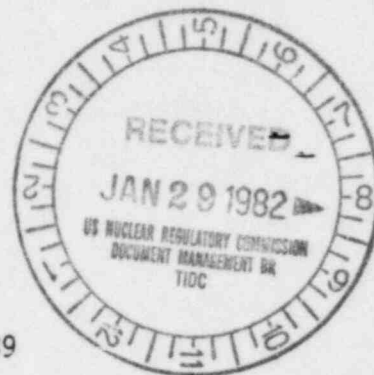


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
METROPOLITAN EDISON COMPANY, ET AL.)
(Three Mile Island Nuclear Station,)
Unit No. 1))

Docket No. 50-289
(Restart)

NRC STAFF'S ANSWER TO AAMODTS' MOTION FOR
RECONSIDERATION OR, IN THE ALTERNATIVE,
MOTION FOR DIRECTED CERTIFICATION

I. INTRODUCTION

By motion dated January 8, 1982,^{1/} the Aamodts request the Special Master to reconsider his denial at the reopened hearing of the Aamodts' oral motion to stay the reopened hearing pending an evidentiary hearing on the integrity of the process due to an alleged violation of the Sequestration Order by Licensee's counsel. See Tr. 26,788-98. Alternately, Aamodts move that their motion be certified to the Licensing Board for its consideration. Licensee filed a response dated January 19, 1982, opposing Aamodts' motion. For the reasons set forth below, the Staff opposes the Aamodts' motion.

II. AAMODTS' MOTION FOR RECONSIDERATION

A. Background

On December 1, 1981, Staff witness William J. Ward, Chief, Investigation Branch, Enforcement and Investigation Staff, Office of

1/ As the Aamodts' Certificate of Service shows, the Staff was served by express mail on January 11, 1982.

DESIGNATED ORIGINAL

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Inspection and Enforcement, testified during cross-examination concerning a possible cheating incident involving Messrs. P and Husted which was revealed to NRC investigators Ward and Baci during their interview of Mr. P.^{2/} Briefly, Mr. Ward testified that Mr. P stated that during the April, 1981 NRC examination which he and Mr. Husted were taking, Mr. Husted asked Mr. P for an answer to a question. Tr. 24,462-3 (Ward). No reference to this incident appears in the NRC reports of investigation, nor were these facts generally known by any party prior to Mr. Ward's testimony. On the evening of December 1, 1981, before Mr. Ward resumed the witness stand for further cross-examination, Licensee's counsel contacted Mr. P and Mr. Husted and confronted them with the substance of Mr. Ward's testimony. Licensee's Response to Aamodt Motion for Reconsideration or, in the Alternative, Motion for Directed Certification, January 19, 1982, at 4. Subsequently, when Mr. P testified on December 9, 1981, the parties and the Special Master learned of Licensee counsel's contact with Messrs. P and Husted concerning the Ward testimony. Tr. 26,712 (Mr. P). During the hearing the next day, the Aamodts charged that Licensee's counsel violated the Sequestration Order and improperly coached witnesses, and, on that basis, orally moved to stay the reopened hearing pending an investigation and evidentiary hearing concerning the matter. Tr. 27,788. Licensee, the NRC Staff, and the Commonwealth opposed Aamodts' motion. Tr. 26,790-92 (Licensee); Tr. 26,792-93 (Staff); Tr. 26,793-94 (Commonwealth). TMIA took no position. Special Master Milhollin denied the motion. Tr. 26,797-98.

^{2/} See the Staff's Proposed Findings of Fact and Conclusions of Law ¶¶46-52 for a complete discussion of this incident.

B. The Sequestration Order

The clear and unambiguous language of the sequestration order^{3/} demonstrates beyond any doubt, without more, that the Aamodts' motion has no merit. The essence of that sequestration order is that:

...no prospective witness...listed on Attachment 1, shall be present in the hearing room at any time when any other listed prospective witness is testifying...[and] no listed prospective witness shall, prior to or after his testimony, discuss with any other listed prospective witness, either prior to or after such prospective witness' testimony...the following matters...

Sequestration Order at 1 (emphasis added). In pertinent part, the sequestration order applies only to communications between or among those individuals listed on Attachment 1 to the Order. Since Mr. Ward is not listed on Attachment 1, the Aamodts' allegation that a communication by Licensee's counsel of Mr. Ward's testimony to Mr. P (who is listed on Attachment 1 under his actual name) was improper and contrary to the sequestration order is without merit.

Nor does the Staff believe that Licensee counsel's conduct can be considered a violation of the spirit of the sequestration order. The explicit language of the sequestration order was negotiated by all the parties to the reopened proceeding, including the Aamodts, and was approved by the Special Master. The Special Master also approved Licensee's November 14, 1981 Memorandum to all the individuals listed on Attachment 1 to the Order, which states: "The Order applies to each individual named or identified by letter designation on Attachment 1 to

^{3/} A copy of the Sequestration Order, approved by Special Master Milhollin, is attached both to the Aamodts' Motion and Licensee's Response.

the Order."^{4/} In light of this clear language, the signatory parties to the sequestration order must be charged with at least a constructive understanding of its plain meaning and should be estopped to argue a contrary interpretation.

