

ORIGINAL
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

METROPOLITAN EDSION COMPANY

Docket No. 50-289 SP

(Three Mile Island Nuclear
Station, Unit No. 1)

Location: Harrisburg, PA

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:
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METROPOLITAN EDISON COMPANY : Docket No. 50-289SP
: (Restart Remand on
7 (Three Mile Island Nuclear Station, : Management)
:
Unit No. 1)
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Hearing Room No. 1
Ground Floor
North Office Building
North Street and Commonwealth Ave.
Harrisburg, Pennsylvania

Thursday, 28 June 1984

The prehearing conference in the above-entitled
matter convened, pursuant to notice, at 9:00 a.m.

BEFORE:

IVAN SMITH, ESQ., Chairman,
Atomic Safety and Licensing Board

GUSTAVE LINENBERGER, Member,
Atomic Safety and Licensing Board

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JUDGE SMITH: Good morning ladies and gentlemen.

This is the prehearing conference previously noticed to discuss the issues and scheduling of the remanded proceeding directed by the Appeal Board Decision of May 24, 1984, enumerated ALAB 772.

Before the session began, we had an opportunity to meet with most of the participants and introduced Judge Linenberger, who has joined the Board since we previously met. Judge Linenberger is a nuclear physicist and is one of the Members of the Licensing Board on the operating license of TMI-2.

Judge Sheldon Wolfe, who is the third Member of the Board is not able to attend today. He has a conflict in responsibilities, and will, however, fully participate in the subsequent decisions made as a result of this conference.

Mr. Goldberg, will you introduce yourself, please?

MR. GOLDBERG: Yes. I am Jack Goldberg, representing the Nuclear Regulatory Commission Staff. With me is J. Gutierrez, the NRC's Region I counsel and to his right is Jim VanVliet, from the Office of Nuclear Reactor Regulation, who is the project manager for TMI-1 restart.

JUDGE SMITH: I understand we have counsel from Government Accountability Project. Do you wish to make

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1 an appearance?

2 MS. BERNABEI: Yes, I am Lynne Bernabei with
3 Government Accountability Project. I will be entering an
4 appearance on behalf of TMI-A.

5 JUDGE SMITH: Will you be filing a formal
6 appearance?

7 MS. BERNABEI: Yes.

8 JUDGE SMITH: We have Ms. Doroshow and Ms. Bradford
9 who have long been representing TMI-A.

10 Mr. Robert Pollard, Mr. Bill Jordan representing
11 Union of Concerned Scientists.

12 MR. AU: My name is Thomas Y. Au. I am
13 representing the Commonwealth of Pennsylvania. I sent you
14 by mail yesterday, my formal notice of appearance.

15 JUDGE SMITH: Yes, I did receive it.

16 Mr. Trowbridge, Mr. Blake, Ms. Bauser, you are
17 all quite familiar to the Board Members.

18 Is there anybody here from Mr. Aamodt. I know
19 Mr. Aamodt was planning to attend, because he called me
20 yesterday afternoon to confirm the location and time.

21 (No response)

22 I propose that the agenda for this morning be
23 as follows, generally:

24 As customary, we will first take up any preliminary
25 business that the parties wish to consider. Then we will have

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1 a short discussion of previously provided information that
2 might be relevant to this case.

3 Then we will take up the particular issues of
4 ALAB 772 beginning with training, one with respect to
5 Mr. Dieckamp and the TMI-1 leak rate issue. We will have
6 a discussion to see if we can avoid the possibility of a
7 separate prehearing conference in the event that the TMI-2
8 leak rate issue, now stayed by the Commission is to be
9 litigated by us.

10 We will discuss the extent of participation by the
11 parties, the feasibility of having lead Intervenors on
12 issues and particular subissues; any discovery requirements;
13 and a discussion of a schedule for further proceedings; and,
14 of course, any other business that is relevant.

15 Good morning Ms. Aamodt.

16 Off the record a moment.

17 (Discussion off the record)

18 JUDGE SMITH: Back on the record.

19 Ms. Aamodt, may I introduce Judge Linenberger,
20 who is a nuclear physicist and will be serving on this
21 Board.

22 You have only missed a listing of the items for
23 the proposed agenda for this morning. It will be gone over
24 again as the categories come up.

25 Is there any preliminary business that any party

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1 wishes to bring to our attention before we proceed?

2 MR. GOLDBERG: Judge Smith, I have what may be
3 a preliminary matter. On the other hand, it may be more
4 appropriate to discuss at the time you take up the extent
5 of participation by the parties. It deals with UCS's
6 participation in the remanded proceedings.

7 As you wish, I can discuss that now or later when
8 you want to talk about participation of the parties.

9 JUDGE SMITH: We do have that as a particular
10 agenda item, so if you don't mind we will hold off.

11 Any other preliminary business?

12 (No response)

13 Recently I have been reading -- well, for example
14 I have been reading ALAB 772 and other communications. I
15 became aware that certain Office of Investigation Reports
16 have been issued and we had not received copies of them. As
17 a consequence, I called up Ben Hays, who is the Director
18 of Office of Investigation, and I asked for a listing of
19 the various Office of Investigation Reports on TMI-1 and
20 TMI-2, and he provided me copies of those that we have not
21 received.

22 It seems at the beginning of this year the method
23 of Board notification changed and we just did not receive
24 the reports we should have. Two of the reports identified
25 as having possible relevance -- and that is Report Q183028

1 Leak Rate, the short title is Leak Rate at TMI-1;
2 and Q184004, the short title Possible Training Irregularities.

3 The Board has -- Members of the Board have made
4 an effort to remain current in the developments of this case.
5 However, we have all been busy on other matters, and no
6 party should assume that we know anything. We are approaching
7 this remand virtually on a clean slate, no Board notification
8 or anything else, except the official issuances of the
9 Appeal Board and the Commission are to be imputed to our
10 knowledge.

