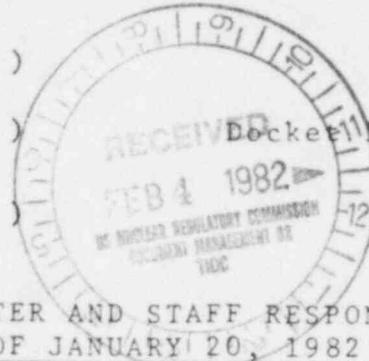


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SPECIAL MASTER OF THE ATOMIC SAFETY AND LICENSING BOARD IN
THE REOPENED HEARING ON CHEATING

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



'82 FEB -3 P2:50

Docket 150-289-SP

emp

AAMODT REPLY TO LICENSEE LETTER AND STAFF RESPONSE CONCERNING
AAMODT MOTION OF JANUARY 20, 1982

The Aamodts motioned on January 20, 1982 to have three late-filed pages of findings of fact from the record of the reopened hearing on cheating accepted by Judge Milhollin to be considered in his Advisory Report to the Board. The motion and findings were served on the principally affected parties by Express Mail on January 20, 1982. The Licensee has elected to not respond to the motion, but the Licensee wrote a letter to Judge Milhollin in which the Aamodt's motion was tied inappropriately to corrections, a table of contents and conclusions to the previously filed findings. The Licensee also faulted the Aamodts for not including in their motion notice of Judge Smith's denial of a different motion relating to late-filed findings. The Staff's response included, in addition, erroneous information which could prejudice Judge Milhollin's decision in the absence of correct information. The following paragraphs reply to the incorrect assertions and assumptions of the Licensee and Staff.

1. The Licensing Board was requested by the Aamodts for an extension of time in which to file findings on Monday, January 11, 1982. Judge Smith

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stated that he was not able to rule on an extension since that was under the authority of Judge Milhollin. Judge Smith suggested that the Aamodts negotiate with counsel for the Licensee and Staff in view of limited time (one week) scheduled for the Licensee and Staff replies to Intervenor findings.

2. The Aamodt pursued two avenues. One was to try to contact Judge Milhollin for an extension. The second was to negotiate with the Licensee and Staff for an additional few days. The Aamodts attempted to contact Judge Milhollin , however this attempt met with failure. The second avenue was negotiation with Licensee and Staff counsel. Licensee counsel was agreeable to an arrangement by which the Aamodts would have approximately two days additional time and would hand-deliver their findings at noon in Washington, D. C. at the offices of Licensee's counsel if Licensee and Staff could obtain additional time in which to respond to the Aamodt findings. The Aamodts were advised by Licensee's counsel that the extension of time for their and Staff's reply to the Aamodt findings was granted. Subsequently the Board issued an order which noted that such an extension was granted. The Aamodts cannot locate this Order and have no certainty whether they were in receipt of it or aware of it prior to the filing of their motion. Prior to receipt of the Order, the Aamodts considered their extension to be a negotiation between the parties, rather than a ruling by the Board.

3. In speaking with Judge Smith on Monday, January 18, 1982, Mr. Aamodt relayed the additional problems which the Aamodts had encountered subsequent to those recognized on January 11. Coatesville, the Aamodt's geographical location, had experienced several severe snow storms. The Aamodt driveway was impassable on several days; road conditions were hazardous. These physical conditions had impeded the Aamodts use of transcripts only available to the Aamodts in Philadelphia or Harrisburg, cities of from one and one-half to two hours traveling time from their home. The Aamodts had not had the opportunity to view the November 21 or December 10 transcripts until January 16.

4. When the Aamodts recognized on Saturday and Sunday, January 16 and 17, that they, with all efforts, would not be able to service a document in Washington, D. C. on Monday, Mr. Aamodt telephoned Judge Smith at 9:00 a. m. and two times thereafter, until contact was made at 1:00 p. m. Mr. Aamodt, in failing to reach Judge Smith, notified Licensee and Staff counsel. The Aamodts made every possible effort to alert Judge Smith contrary to the assertions of the Staff.

