changed
14 afterwards, that would seem to be highly relevant
15 material.

16 JUDGE MILHOLLIN: Relevant to what?

17 MR. CLEWITT: Relevant to the question, the
18 degree to which management has encouraged the cheating
19 and the effect cheating may have on a wide variety of
20 issues, including public safety.

21 JUDGE MILHOLLIN: I am afraid I cannot agree
22 with your view of relevancy, although perhaps the
23 Licensee would accept the 1977 date. As I say, I think
24 I am confronted with ruling on the Licensee's objection,
25 or accepting the request as it is written.

1 I am going to be forced to conclude that these
2 should be bounded in time if the Licensee will accept
3 1977 as the time. So the ruling would be that the
4 Licensee's language is adopted, unless the Licensee --
5 well, if the Licensee's language is going to be adopted
6 and the proposals that the language in the last line be
7 changed from "Since the TMI-2 accident" to "Since 1977".

8 MR. TROWBRIDGE: That will be the subject of
9 further discussion along with the other items we are
10 going to talk about after this.

11 JUDGE MILHOLLIN: Very well. Now, with respect
12 to Issue 11, I understand that some explanation will be
13 necessary.

14 MR. TROWBRIDGE: Yes. I thought we might
15 proceed with General 1 and 3, because they are close to
16 what we have been talking about. Issue 11 involves
17 quite a different animal.

18 JUDGE MILHOLLIN: Just a moment. Let me study
19 that. You are now speaking of One and Three under
20 "General" on page three?

21 MR. TROWBRIDGE: Right.

22 JUDGE MILHOLLIN: Go ahead.

23 MR. TROWBRIDGE: I think the first question I
24 would have is: In view of the Board's ruling on Issue
25 One, are the Aamodt's still interest in Issue Item One

1 under "General"?

2 MR. CLEWITT: We would not oppose a motion to
3 delete this item altogether. It appears to us to be
4 essentially identical to the Issue Number One as has
5 been ruled upon.

6 JUDGE MILHOLLIN: That disposes of number one,
7 doesn't it?

8 (Pause.)

9 JUDGE MILHOLLIN: Mr. Trowbridge, are you ready
10 to discuss number three under "General", which according
11 to my documents is the last item?

12 MR. TROWBRIDGE: Correct. I guess I have -- I
13 would suggest again to the special master it is a
14 somewhat similar question in view of the Board's rulings
15 on Issue Nine and One --

16 JUDGE MILHOLLIN: When you speak of the Board --

17 MR. TROWBRIDGE: Excuse me. The special
18 master's rulings on Issue Nine, Item One.

19 JUDGE MILHOLLIN: Yes.

20 MR. TROWBRIDGE: Do the Aamodt's wish still to
21 push for general item three and to reargue the question
22 -- I think the special master has just decided.

23 JUDGE MILHOLLIN: What is the difference
24 between Item Three under "General" and Item One under
25 Issue Nine?

1 MR. TROWBRIDGE: Well, the literal difference
2 -- one of them asks what are your policies. The other
3 one asks, "Give us any documents which define your
4 policies."

5 I think in the nature of the thing, we would
6 have answered Issue Nine, Item One by referring -- by
7 providing documents if there are policy documents.

8 JUDGE MILHOLLIN: Mr. Clewitt?

9 MR. CREWITT: I think these do appear to be
10 quite parallel. I think the reason for the inclusion of
11 both of these may lie more in history than logic, given
12 the time and pressure under which we were functioning
13 when we drafted these. If the Licensee is prepared to
14 respond to Issue Nine, that would seem also to fulfill
15 Three and I assume that the ruling of the special master
16 would not differ on this from the last one.

17 JUDGE MILHOLLIN: That is correct. My ruling
18 would be the same. It is a question of preference
19 whether we leave Number Three in or not since it does
20 contain the additional word, documents.

21 MR. CLEWITT: Well --

22 JUDGE MILHOLLIN: It is up to you whether to
23 withdraw it or to leave it in.

24 MR. CLEWITT: Given that option, I suppose we
25 would leave it in just to make sure that we have got

1 everything that there was to get in this matter. So
2 that would mean that the phrasing offered by the
3 Licensee would prevail on this issue.

4 JUDGE MILHOLLIN: Very well. Are there any
5 other items which we should discuss in connection with
6 these documents referring to the disputed areas of
7 discovery?

