

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))

DOCKETED
 USNRC
 Docket No. 50-289
 (Restart)
 (Reopened) 81 001 29 P4:50

OFFICE OF SECRETARY
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RESPONSE IN OPPOSITION TO STAFF MOTION
 FOR RECONSIDERATION OR CERTIFICATION

By written motion distributed at the October 16, 1981 meeting of parties, the NRC Staff asked the Special Master to reconsider his requirement that it present evidence concerning the "Attitude of the NRC Staff," or in the alternative that he certify the matter to the Atomic Safety and Licensing Board.

In response, the Aamodts urge the Special Master to stand behind this important requirement, which is a necessary element to a proper understanding of whether the NRC examination program is adequate, and that the Special Master decline to certify this matter to the Board.

The question of the "Attitude of the NRC Staff" is directly relevant to these proceedings. For example, it bears directly on the question of the adequacy of the NRC testing program, which was raised in the Board's Issue 10 in its October 14, 1981 Memorandum and Order. If the Staff's attitude is one of indifference to cheating and indifference as to whether proper procedures are

followed in administering examinations, it would seriously compromise the validity of the examination program. This is not a frivolous issue, as is reflected, for example, in the Staff's assertion in response to Commonwealth Interrogatory 9 that "No analyses have been conducted on TMI exams since the discovery of cheating."

Even if the evidentiary requirement by the Special Master somehow constituted an expansion of the scope of the hearings, that expansion would be within the authority of the Special Master. In its October 14, 1981 Memorandum and Order the Board specifically noted that the Special Master "has the authority to add additional issues under the broad issue," and that broad issue makes specific reference to "the NRC process by which the operators would be tested and licensed."

Since the question of the attitude of the NRC Staff is a highly relevant issue within the authority of the Special Master to address, the Aamodts request that the Special Master decline to withdraw this issue from the evidentiary presentation required of the NRC Staff.

The Aamodts also urge the Special Master not to certify this matter to the Atomic Safety and Licensing Board. As the Staff notes, in order for it to support its request for certification it must show that the Special Master's ruling in declining to delete the required evidentiary presentation would either (1) threaten the Staff with immediate and serious irreparable impact which, as a practical matter, could not be alleviated by

a later appeal, or (2) affect the basic structure of the proceeding in a pervasive and unusual manner. The Staff has shown neither of these.

As to the first of these required showings, the Staff is clearly not irreparably injured. If the Staff is correct in its belief that the attitude of the NRC Staff is irrelevant to the proceedings or beyond the power of the Special Master to consider, the appeals process is perfectly adequate to vindicate that belief. The reason offered by the Staff in attempting to show immediate and serious irreparable injury is simply that staff resources would need to be expended in response to the ruling. However, if this argument were accepted, it would render almost every ruling on discovery or any other matter, such as a decision to hold a pre-hearing conference, subject to interlocutory appeal, since some action by Staff would be necessary.

Nor is the attempt to satisfy the second of these showings any more successful. The Staff asserts that requiring it to address an issue it considers improper and unnecessary would affect the basic structure of the proceeding in a "pervasive and unusual" way. However, even if the issue in question were brand new it clearly would not have any "pervasive" effect on other issues or on the proceeding as a whole, nor is the specification of issues by the judge in an administrative proceeding at all "unusual."

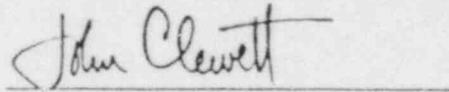
In short, the Staff has failed to show any reason why it should not address the important issue of "Attitude of the NRC Staff," and has failed to show any reason why the matter should

be certified to the Atomic Safety and Licensing Board.

CONCLUSION

For the reasons stated above, the Aamodts request the Special Master to decline to reconsider his ruling and to decline to certify the matter to the Atomic Safety and Licensing Board.

Respectfully submitted,

A handwritten signature in cursive script that reads "John Clewett". The signature is written in dark ink and is positioned above a horizontal line.

John Clewett
Counsel for the Aamodts

Dated: October 22, 1981

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NUCLEAR REGULATORY COMMISSION

'81 OCT 29 P4:51

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