11 What I am saying is, if you want us to know
12 something you will have to start fresh and either tell it
13 to us, give it to us, or make a reference to us so that we
14 can identify it in the files and the papers that we have
15 already received. That, of course, is tradition. We would
16 normally just look at matters of evidentiary record in
17 making our judgments.

18 Let us begin then with a general discussion of
19 formulation of the issues.

20 I propose that after this morning's discussion,
21 that we follow the procedure that I thought worked quite
22 well in the last reopened, and that is, counsel for GPU
23 presented a list of issues with the major issue and sub-
24 issues. However, we just had it somewhat backwards, we had
25 those before the prehearing conference. But, I think that

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1 since you have the burden on you, we will ask you for a
2 lead role in identifying those issues. In any event, that
3 is just a proposal. We can see what happens this morning.

4 MR. BLAKE: Mr. Smith, we had anticipated that
5 it might be easier if the parties had something to look at
6 and to follow along in order to discuss this. And we have
7 put together what we think is a starting point for discovery
8 and for the discussion, and might well turn out to be
9 sufficient for purposes of the remand hearing.

10 I can pass it out. It can be fairly quickly
11 read if we took five minutes, and maybe we can go from there.

12 JUDGE SMITH: I think that is a very good idea.

13 (Document distributed to Board and Parties)

14 Mr. Blake, did you provide a copy of that to
15 the reporter?

16 MR. BLAKE: Yes, we did.

17 JUDGE SMITH: Would you bind that into the
18 transcript at this point, please?

19 (Licensee's Proposal as to Scope of Remanded
20 Hearing, follows:)

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LICENSEE'S PROPOSAL
AS TO SCOPE OF REMANDED HEARING

1. Licensed Operator Training. The purpose of the remanded hearing is to obtain the present views of the OARP Review Committee and other Licensee consultants, who previously have testified on Licensee's training program, as to the adequacy of Licensee's current licensed operator training program taking into account the cheating incidents and other subsequently acknowledged deficiencies in the training program reflected in LBP-82-86 and ALAB-772. Their testimony should at a minimum address the questions raised by the Appeal Board in Section III.C of ALAB-772 as to the impact of the cheating incidents and other deficiencies on their view of the adequacy of the training program. Licensee personnel may supplement their testimony as necessary to provide details of the training program. Other parties may support or challenge, by testimony or cross-examination, any of the testimony of Licensee's consultants or personnel. No testimony is to be provided on Licensee's non-licensed operator training program or the adequacy of the NRC licensed operator examination process.

2. TMI-1 Leak Rate Testing. The purpose of the remanded hearing on TMI-1 leak rate testing is to receive testimony on (1) leak rate testing procedures at TMI-1 prior to the TMI-2 accident and (2) the leak rate testing procedure presently in effect for TMI-1.

3. Dieckamp Mailgram. The purpose of the remanded hearing on the Dieckamp mailgram is to receive testimony as to (a) whether anyone interpreted the pressure spike and containment spray in terms of core damage at the time of the spike and whether any such information was withheld and (b) the information and the source(s) on which Mr. Dieckamp based his mailgram.

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1 JUDGE SMITH: I think everyone has had a chance
2 to read the Licensee's Proposal in writing. I agree that
3 the proposal serves as a departure point for discussing the
4 issues. It seems to me, assisted by my memory, to be rather
5 accurate. Whether it is complete or not, we will find out.

6 We will take up then the OARP aspect of the
7 remand, or the training aspect of the remand. Let's begin
8 with a discussion beginning with the Intervenors, ending
9 with the Staff, as to whether the proposal by the Licensee
10 actively captures the issue as remanded by the Appeal Board.

11 Who will be speaking this morning for TMI-A?

12 MS. DOROSHOW: I will be speaking.

13 JUDGE SMITH: Are you prepared?

14 MS. DOROSHOW: Yes.

15 Judge Smith, I would first like to make the
16 comment that we realize that the submission by the Licensee
17 was done sort of as an ad hoc suggestion by the Board. But
18 we think that in the future it may be appropriate that if
19 Licensee has an opportunity basically to provide an outline
20 to the Board on any issue or any submission of this sort, that
21 the other parties have an opportunity as well to provide their
22 views in writing.

23 JUDGE SMITH: You have that opportunity exactly
24 the same as the Licensee does.

25 MS. DOROSHOW: Okay.

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1 With regard to the licensed operator training
2 issue, we believe that the issue as outlined by the Appeal
3 Board was considerably broader than what has been presented
4 in the submission by the Licensee. And we think there are
5 several indications of this from the Appeal Board Decision
6 itself.

7 For example, the Appeal Board framed the issue
8 similarly as the Licensing Board did in their partial
9 initial decision, which is: Is the instruction adequate to
10 prepare the operators to operate the plant safely? And
11 they, as well, framed the issues by the Intervenors
12 on appeal, especially UCS and TMI-A, that generally the
13 record in reopened proceeding on cheating, presents a serious
14 challenge to the Licensing Board's earlier favorable findings
15 concerning Licensee's training program.

16 We believe that this issue as framed, as well as
17 some of the other deficiencies which the Appeal Board found
18 in the Licensing Board Decision, which are described on page
19 63 of the Appeal Board Decision, indicate that they had
20 serious concerns other than simply the opinion of the OARF
21 consultants with the adequacy of the record that was
22 presented in that proceeding, and the adequacy of the
23 Licensing Board Decision in resolving the issues.

24 I think it is important to note that the Appeal
25 Board expressed general concerns with the training record

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1 and the way the issue was dealt with in the Licensing Board
2 Decision, and that really what we need to focus on here
3 is what exactly is the current state of the training program
4 at TMI? Is instruction adequate to prepare the operators
5 to operate the plant safely?

6 And I think that it is important that we examine
7 that issue at the point of delivery as the Licensing Board
8 expressed the need to do in writing the first PID; that it
9 was not until we actually saw what was going on at the
10 actual point of delivery of training, that we really had a
11 good idea of what was going on with the training department.