8 MR. TROWBRIDGE: Issue 11, which I think we are
9 ready to come to now.

10 JUDGE MILHOLLIN: Go ahead.

11 MR. TROWBRIDGE: Let me explain it. As we
12 understand it, the records which are requested under
13 Item One for SRO's and under Item Two for RO's are for
14 the purpose of pursuing an agreed upon issue, the impact
15 of the cheating incident and consequent loss of two
16 SRO's and Licensees -- on the adequacy of staffing.

17 We do not regard the request as irrelevant,
18 immaterial or otherwise improper, but as put to us we
19 had a distinct problem. Given candidate by candidate,
20 the detail of information that we understand this would
21 call for under past history, it would greatly facilitate
22 the identification of the individuals.

23 We have, I think, arrived at an understanding
24 with the Aamodt's which we both agree should be
25 explained to the special master. We would from this

1 document delete the item at issue, so any response to
2 the question would not become in the nature of things
3 distributed and be made a public document.

4 We would provide to the Aamodt's on an informal
5 basis using numbers one, two, three or four, the
6 employment record history, if you like, for each RO, for
7 each SRO. In that listing we would put an asterisk or
8 otherwise identify for the Aamodt's the two numbers that
9 represented the terminated employees after the cheating
10 incident.

11 We would ask for frequent confirmation from the
12 Aamodt's and the Aamodt's counsel, Mr. Clewitt, and
13 would accept such a written commitment that this
14 information would not be disseminated to others than
15 himself and Mr. and Mrs. Aamodt without our approval.

16 We would further ask that if the information --
17 they decide this information needs to be used in this
18 hearing and they wish to present it, that we have then
19 an opportunity to consider with them and with the
20 special master what, if any, protective measures may be
21 necessary.

22 I think that states the understanding, the
23 accommodation we reached.

24 JUDGE MILHOLLIN: Very well. Perhaps it would
25 be a good thing to go back through these issues just to

1 make sure that my understanding and your understanding
2 is the same. With respect to issue one, my
3 understanding is that I ruled the Licensee's suggested
4 limitations are protected, and that that request reads
5 as it is typed, except for the words, "Licensee training
6 or requalification."

7 Is that correct?

8 MR. CLEWITT: No.

9 JUDGE MILHOLLIN: It reads as it is typed.
10 Correct?

11 MR. CLEWITT: Right.

12 JUDGE MILHOLLIN: All right. Then with respect
13 to Issue Three, can you refresh my recollection?

14 MR. CLEWITT: We agreed to the modification of
15 Issue Three by the addition of the words, "On the April
16 1981 NRC examination."

17 The next item where we disagreed was under
18 Issue Five, Item Two.

19 JUDGE MILHOLLIN: My copy is not explicit. The
20 copy which I have left is not explicit as to whether
21 there was an agreement or a disagreement.

22 All right. The next issue then was Issue Five,
23 and Item Two was to be deleted. And following that we
24 have Issue Nine in which the Licensee's modifications
25 were accepted, together with the modification with

1 substituted other language for the words, "plan" in the
2 first line and deleted "plans" from the second line.

3 Is that correct?

4 MR. CLEWITT: Yes.

5 JUDGE MILHOLLIN: Then with respect to Item One
6 under "General," that was withdrawn, and the Item Three
7 under "General" was retained with the Licensee's
8 objections.

9 There was no controversy with Item Four under
10 "General", so it will appear as amended on my copy.

11 Are there other matters which any party wishes
12 to discuss at this time?

13 (No response.)

14 I have just a few things. I would like to
15 remind you that it is necessary to serve the Office of
16 Docketing and Services at the Nuclear Regulatory
17 Commission Office, as well as the other parties with
18 respect to discovery.

19 MR. TROWBRIDGE: That applies, I believe, Mr.
20 Chairman, not to document production, but to other --
21 but to interrogatories.

22 JUDGE MILHOLLIN: Yes. I made that statement
23 for Mr. Clewitt's attention. It is necessary for the
24 official record in Washington to be complete.

25 MR. CLEWITT: Thank you.

1 JUDGE MILHOLLIN: With request to the Staff's
2 request for the fourth instead of the second, it seems
3 to me that that is a reasonable extension, and it is
4 printed that you should be aware that I am on the list,
5 and for me to receive things by the Board from you, they
6 would have to be mailed on the third.

