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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judge Gary L. Milhollin
as Special Master



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

Docket No. 50-289
(Restart)
(Reopened Proceeding)

October 8, 1981

MEMORANDUM AND ORDER FOLLOWING
A CONFERENCE AMONG THE PARTIES

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A conference among the parties to this proceeding was held on October 2 and 3, 1981, in Harrisburg, Pennsylvania. The conference was convened pursuant to a Memorandum and Order of September 14, 1981 by the Atomic Safety and Licensing Board. In its Memorandum and Order, the Board took the following actions:

- (a) it reopened the record for the purpose of receiving additional evidence on the question of the extent to which the discovery of cheating on examinations for reactor operators and senior reactor operators -- and the circumstances surrounding the cheating should affect the issues left open or considered in the Board's Partial Initial Decision of August 27, 1981;

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- (b) it appointed me as Special Master, technical interrogator and informal assistant, pursuant to 10 CFR 2.722;
- (c) it scheduled a conference of parties before the Board on October 2, 1981; and
- (d) it scheduled a conference of parties before me, the Special Master, on October 2, 1981, immediately following the conference before the Board.

At the conference before the Board, the parties discussed the question of which issues should be the subject of the reopened proceeding before the Special Master. After considering the parties' arguments, the Board established the specific language of those issues by a ruling from the bench. The Board then concluded the conference before it.

After the Board concluded the conference before it, the Special Master convened a conference of the parties to the reopened proceeding. These parties are the following: Licensee; the Office of Executive Legal Director, United States Nuclear Regulatory Commission (the Staff); Three Mile Island Alert (TMIA), represented by Ms. Louise Bradford; Mr. Norman and Mrs. Marjorie Aamodt. The Commonwealth of Pennsylvania also participated as an interested state under 10 CFR 2.715(c). Parties who appeared before the Licensing Board in the restart proceeding, but who did not participate in this conference before the Special Master, will not be parties to the reopened proceeding. Those parties will be retained on the service list for ordinary filings, but will not be furnished with discovery responses, with bulky documents, or contacted for matters requiring rapid communication. With respect to service of these ordinary filings on members of the Licensing Board, Chairman Smith will receive two copies; the other members will receive one copy.

The items of business for this conference were the following:

(a) consolidation of the parties, (b) discovery, (c) confidentiality of names of examinees, (d) a schedule for closing discovery, filing testimony, and beginning the evidentiary hearing.

(A) Consolidation

Mr. John Clewett, attorney for Mr. and Mrs. Aamodt, was selected as the person who will receive rapid communications on behalf of Mr. and Mrs. Aamodt and TMIA.

(B) Discovery

At the conference the parties exchanged requests for discovery of documents. They also exchanged other discovery requests. The conference was adjourned for several hours during the afternoon of October second for the purpose of allowing the parties to negotiate with each other on the permissible scope of their discovery and to reduce their disagreements to a minimum. During this time the parties cooperated in a diligent effort to facilitate compliance with their mutual requests. The parties also met in the evening of October second, and for two hours in the morning of October third. The parties are to be commended for their diligence and cooperation.

At the conclusion of these meetings, the parties presented a specific list of disagreements over discovery, which were disposed of by a ruling from the bench.

(C) Confidentiality of Names of Examinees

The parties presented arguments, both orally and in writing, on the question whether the identities of persons who took various examinations should be withheld from disclosure to the public or the parties.

Mr. Michael F. McBride, attorney for two individuals who may have been involved in cheating, and Mr. David E. Cole, attorney for another individual, made special appearances to argue in favor of confidentiality.

The question was taken under advisement. Pending a ruling, the parties were instructed to designate examinees by using the lettering system which was used in the restart proceeding before the Licensing Board.

(D) A Schedule for the Balance of the Proceeding

At the conference the parties were furnished with a schedule which the Special Master proposed for the balance of the hearing. After a discussion, the parties agreed with the schedule except for some minor modifications, which were then adopted. The schedule is as follows:

- By October 15
 - Receipt of documents requested Oct. 2.
 - Receipt of responses to interrogatories.
- On October 16
 - Conference among the parties beginning at 9:00 a.m. in the Honor Suite (Room 41) of the Harristown II Building at 333 Market Street, Harrisburg, Pennsylvania. The conference will continue, if necessary, on October 17.