12 I think also that the recent Appeal Board
13 Decision, which denied TMI-A's motion to reopen the record
14 on training irregularities dated June 19, 1984, suggests also
15 that their intention was to encompass in these reopened
16 hearings, the general question of adequacy of training as it
17 is currently applied today.

18 JUDGE SMITH: I'm sorry, what document were you
19 referring to?

20 MS. DOROSHOW: The Memorandum and Order from the
21 Appeal Board dated June 19, 1984. And this is the Memorandum
22 and Order which denies TMI-A's motions to reopen the record
23 on two OI investigations. One being training irregularities
24 and the other being the reportability of the BETA and RHR
25 Reports.

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1 The Appeal Board expressed the view that since
2 the record had already been reopened on the issue of
3 Licensee's existing training program, that any matters which
4 may impact on that program which were revealed in OI's
5 investigation of training irregularities, should be considered
6 in this reopened proceeding.

7 And I think that is strong indication that the
8 Appeal Board really did mean that the training program needs
9 to be looked at in a much broader context than just simply
10 having the OARP consultants present their additional views
11 on this matter.

12 And I should also point out -- and I think that
13 the company also does indicate this -- that it is not simply
14 the OARP committee that is being requested to provide addi-
15 tional views here, it is additional Licensee consultants,
16 which seems to us to include RHR and whoever else Licensee
17 may have reviewing its own training program at this time.

18 I would just also like to add that at a minimum
19 the record be reopened to address the issues raised in the
20 RHR and the BETA report as they relate to the training
21 program in particular. And as well, we feel that it is very
22 important that whatever consultants are brought up before
23 the Board again in this hearing, that it is important that
24 they be able to address the issue of, are the operators being
25 trained adequately to operate the plant. And that is something

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1 that can only be determined through a thorough analysis at
2 the point of delivery of training. And that it doesn't seem
3 adequate to us that consultants again be brought up before
4 the Board to simply address the paper training program as
5 it is just on paper, as a number of the consultants did
6 originally in the hearing.

7 JUDGE LINENBERGER: Mrs. Doroshow, within the
8 last few minutes you have several times used the phrase
9 with respect to training, "at the point of delivery." It is
10 not entirely clear to me what you mean by that.

11 Do you mean as implemented as opposed to as
12 appears in written format?

13 MS. DOROSHOW: Yes, basically that's our concern
14 that it be viewed as implemented.

15 JUDGE LINENBERGER: Thank you.

16 JUDGE SMITH: Mrs. Aamodt?

17 MS. AAMODT: I believe that the issue as stated
18 on page 63 of the Appeal Board's Order, is the instruction
19 adequate to prepare the operators to operate the plant safely,
20 that was essentially the thrust of our contention.

21 What are the jobs that the operators are to do?

22 And, are the operators properly trained?

23 And, is there an independent certification that
24 the operators have been properly trained to perform these
25 jobs so that the plant can be operated safely?

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1 I would be disappointed with simply a mass
2 presentation by Licensee's consultants. I understand that
3 the Appeal Board is interested in having the present views
4 of the OARP review committee. We never really had the views
5 of the OARP review committee, those members of it who had
6 expertise in nuclear subjects. That was the deficiency in
7 the record in the May hearing. We simply had two
8 psychologists who were able to evaluate whether training
9 methods and training equipment was adequate, training facili-
10 ties were adequate.

11 So I think that Licensee should be prepared to
12 present Dr. Uhrig and Dr. Kimel and Mr. Marzec, and that
13 hopefully these experts will have had some present
14 acquaintance, some present observance of the training program
15 as it presently exists. And that there will be some substan-
16 tial testimony from these individuals to evaluate the
17 present training program.

18 JUDGE SMITH: I don't understand your statement
19 about the lack of nuclear expertise of the committee, the
20 operator training program committee. I count, just at a
21 rough glance, four of them had specialized training experience
22 in the nuclear area -- three out of the six.

23 MS. AAMODT: They didn't testify. Only Mr. Kelly
24 testified at the hearing. We never heard from Dr. Kimel --

25 JUDGE SMITH: Kelly -- that is four of them.

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1 MS. AAMODT: We didn't hear from any of those who
2 had any expertise from the OARP Review Committee.

3 JUDGE SMITH: I understand.

4 MS. AAMODT: I think TMI-A has fairly broadened
5 the scope of the hearing above what Licensee has presented.
6 We would agree that we wouldn't just be interested in
7 hearing from Licensee's consultants, but we would, perhaps,
8 like to be able to call for instance, some of the operators
9 to hear -- to question them as to their understanding on
10 certain procedures and certain basic information that they
11 would have been expected to have been trained to know.

12 So, I think I would just reiterate that I think
13 the basic question that the Board must be prepared to decide
14 is whether the instruction is adequate to prepare the
15 operators to operate the plant safely. And I think as the
16 hearing develops and as discovery develops, their doors
17 should not be closed in our pursuit to an answer to that
18 question.

19 JUDGE SMITH: Mr. Jordan?

20 MR. JORDAN: Thank you, your Honor.

21 We would essentially agree, I think, with what
22 has been said, although state the issues somewhat differently.

23 It is true, of course, that the underlying issue
24 is what is stated on page 63 of the ALAB 772: Is the
25 instruction adequate to prepare the operators to operate

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2 But, of course, in a remanded proceeding, in
3 our view the issue is: Is that instruction adequate in
4 light of the information that is now available? What has
5 happened since your previous decision?