C. Timeliness

As the Licensee has pointed out, the Aamodts did not file their Motion for Reconsideration until a month after the Special Master denied their oral motion. Licensee's Response at 2. The Aamodts offer no reason for their delay in seeking reconsideration and no good cause for such delay is apparent. The Staff agrees with Licensee that the Aamodts' motion should be deemed untimely.

In summary, the Special Master's initial ruling on the Aamodts' oral motion for a stay of the reopened hearing and an inquiry into the alleged violation of the sequestration order was correct based on the clear terms of the sequestration order itself. The Aamodts have alleged nothing that would warrant reconsideration of that ruling. Furthermore, the Aamodts' motion for reconsideration is untimely without good cause. The Aamodts' motion for reconsideration should be denied.

III. AAMODTS' MOTION FOR DIRECTED CERTIFICATION

The Aamodts also request that if the Special Master declines to reconsider his previous ruling, or fails to take appropriate action, their motion be certified to the Licensing Board pursuant to 10 CFR § 2.722(a)(2) and the Board's September 14, 1981 Memorandum and Order

^{4/} See Licensee's November 14, 1981 Memorandum, at 1, (attached to Licensee's Response to Aamodts' Motion.)

Reopening Record On Matters Related to Cheating, Appointing a Special Assistant, and Scheduling a Conference of the Parties (September 14th Memorandum and Order). Aamodts Motion at 6. The Staff opposes that request and submits that the Aamodts' have not satisfied the criteria for Licensing Board review of the Special Master's ruling on Aamodts' motion.

The Licensing Board has established the following standards for its review of rulings by the Special Master:

Parties may seek discretionary review by us of a significant evidentiary ruling by the Master under the guidelines applicable to requests for directed certification to an appeal board pursuant to 10 CFR 2.718(i). However, we establish the rule in this proceeding that it shall be a prerequisite to a request to us for directed certification that the Master has first been requested to certify the question or refer the ruling to us pursuant to 10 CFR 2.718(i) or 2.730(f), and has had an opportunity either on the record or in writing to rule on the request.

September 14th Memorandum and Order at 3-4 (footnote omitted).^{5/}

Considering the Aamodts' motion as both a request that the Special Master certify or refer his ruling to the Licensing Board and, if the Special Master declines to do so, a request that the Licensing Board direct certification, the Aamodts motion should be denied. The Aamodts have

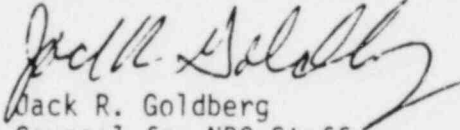
^{5/} In its September 14th Memorandum and Order, the Licensing Board summarized the standards for directed certification as "exceptional circumstances" where the ruling below "either (1) threatened the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated by a later appeal or (2) affected the basic structure of the proceeding in a pervasive or unusual manner". September 14th Memorandum and Order at 4, n.3, citing South Carolina Electric and Gas Co. (Summer, Unit 1), Unpublished Memorandum, August 27, 1981, at pages 3-4, and quoting Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-382, 5 NRC 603, 606 (1977), and Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977).

failed to meet their burden of establishing that the certification criteria adopted by the Licensing Board are satisfied. The Aamodts' entire argument supporting their request for certification consists of conclusory statements that the Special Master's denial of Aamodts' motion is a "significant evidentiary ruling" which "affected the basic structure of the proceeding." Aamodts' Motion at 6-7. The mere statement of the criteria, however, falls far short of the required showing that "exceptional circumstances" warrant the extraordinary relief of interlocutory review. The Staff submits that the lack of the required showing by the Aamodts, in conjunction with the absence of merit to the Aamodts' unjustified allegation (discussed herein in Part II, supra), warrant the denial of Aamodts' motion for directed certification.

IV. CONCLUSION

For the reasons stated above, the Staff opposes in its entirety the Aamodts' motion for reconsideration and directed certification.

Respectfully submitted,


Jack R. Goldberg
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 28th day of January, 1982.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO AAMODTS' MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, MOTION FOR DIRECTED CERTIFICATION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 28th day of January, 1982:

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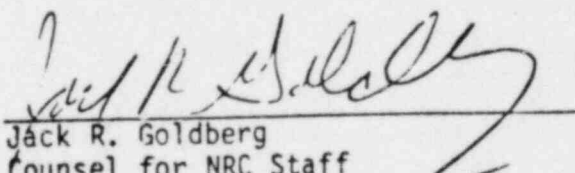
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