7 MS. SWARTZ: We are aware of that. We plan to
8 get it in your hands by the fourth.

9 JUDGE MILHOLLIN: Okay.

10 MR. TROWBRIDGE: May I ask will you generally
11 be in Wisconsin as opposed to -- you are not going to
12 have a setup in the licensing board office?

13 JUDGE MILHOLLIN: Not for the time being
14 anyway, so you can assume that my -- I trust the
15 services will be in medicine, and if it should be
16 necessary to reach me by phone, then you should reach me
17 at the address on the service list.

18 MR. CLEWITT: I assumed that the extension to
19 the fourth is for all parties, not just the Staff.

20 JUDGE MILHOLLIN: Yes, but I intended to ask
21 the Staff whether since they have my copy ready on the
22 third, as an accommodation they could serve other
23 parties also on the third here in Washington.

24 MS. SWARTZ: We were planning to have our
25 testimony served so it was in the hands of all the

1 parties on the fourth. It will be in the hands of all
2 parties on the fourth, your hands and the Aamodt's,
3 TMI-A and the Licensee.

4 JUDGE MILHOLLIN: Will it be possible for you
5 to serve the licensing board members in Washington on
6 the third.

7 MS. SWARTZ: Hand delivery in Washington?
8 Certainly.

9 JUDGE MILHOLLIN: That would be an
10 accommodation to me if that could be done.

11 MR. TROWBRIDGE: Where did Licensee fall out in
12 this process?

13 JUDGE MILHOLLIN: Well, if the Licensee would
14 like to have the Staff's documents by the third --

15 MR. TROWBRIDGE: No, no, we will do that
16 arranging. No, you answered Mr. Clewitt's question.
17 The fourth applies to all parties.

18 JUDGE MILHOLLIN: Yes. Then I suggested that
19 the parties who could be served by hand in Washington on
20 the third might receive service as an accommodation.

21 MR. CLEWITT: I think the point of confusion
22 may have arisen from my question. The question I
23 intended to ask was whether all parties could assume
24 that the documents they were serving on other parties
25 did not have to arrive until the fourth, or whether the

1 extention of the deadline applied only to those
2 documents served by the Staff.

3 In other words, do we have to serve all other
4 parties by the second?

5 JUDGE MILHOLLIN: One of the reasons for giving
6 the Staff extra time was the Licensee's representation
7 that the Licensee would serve on the second. So I
8 assume that Licensee-- the answer to your question is
9 the Licensee will still be held to the second.

10 MR. TROWBRIDGE: The second I believe is a
11 Monday. Delivery in hand on Monday means -- I said we
12 would deliver on the second. I'm only trying to renege
13 on that a tiny bit.

14 (Laughter.)

15 I would like to be able to mail or Federal
16 Express to you on Monday and hand deliver it to the
17 Board on that Monday. I could also hand deliver to the
18 Staff and to Mr. Clewitt in Washington.

19 JUDGE MILHOLLIN: So you can hand deli
20 everything except mine on Monday.

21 MR. TROWBRIDGE: Not for TMI-A.

22 JUDGE MILHOLLIN: Oh.

23 MR. TROWBRIDGE: Not for the Aamodt's, except
24 as we all deliver it to Mr. Clewitt. We agreed to serve
25 all except the documents in the discovery on both the

1 Aamodt's and Mr. Clewitt, and we will do the same with
2 testimony.

3 JUDGE MILHOLLIN: Very well. If you are asking
4 for --

5 MR. TROWBRIDGE: So the Washington people will
6 be hand delivered on Monday, and it will go special
7 express mail, Federal Express, to you and --

8 JUDGE MILHOLLIN: Why don't we agree on it this
9 way: That you will hand-deliver to everyone on the
10 second, except me, and you can send it by Federal
11 Express on the second, and I will have it on the third.

12 The reason for that is that I think the other
13 parties all should have it on the second. It would give
14 them more time to read it before the hearing.

15 Have I not understood your point?

16 MR. TROWBRIDGE: I have lost what potentially
17 could be a very hard-working weekend if I have to have
18 -- excuse me.

19 (Counsel for the Licensee conferring.)