6 The underlying "what happened" was that the
7 Appeal Board decided that that decision, the substantive
8 conclusion that had been reached, needed to be reexamined.
9 In our view the issues that are involved in reexamining that
10 are three:

11 Is the company competent to train operators?

12 Is the training program adequate to train
13 operators?

14 And, is the training program training competent
15 people?

16 JUDGE SMITH: Two is, is the program adequate?

17 MR. JORDAN: Is the program adequate?

18 JUDGE SMITH: And then three is?

19 MR. JORDAN: Three is, is the program training
20 competent operators?

21 JUDGE SMITH: How does two differ from three?

22 MR. JORDAN: I make that distinction to clarify
23 the point that on the one hand you can examine the program.
24 That is to say, you can have someone look at the tests, per
25 se and have an opinion as to whether the tests seem adequate.

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1 We have reached the question of, we think you
2 need to examine not only the program, but also the competence
3 of the people who are trained.

4 JUDGE SMITH: So, it is it analytically sound and
5 does it produce results?

6 MR. JORDAN: That's right.

7 JUDGE LINENBERGER: Well, sir, on that point let
8 me inquire as follows:

9 If the training program as a paperwork document
10 were examined and adjudged to be adequate, following that there
11 are two possible alternatives; that the majority of the
12 operator candidates failed the test based on that program,
13 or that the majority of them passed the test.

14 Now, in what respect is your third issue not
15 answered by either of those alternatives subsequent to --

16 MR. JORDAN: Our concern is with those who passed
17 the test. We are not concerned with those who don't, because
18 they won't be operators. The people who pass the test, the
19 question is whether now that they have taken the test, they
20 can adequately run the plant. Have they, in fact, been
21 trained adequately.

22 We think you need to examine that. In a sense,
23 we take at the point of delivery concept that TMI-A has
24 raised, and we say that you need to look at the point of
25 delivery both what are the papers and tests, examinations

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1 being taken, and have those tests succeeded or not?

2 You have to examine the people.

3 JUDGE SMITH: This is a good time to explore your
4 view as to what you believe the Appeal Board meant on page
5 63, compared to the rest of the section, when it raised the
6 question as to whether -- they have three particular
7 example questions on page 63. I am going to read them into
8 the transcript now:

9 For example, does the training program actually
10 enhance the operator's knowledge, or simply encourage
11 memorization for test-taking purposes?

12 That is a facet of your third point.

13 Are the Licensee and NRC examinations an effective
14 way to measure an operator's ability to run the plant?

15 And, do the format and contents in the examination
16 encourage cheating?

17 I guess the aspect of the Licensee's examinations
18 would be subsumed by the general tenor of the remand, and
19 the call for reassessment by the Committee.

20 With respect to the NRC examinations, I don't know
21 if you are referring to those or not, but with respect to
22 the NRC examinations, the Appeal Board Decision remanding
23 this is not, to me at least, unequivocally clear. They
24 go on to point out that they do not, nor would we have
25 jurisdiction to tell the Staff how to run their examination

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1 process.

2 On the other hand, we might have jurisdictions in
3 this case to determine whether Staff, having done its job,
4 whether it is adequate for the purposes of this case. I
5 don't know. But I think that is an area where we could use
6 some guidance from the parties.

7 MR. JORDAN: I think that focusing on this NRC
8 examination question, absolutely, the Boards do not have the
9 authority to tell the Staff how to run its tests. But, it
10 seems to me clear from the fact that the Appeal Board has
11 focused specifically on the NRC examination issue in its
12 own question, that the Board does need to answer the
13 question, whatever tests the NRC Staff chooses to give and
14 however they choose to give them, are they an effective way
15 to measure the operator's ability to run the plant?

16 And of course, whether the Staff chooses to follow
17 your rulings is up to them.

18 But, I don't see any room for this Board not to
19 answer the question that the Appeal Board has posed here.

20 JUDGE SMITH: Mr. Goldberg?

21 MR. GOLDBERG: I think that the Licensee's
22 statement of the issue on operator training captures the
23 flavor of the broad issue that the Appeal Board was
24 concerned with in ALAB 772. There are some specific questions
25 that the Appeal Board asked in ALAB 772 on pages 63 to 72 of

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1 their decision which can serve the framework of subissues
2 under this broad issue on licensed operator training.

3 I have some language for a statement of the issue
4 on remand for licensed operator training, which I would like
5 to state.

6 MR. JORDAN: Your Honor, I am sorry to interrupt,
7 but I was under the impression that we were addressing this
8 particular question of NRC examination. That was what you
9 were seeking from Mr. Goldberg. We have more to say on the
10 overall issue.

11 JUDGE SMITH: On the overall issue of training?

12 MR. JORDAN: Yes.

13 JUDGE SMITH: I'm sorry, I didn't recognize that.
14 I called on you out of turn, Mr. Goldberg.

15 Ms. Aamodt, Mr. Jordan wants to finish his comments
16 on the training issue.

17 MS. AAMODT: I thought we were going to address
18 the NRC examination issue also.

19 I would like to say something on it when it is time
20 for that.

21 MR. JORDAN: Okay.

22 We have addressed that NRC exam question for the
23 moment. I do want to speak to the Licensee's emphasis on
24 getting the view of the OARP Review Committee as the purpose
25 of the hearing.

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1 I think that is clearly not the purpose of the
2 hearing. The purpose is the substantive question. The only
3 reason there was a focus on the OARP Review Committee was,
4 that was the basis of the prior decision. The prior decision
5 having been undermined, the question is, what are the facts
6 to date from whoever those facts are to come.

7 The only other point that we would make is, we
8 believe this has to extend -- the hearing must extend to
9 nonlicensed operator training as well as licensed operator
10 training.

11 I would just refer the Board to page 157, note
12 123 of the ALAB 772 reference to the so-called SALP Report.
13 And I would ask, since I am not entirely up on this issue,
14 Mr. Pollard to explain the significance of that and the
15 reason that it requires consideration of the nonlicensed
16 operators as well as the licensed operators.

17 MR. POLLARD: In particular, while the Appeal Board
18 addressed the issue of nonlicensed operator training at pages
19 77, 78 and the first paragraph on 79, in general they concluded
20 at that time Mrs. Aamodt had not shown any reason to doubt the
21 Staff's testimony at that point.