5. Judge Smith denied any extension of time past 5:00 p. m. of that very day, January 18, for findings of the Aamodts to be picked up at Mr. Aamodt's place of business in Intercourse, Pennsylvania. Some of the pages were with Mr. Aamodt, and others were being retyped thirty miles away in Coatesville. The pages were reunited in Intercourse for reproduction without the

benefit of a careful proof reading. Pages that were prepared in handwriting could not be prepared for servicing. One page (originally page 23, now page 21) could not be located at the time. The Table of Contents and the Conclusions had not been typed in final form. The Aamodts made a good faith effort to supply all that was available by 5:00 p. m. on the January 18, 1982. On finding that they had, through oversight, omitted transcript numbers, a complete Table of Contents, and the Conclusions, these were submitted as an Errata. The Licensee is most unjust in concluding that the Errata was a "guise" to submit additional findings. All of findings to which the contents of the Errata applied were in the hands of the Licensee by the time of the extension; while complete transcript references are a technical fault, they should be forgiven in view of the alacrity with which complete and accurate transcript references were supplied, and the familiarity of all parties with the record. The Licensee and Staff do not mention any inability to respond due to the corrections and additions of the Errata. Aamodts do not consider the Errata as a guise, a disregard of Judge Smith's denial, or the addition of new information, in view of Licensee's and Staff's full acquaintance with the record.

6. Concerning the Aamodt Motion for admitting additional findings, the Aamodt considered this, in no way; to be the same motion as was denied by Judge Smith. The oral motion made to Judge Smith on January 18, was a request to file any additional findings deemed appropriate by the Aamodts by a schedule as expeditious as possible for the Aamodts. The written motion to Judge Milhollin was an entirely different motion; it concerned three pages of findings, complete and enclosed, and served so that Licensee and Staff had time to respond within the time allowed by the Board. The first motion was un bounded; the second was clearly bounded. The two motions were distinct and different motions in two ways: a) in matter and b) in time.

7. The failure to mention Judge Smith's ruling regarding the Aamodt's first motion was not in any way intended by the Aamodts to be a withholding of information. Not only did the Aamodt's consider the second motion to be an entirely new matter, Judge Smith was in receipt of the second motion (by Federal Express delivery) as soon as Judge Milhollin was. Although the Aamodts did not consider the two motions to be identical, Judge Smith could have made such a determination on his own.

8. The Licensee's assertion that the Aamodt's first motion should have been retailored and submitted to Judge Smith, ignores additionally the fact that matters of the reopened proceeding are correctly addressed

to Judge Milhollin. Not knowing whether Judge Milhollin was available to rule on matters of reopened proceeding, the motion was sent to Judge Milhollin at his address in Wisconsin and in care of Judge Smith. If, therefore, Judge Smith had authority to act in behalf of Judge Milhollin, service of the motion was sufficient to accord Judge Smith that opportunity. The motion was properly directed to Judge Milhollin.

9. The Licensee indicates that the Aamodts should have cited new grounds for submitting their second motion. Although the Aamodts reject the Licensee's assumption that the second motion was for reconsideration of the first motion, the Licensee failed to acknowledge three reasons, unique to the second motion, which were laid out in the written motion:

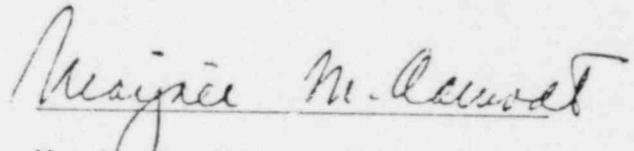
- a) The findings were not covered by the findings of other parties.
- b) The findings would be in the hands of Licensee and Staff on January 21.
- c) The findings were significant.

10. The Staff objects to the allowance of the Aamodt Table of Contents, completed and served with the Errata. The Staff appears unaware that Judge Smith requested the parties to submit Tables of Content, where the document exceeded ten pages and none had been included in the original filing. The Staff objections to the completed table of contents are totally unfounded.

11. Neither the Staff nor the Licensee indicated that they would not have been able to respond to the additional Aamodt findings by the deadline of January 26. The Licensee, in fact, responded to the Aamodt findings by a document dated January 22, 1982 and bearing a postmark of January 21, 1982., not requiring the additional four days granted for their response.

12. For all of the above reasons, the Aamodts move that Judge Milhollin consider the Aamodt's motion on its merits and for the reasons stated in it, and that extraneous and erroneous information contained in the Licensee's letter and the Staff response be recognized as such.

Respectfully submitted,


Marjorie M. Aamodt

January 31, 1982