20 MR. CLEWITT: Could we also plan on Federal
21 Expressing things on Monday, the second of November?
22 There is a possibility that these will be originating
23 from this area out of the Aamodt residence, so it would
24 not be possible to hand deliver to people in Washington,
25 but we also would like the option of having that

1 hard-working weekend before the service?

2 JUDGE MILHOLLIN: So it would seem then that
3 the consensus is in favor of changing the two to a three?

4 MR. CLEWITT: Yes.

5 JUDGE MILHOLLIN: For everyone except the
6 Staff, and they are changing their two to a four.

7 MR. TROWBRIDGE: Although we have no objection
8 to hand delivery on the second in Washington.

9 JUDGE MILHOLLIN: All right. The date then
10 shall be changed to the third for everyone except the
11 Staff. Written testimony shall be filed on the fourth.

12 MS. SWARTZ: Received on the fourth.

13 JUDGE MILHOLLIN: I am sorry, received on the
14 fourth.

15 The last item of business is to schedule our
16 next session, and I noticed that there seems to be a
17 strong feeling in favor of the 16th rather than the
18 ninth.

19 MR. AAMODT: That is true.

20 JUDGE MILHOLLIN: That is inconvenient for me,
21 but that will have to be too bad. We will meet then on
22 the 16th at 9:00 a.m. in this room, unless you are
23 notified otherwise.

24 The documents which were to have been delivered
25 on the eighth will be due on the 16th.

1 MR. TROWBRIDGE: The fifteenth being a Sunday.

2 JUDGE MILHOLLIN: The fifteenth --

3 MR. TROWBRIDGE: Excuse me. I am on the wrong
4 one on my calendar.

5 JUDGE MILHOLLIN: When we meet on the 16th, we
6 will come to order at 9:00 o'clock, and then preferably
7 recess for purposes of discussing documents which have
8 been delivered the previous day. That is, the parties
9 will -- I will adjourn the hearing for the purpose of
10 the parties discussing documents delivered the previous
11 day, and that according to how much discussion is
12 necessary, we will reconvene, and I will be available to
13 rule on any matters which then seem to be necessary and
14 to be ripe before ruling on the 16th.

15 MR. CLEWITT: As a point of clarification on
16 the matter of our decision as to whether or not we are
17 intending the testimony of the witness of other cheating
18 to be a minimum showing, whether it will eventually be a
19 showing to lead before the discovery -- that date, I
20 gather, although there has been some back and forth --
21 that date will be the 15th or the 16th when those
22 documents are due?

23 JUDGE MILHOLLIN: I am sorry. There is one
24 point left open. The 16th was previously the date for
25 serving interrogatories, responses to interrogatories.

1 That date will be the 15th.

2 MS. SWARTZ: The Staff wonders if the Aamodt's
3 understand our agreement with them still stands for
4 October 9?

5 MR. CLEWITT: I am not sure that was our
6 understanding. There has been a discussion of both
7 dates, and we had assumed that that would be now
8 outstanding for the 15th for you and --

9 MS. SWARTZ: The understanding I thought I
10 reiterated this morning was that you were going to --
11 the Aamodt's were going to let us know by next Friday
12 whether they intended to answer our interrogatories on
13 Issue Six as is, that if they did not, that at that time
14 we were going to give them additional interrogatories on
15 the same issue, but not asking for name and address,
16 asking for other information concerning those
17 individuals.

18 Interrogatories given to them on the ninth
19 would then be due the 26th, the end of the discovery
20 period. It is merely giving them more time to answer
21 the interrogatories. If they do not want our additional
22 interrogatories on the 16th having to be answered on the
23 26th, that is fine for us.

24 MR. CLEWITT: To the extent it is possible, we
25 would prefer to have that be on the same schedule as

1 with the Licensee, if that is all right with you.

2 MS. SWARTZ: It is giving you more time. If
3 you want less time, that is fine with us.

4 JUDGE MILHOLLIN: Well, I will assume there is
5 no argument about it between the two of you with respect
6 to whatever agreement you have previously reached.

7 Are there any other items for discussion at
8 this time?

9 (No response.)

10 Very well. We stand adjourned until October 16
11 at 9:00 a.m. at this room.

12 (Whereupon, at 4:05 p.m., the hearing was
13 adjourned, to be resumed at 9:00 a.m., October 16, 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 3, 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 M. Parker

Official Reporter (Typed)



(SIGNATURE OF REPORTER)