22 In the meantime, however, the Staff has done fur-
23 ther work and we have had further opportunity to observe the
24 performance of the nonlicensed personnel at TMI-1. And the
25 reason Mr. Jordan refers you to this note on page 157 where

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1 it references the Staff's April 2, 1984 Systemmatic Assessment
2 of Licensee Performance is because in the SALP Report itself,
3 the Staff attempts to attribute what they refer to as
4 problems of procedure adherence principally to errors by non-
5 licensed personnel. That is on page -- the bottom of page 7
6 of the Systemmatic Assessment Report.

7 But, continuing on on page 9 of the same report, the
8 Staff asserts that the training program does not appear to be
9 the factor in the poor individual performance noted in the
10 Procedure Nonadherent Events Discussed Above.

11 Now the SALP Report itself, just to give you an
12 example, references various inspection reports which the NRC
13 Staff has prepared since the close of the record in earlier
14 proceedings. I think it is particularly useful to examine
15 Inspection Report Nos. 50-289, 83-25 and 50-289, 83-26,
16 because once again here we see the details of the errors
17 committed by nonlicensed personnel which resulted in important
18 safety deficiencies. Failure to maintain containment
19 integrity, among others.

20 And so I think that we do need to examine in the
21 overall concept of the adequacy of training, look at the
22 available evidence now as to how those nonlicensed personnel
23 have, in fact, been performing very recently at Three Mile
24 Island Unit 1.

25 JUDGE SMITH: Assuming that you are correct that

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1 would be an appropriate subject for the record to be opened
2 on, where do you find in the ALAB 772 any authority for this
3 Board to consider that subject?

4 MR. POLLARD: I might have to ask counsel to answer
5 that. But to me as a nonlawyer, the thrust of the Appeal
6 Board decision is -- they make reference that they are aware
7 that there are other reports available favorable to Licensee
8 management, and they specifically reference the Systemmatic
9 Assessment of Licensee Performance as one of those reports.
10 So the thrust seems to be the Appeal Board is saying, all
11 right, let's take a look at the current state of affairs;
12 what are the facts available to us now to judge the adequacy
13 of the training program at Three Mile Island Unit 1?

14 And I just wanted to raise this because I would
15 assume that the Systemmatic Assessment Report would have been
16 a subject for this hearing. And I think the content of the
17 Systemmatic Assessment Report does, in fact, raise the issue
18 of the adequacy of the training of the nonlicensed personnel.

19 JUDGE SMITH: If there was language in the Appeal
20 Board's decision which remanded that issue to us, it escaped
21 me and someone is going to have to point it out. I never
22 noticed it. I never inquired about it.

23 MR. POLLARD: That's why I brought it up at the
24 Prehearing Donference. I thought perhaps people hadn't thought
25 of it.

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1 JUDGE SMITH: Mr. Jordan?

2 MR. JORDAN: I think that is it for us, your
3 Honor.

4 JUDGE SMITH: Can you point out any particular --

5 MR. JORDAN: There is no specific language to that
6 effect, no, sir.

7 JUDGE SMITH: Are you done on the issue of training?

8 MR. JORDAN: Yes, sir.

9 JUDGE SMITH: Mr. Goldberg?

10 MR. GOLDBERG: As I was saying before, I think the
11 Licensee's statement, Issue on Licensed Operator Training,
12 generally captures the flavor of the broad concern of the
13 Appeal Board as expressed in ALAB 772. And we can look to
14 pages 63 to 72 of ALAB 772 for guidance on specific subissues
15 that need to be addressed in the remanded proceeding.

16 I have a statement of the broad issues which I
17 believe should be considered in this remanded proceeding on
18 training, and I would like to read that.

19 Are Licensee's past and current licensed operator
20 training practices, in light of the issues identified in
21 ALAB 772, such that there is reasonable assurance that
22 Licensee has the managerial competence and integrity to
23 operate TMI-1 without undue risk to the public health and
24 safety?

25 A reading of ALAB 772 as a whole clearly suggests

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1 that these proceedings about Licensee's management, competence,
2 and integrity. The Appeal Board had some concerns on limited
3 aspects of the record which was developed on that broad issue.
4 It identified those concerns in ALAB 772.

5 And what we are here to do is to address the
6 particular and specific concerns that the Appeal Board had with
7 the adequacy of the record that has already been developed.

8 In that regard, there is certainly no basis in
9 ALAB 772 to inquire further into nonlicensed operator training.
10 Neither is there, I believe, any basis in ALAB 772 to relitigate
11 the issue of the adequacy of the NRC examination.

12 I think the Appeal Board clearly recognized the
13 generic nature of the concerns that they had with the NRC
14 licensing process. It has been clear in this record that the
15 Staff has been giving priority to correcting the deficiencies
16 which were identified in this proceeding. That effort has
17 been endorsed by the Licensing Board, has been endorsed by
18 the Appeal Board.

19 But, there is no basis to relitigate that subject
20 in this remanded proceeding which, as I read ALAB 772, is
21 concerned primarily with the fact that the OARP Committee on
22 which the Licensing Board relied heavily, testified prior to
23 the cheating incidents. The primary reason why we have to
24 consider training further, is to get the views of the OARP
25 Committee on the current training and testing program of the

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1 Licensee in light of the deficiencies in that program which
2 were evidenced by the cheating incidents.

3 I think that is all I have to say at this time
4 about the issue of training.

5 JUDGE SMITH: Ms. Aamodt, you asked for an
6 opportunity to supplement your remarks with respect to the
7 NRC operating license?

8 MS. AAMODT: Yes. Licensing just put the scope
9 of the proceeding before us this morning, so I have one
10 other addition I would like to make to my other remarks
11 concerning the NRC examination.

12 I think it is a given that the NRC, after we
13 raised the issue in February of 1981 concerning the validity
14 of the NRC exam, recognized that they had some work to do
15 there. And in November, I believe, of 1981, they began a
16 revalidation -- they began to reevaluate their process for
17 examining the operators.