- By October 26 - Receipt of all responses to discovery requests.
- By November 3 - Receipt of all written testimony except by the Staff,
which shall be received on November 4.
- Receipt of trial plan outlines, which shall accompany
written testimony, and will summarize the testimony of
each witness and state what that testimony will seek to
prove. Where a party seeks to prove its case-in-chief
by examining an adverse witness, a trial plan outline,
as above, is also required. These outlines shall be
served on all parties.
- November 10-14 - Hearing Tuesday through Saturday.
- November 17-21 - Hearing Tuesday through Saturday.
- Receipt of cross-examination plans.
- December 1-5 - Additional hearing days as necessary.
- Receipt of cross-examination plans.

From close of hearing:

- + 13 days - Receipt of proposed findings.
- + 20 days - Receipt of reply findings.
- + 50 days - Receipt of report by Special Master (estimated).


- (a) Why didn't the Licensee discover the cheating on the mock exams?
 - (b) Why didn't other persons who sat for the examination on which cheating occurred, and who were in a position to observe the cheating, report it? Were management-level employees in a position to observe the cheating? Did they learn of it later and fail to report it? For example, the instructor for licensed operator training is reported to have refused to answer questions by investigators concerning whether reference material was covertly brought into the examination room, or to reveal the details of rumors of cheating which he may have heard.
 - (c) What is the practice of allowing re-examinations of those who fail initially on the various examinations which the Licensee gives? What is the purpose of this practice?
 - (d) How does the Licensee administer its examinations so as to prevent cheating or other devices which defeat the purpose of the examinations?
- (2) In general, are the NRC examinations administered in such a way as to insure that operating personnel are qualified for their positions?
- (a) Proctoring. Has it been adequate in the past? Will it be adequate in the future? When were proctors present during the TMI examinations? What did they do while present and absent? What arrangements for proctoring did they make during their absence? What instructions were they given by their superiors? What instructions did they give to the examinees?

- (b) Grading. Has it been adequate in the past? Will it be adequate in the future? Who graded the TMI exams? Why wasn't the cheating detected?
- (c) Other monitoring. To what extent does NRC evaluate or monitor the Licensee's testing program? Is NRC's interest confined to its own examination? NRC was to have evaluated the "Category T" examination. What is NRC's procedure for doing so? Would NRC have detected cheating on the "Category T" examination?
- (d) Integrity of the examination. What has been NRC's procedure for preventing examinees or their instructors from discovering what questions will be asked on examinations? Are the same questions repeated from one examination to the next? Do responses to the questions require fresh analysis by the examinee, or can the responses be memorized? To what extent are candidates "coached"? Mock and actual examinations are to be compared. The bank of questions maintained by NRC is to be furnished, together with the examinations mentioned in issue (1) above.
- (e) Oral tests. How will the oral test be given and graded?
- (f) Attitude of the NRC Staff. The Kemeny Commission found that operator training was greatly deficient: that the depth of understanding was far too shallow. It also found that the branch of NRC that monitored operator training was "weak and understaffed" and that NRC limited itself to "giving routine exams". It concluded that no quantity of

"fixes" would cure the basic problem, which it found to be the attitude of the people who were involved. Because the cheating incident occurred after the Staff had responded to the Kemeny Commission and promised to improve, what does the possibility of laxity in the Staff's procedures indicate about the Staff's attitude?

At the conference the parties were also furnished a list of specific witnesses whom the Licensing Board wishes to question, and a list of additional witnesses who will be asked to appear before me. The former are Messrs. Arnold, Boger, Davis, Hukill, Kelly, Newton, and M. Ross. The latter are Mr. Husted, the persons who administered the Licensee's "mock" examination, all NRC proctors at the TMI examinations, all the SRO examinees, the persons who took the NRC and Licensee examinations in rooms where cheating occurred, the person whose work appears to have been copied from on the make-up "Category T" examination, and any other persons who appear to have cheated on this latter examination.

IT IS SO ORDERED.


Gary L. Milhollin
ADMINISTRATIVE JUDGE
By Doris M. Moran
Clerk to the Atomic Safety
and Licensing Board

Bethesda, Maryland

October 8, 1981