18 My question is, at what stage is this process?
19 Do they have now an examination that they can say is a valid
20 examination? And, will the operators be retested by that
21 exam?

22 I can't see that we are talking more about the exam
23 that we have shown in litigation, was not a valid exam. It
24 was not established by any -- it was not designed with any
25 established testing techniques; did not have a critical score

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1 that was determined to be applicable to safely operating the
2 plant, was not tested for validity or reliability. I think
3 that was all established, and that the NRC is undergoing a
4 process of improving their exam.

5 What testimony will we have about the improved
6 exam, and will the operators be retested on it?

7 I can't see redoing what has already been done.

8 The other question that comes to my mind is, I
9 believe there is an integrity question issue here also.
10 Will Licensee offer testimony as to how they determined what
11 changes, if there were any, needed to be made to the training
12 program over and above those that were made in 1981?

13 And, why it took so long to get to this point?
14 What management deficiencies have they identified and corrected
15 in making any changes that we assume that they have made to
16 their present training program?

17 So, I think there is also the management integrity
18 issue here as well that should be addressed within this
19 proceeding.

20 JUDGE SMITH: Before we move on to Mr. Blake, do
21 you have an additional comments, Ms. Doroshow?

22 MS. DOROSHOW: Yes.

23 I think that our position still is that what we
24 are most concerned with is how Licensee's training program
25 is training operators, and is it being implemented effectively?

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1 And basically there are two points: are the changes
2 which the company has made appropriate? And, I think the
3 Appeal Board expresses concern at page 63 in note 47, where
4 they say -- where they remark, are the fixes sufficient of
5 what may be more serious infirmities in the training program.

6 And they also remark at page 71 in note 56, that
7 several of the assignments which Licensee has made in their
8 training department and including Robert Long who was
9 Director of the Training and Education Program at the time
10 the cheating incidents were occurring, has been promoted to
11 GPU-N as Vice President for Nuclear Assurance, which does
12 have supervision over all training of GPU-N's nuclear reactors.

13 These also raise questions as to the competence and
14 integrity of management in placing these individuals in
15 these positions.

16 And second, if these changes are appropriate, have
17 they been effectively implemented?

18 And the issues which were outlined by the Appeal
19 Board on page 63 of the Decision, we think are suggestions
20 by the Appeal Board as to how these issues should be addressed
21 and how the Board should proceed in this matter. And that
22 what the Appeal Board was trying to do was to give some
23 guidance and instruction to the Board and to the Parties as
24 to what issues should be addressed in particular.

25 MR. GOLDBERG: Judge Smith, if I may I would like

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1 to respond to something Mrs. Aamodt said about the NRC exam.

2 It simply is not true that the Aamodts prevailed
3 with their attack on the validity of the NRC exam. There
4 is nothing in ALAB 772 which identifies any deficiency in the
5 NRC's new examination procedures. No one even challenged the
6 NRC's new examination procedures. They were used at TMI-1
7 in October of '81 to reexamine the TMI-1 operators.

8 The deficiencies which are in the record concern
9 the April '81 exam. That exam was invalidated, the operators
10 were reexamined under the strictest administration practices
11 that the NRC has ever used. No one has challenged that
12 readministration; there is no evidence in the record that
13 disputes the Licensing Board's finding and the Appeal Board's
14 finding on the adequacy of the administration of the October
15 '81 NRC exam.

16 So, when we talk about the deficiencies in the
17 NRC exam, we are talking about an exam which has no effect
18 at all. It was invalidated, the operators were reexamined
19 under the new NRC administration practices.

20 MS. BRADFORD: Judge Smith, may I just make a
21 comment. It seems to me we are back here for the third
22 time examining this issue. And it was identified as a
23 significant cause of the exacerbation of the accident itself.

24 It would seem that unless we want to come back
25 here every two years, that we should examine all of these

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1 issues. We have the opportunity now before us to look at the
2 changes that have been identified by the Staff and the
3 Licensee in the training program. And, remembering that in
4 many of these issues, the inadequacies of the training
5 department came to light during the cheating hearing, as
6 a function of the operators coming before that hearing board.

7 So, it seems no matter how narrow the scope of
8 the order seems to be, that it is just common sense that
9 now at this time we take this opportunity to examine all of
10 those things. If, indeed, the Staff's process has changed --
11 and I think some of the deficiencies that were identified
12 by the Special Master went to a much broader issue than the
13 administration of the exams that Mr. Goldberg has identified
14 here as being changed. It also went to the very heart of
15 that exam itself.

16 And there is a possibility that that process can
17 be reviewed, so that the checks and balances that are now
18 in place -- and we can have absolute assurance that they are
19 indeed checks and balances -- it just seems to me as a non-
20 lawyer that to miss this opportunity means that we are going
21 to be meeting here again and again and again on this issue.
22 It is not going to go away unless we threat it as a whole.

23 MS. AAMODT: What Mr. Goldberg conveniently
24 refers to as the administration of the exam, we are not
25 contesting the administration of the exam. That is a very

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1 easy matter to discuss. And NRC at last appears to have
2 gotten its act together and is providing proctors.

3 We are talking about the content of the
4 examination; whether the questions are valid questions and
5 whether the grading is valid and whether the final score is
6 at a cutoff point, so that those who have enough information
7 are passed, and those who do not are failed. And that is what
8 we are talking about.

9 We are talking about validity, reliability and
10 critical score.

11 MR. AAMODT: I think we should be a little more
12 specific than that, Judge Smith. The issue is not just these.
13 The issue is the question Mr. Jordan raised. After this
14 process is complete, can we and the public be assured that
15 those operators can run the plant safely.

16 Now it happens that one criteria is the NRC exam.
17 Perhaps there are others. The Appeal Board clearly wants to
18 know, can these operators run the plant safely?

19 I think this is perhaps the issue before this
20 hearing.

21 JUDGE SMITH: Are we ready for Mr. Blake's
22 remarks?

23 Mr. Blake?

24 MR. BLAKE: Mr. Smith, let me start by reminding
25 some of the people here -- some of whom never participated in

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1 the training portion of the proceeding -- setting something
2 straight with regard to the OARP.

3 There were, in fact, a number of individuals who
4 were pulled together by Licensee to form the OARP Review
5 Committee. They issued a report, members of that committee,
6 and that report appeared in the proceeding -- put in the
7 report in evidence.

8 Now, the individuals that made up that OARP Review
9 Committee spanned a good deal of expertise in the educational
10 and training fields, with particular expertise as Ms. Aamodt
11 has pointed out, in the nuclear area.

12 With regard to the two witnesses from that
13 Committee who actually appeared at the last proceeding, I
14 must say that that wasn't by luck. In fact, the two individ-
15 als that Ms. Aamodt points out were heavy in the psychology
16 area, as we understood Ms. Aamodt was, and we thought it was
17 a better fit, quite frankly. And, I'm sorry that now it is
18 regarded as not having been the right idea because nuclear
19 engineers were not involved in it. But in fact it was
20 actually designed to more accommodate what we understood were
21 Ms. Aamodt's contentions and her interest.

22 Shortly after ALAB 772 came out, the Licensee
23 reconstituted the OARP Review Committee. The Licensing
24 Board may not have seen that and reviewed some of the pleadings
25 filed before the Commission and the Appeal Board.

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1 JUDGE SMITH: We have seen the pleadings -- I
2 trust we have seen the pleadings, although I don't recall
3 that particular communication. It is the Board notifications
4 that have not been reliable -- reliably served on us, that is.

5 MR. BLAKE: The reconstituted OARP includes the
6 same members as the last OARP Committee did with one
7 exception. Mr. Marzec, the manager of training at Duke
8 Power Company, was just plain not available. My understanding
9 is that he is out of the country.

10 What we did was add Mr. Kelly, whose background
11 is precisely in the NRC agency training area, as is
12 Mr. Marzec's, to the other OARP members. And that is the
13 reconstituted Committee.

14 It is my understanding that these gentlemen have
15 been at TMI, have been brought up to date on documentation,
16 have observed training, and that we will have a report from
17 them shortly, as early as next week.

18 JUDGE SMITH: I trust, Mr. Blake, that they will
19 have read the relevant decisions?

20 MR. BLAKE: Yes, sir.

21 They were pointed at the Appeal Board's Decision,
22 the Licensing Board's Decision, the Special Master's Decision.
23 In fact, both Licensing Boards' Decisions.

24 Let me now turn, if I can, to the comments made
25 by the other parties.

1 There is one thing which is common among the other
2 Parties' points, and that is that our proposal is not
3 sufficiently broad. That, in fact -- and it is a little hard
4 for me to see each of the elements they are talking about.
5 But, I think a way of defining the difference between our
6 proposal and what the other Parties have referred to today,
7 is to focus on ALAB 772 and to draw a line in the middle of
8 the page on page 64.

9 If we draw a line there, where it starts, the
10 paragraph beginning, "The principal difficulty. . ." and
11 follow through the rest of that, that in my view is what we
12 would be putting on, or would propose to put on by way of
13 evidence and covering by the OARP Reconstituted Committee
14 and, as I understand the other parties we should back up and
15 hit NRC examinations and other broader subjects which are
16 referred to by the Appeal Board primarily on page 63.

17 There are several reasons why I believe that ours
18 is the better reading of ALAB 772. I would have the Parties
19 and the Board focus on the Appeal Board's concluding language
20 in this very section at pages 71 through 72, at page 77 and
21 in the Final Summary and Conclusions.

22 On pages 71 and 72, the Appeal Board states in
23 its concluding paragraph on licensed operator training:
24 "Licensee's Program. We recognize that by requiring additional
25 hearing on post-cheating views of Licensee's outside

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1 consultants, we are further prolonging the proceedings that
2 appear to have no end," et cetera..

3 I think clearly the Appeal Board there is talking
4 about hearing from Licensee's outside consultants, the OARP.

5 Looking at page 77 in the concluding paragraph on
6 the licensed operator training section, starting actually on
7 page 76:

8 "We therefore remand to the Licensing Board, that
9 part of this proceeding devoted to training, for further
10 hearing on the views of Licensee's outside consultants,
11 including the OARP Review Committee, in light of both the
12 weaknesses demonstrated in Licensee's training and testing
13 program, and the subsequent changes thereto."

14 Finally, when you look at the end of the Appeal
15 Board's Order in its Summary and Conclusions where it sums
16 up the remand on page 155, the concluding sentence on this
17 subject is:

18 "In particular, the Board should have sought
19 further testimony in light of the cheating incidents, from
20 the OARP Review Committee, whose views the Board previously
21 found so persuasive."

22 While there is some room here for interpretation,
23 I think there is very little. The Appeal Board clearly wants
24 to hear from the OARP Review Committee on this subject,
25 which it previously addressed, which the Licensing Board in

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1 turn relied upon. And now it feels it ought to hear from
2 them again.

3 I think that our proposal on the issue in this
4 proceeding, for the purpose of the proceeding, accurately
5 captures the Appeal Board's views.

6 In that regard, and with regard specifically to
7 the point of delivery aspect of training, I would remind
8 those that previously were involved in the proceeding and
9 alert those who were not, that the OARP Review Committee
10 Report, and the individuals who were members of that OARP
11 Review Committee, did not depend upon a paper review. They
12 were at Three Mile Island, they observed training, they
13 observed the instructors, and they have again. That is
14 point of delivery.

15 JUDGE SMITH: Would you amplify your remarks by
16 "they have again been there."

17 MR. BLAKE: It is my understanding that since the
18 days following issuance of ALAB 772 and the reconstitution
19 of that Committee, they have been to Three Mile Island and
20 have been observing training in order to update and get a
21 current perspective on training of operators at Three Mile
22 Island. That was a portion of their review before, Judge
23 Smith.

24 JUDGE SMITH: We have all looked at page 63, as to
25 be compared with page 77 of ALAB 772. As far as I can see,

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1 there is nothing on page 63 which is inconsistent with the
2 actual language of the remand, except the suggestion that
3 we may want to inquire into the sufficiency of the NRC
4 examination. It seems to me that is the only dispute.
5 Although, with the general encouragement that Ms. Bradford
6 has given, the only dispute that is before the Board as to
7 the interpretation of the ALAB.

8 Would you agree?

9 MR. BLAKE: Yes. I agree with that. I think on
10 page 63 starts their discussion of what is involved and
11 what is troubling them.

12 And then as you go into the succeeding paragraphs
13 that lay out more specifically what is it that leads to these
14 types of concerns which appear on page 63.

15 Let me address the NRC exam in particular and
16 that difference.

17 There really are two reasons why I think the
18 Appeal Board did not envision our taking on the NRC examination
19 process, and Mrs. Aamodt's views, in her words, its validity.
20 Those two are the wordings which I have read to you now about
21 the concentration on the OARP Review Committee. And recognizing
22 that the OARP Review Committee was Licensee's Review
23 Committee it didn't look at and review the NRC exam.

24 It did have a view on the adequacy of that sort of
25 an audit exam, because they looked at Licensee's exams which,

mm39 1 in fact, are styled on and track the NRC exams themselves.
2 So, we got some learning from it, but they didn't review the
3 NRC exams themselves.

4 JUDGE SMITH: They did do this however and my
5 memory -- that was a long time ago, that was three or four
6 years ago -- and my memory is that their report and the
7 testimony was that the operator-accelerated training program
8 was well designed to prepare the operators to pass the
9 NRC examination.

10 MR. BLAKE: Yes.

11 JUDGE SMITH: And that the program -- and here I
12 am not so positive -- that the program was therefore, some
13 assurance that the operators could operate the plant safely.
14 In other words, they were using the NRC operator licensing
15 examination as a criteria against which operator competence
16 could be measured.

17 I am not sure about that. I am just going by the
18 memory of the general gist of it. I specifically recall,
19 however, that they devoted considerable attention to the
20 direction of preparing the operators for passing the NRC
21 examination, and particularly the special examination which
22 was required by the Commission's Order shutting the plant down,
23 and the Order at notice in the hearing.

24 I think unless the Parties can give us any more
25 advice on it, we will just have to go back and read carefully

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1 the ALAB, and maybe even give some consideration to deferring
2 our ruling. If we should defer our ruling or somehow at least
3 bring it to the attention of the Appeal Board that there
4 does seem to be genuine differences of the reading of their
5 opinion on that point.

6 MR. BLAKE: I think it is particularly instructive
7 that at the end of the section on this licensed operator
8 training, which follows the role of the Staff, that this
9 particular language about the OARP, this is what it is
10 remanding, this is what the Appeal Board comes down to in
11 its conclusion.

12 And there is one other bit of language there,
13 Judge Smith. The Appeal Board points out, I think, that
14 reliance on the examination-qua-examination may be misplaced.
15 What they are really interested in here is training. I
16 think that appears on page 75 in ALAB 772. And I find that
17 also instructive about what it is they expect this remanded
18 hearing to accomplish and focus on as opposed to the NRC
19 exam, the training program itself.

20 JUDGE SMITH: I think it could also be observed that
21 if the Appeal Board did intend a rather discrete hearing on
22 remand including the adequacy of NRC examinations did not
23 accomplish that, that would be a substantial undertaking to
24 litigate.

25 Is there anything further on that point?

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1 MS. AAMODT: Judge Smith, I believe your
2 recollection is correct that the standard of the OARP Committee
3 was the NRC examination, that the operators were trained
4 adequately to pass the NRC examination, they were correcting
5 that. But I think the standard here that the Appeal Board
6 has, is are they trained to operate the plant. And I think
7 we have to make that clear distinction, because I think it is
8 a given that the NRC examination validity is very much in
9 question, or the NRC wouldn't be presently attempting to
10 improve the examination, which they are.

11 But I think that is the distinction. And the OARP
12 Committee has to be prepared to come back, independent of the
13 NRC examination, to be able to testify whether these
14 operators are trained to operate this plant safely. Not
15 whether they are able to pass the examination.

16 That was the fault that we found in the testimony
17 that was given in the first hearing.

18 MR. AAMODT: I think it is also significant that
19 the Appeal Board notes that one of the consultants of the
20 OARP -- it doesn't cite them uniquely.

21 JUDGE SMITH: I was going to ask that question.
22 They do say that there should be a further hearing on the
23 views of Licensee's outside consultants, including the OARP
24 Review Committee --and that is language in 77. Other than
25 Mr. Kelly and his group I don't recall any other outside

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1 consultants.

2 MR. BLAKE: There weren't any on the adequacy of
3 training in the initial proceeding, other than the OARP
4 Review Committee. Two members who testified. And, of
5 course, the cheating hearing, Mr. Trunk appeared on some
6 questions, but I don't think that is what the Appeal Board
7 had in mind here.

8 Now, I have forgotten which of the team -- I
9 think it was Ms. Bradford, it might have been Ms. Doroshow --
10 indicated that in their view they felt RHR, the Appeal Board
11 also may have had in mind here, and should be called now to
12 testify it, in fact, was a Licensee consultant. But hardly
13 the Licensee consultant which the Appeal Board is addressing
14 here, which the Board earlier relies on and now ought to be
15 brought back to see whether that reliance is correct to deal
16 with the cheating.

17 I can't make that tie reading ALAB 772 at all.

18 I don't think the Appeal Board had RHR or BETA or
19 any of those other folks in mind. It is just not a fair reading
20 of the Appeal Board's decision.

21 MS. DOROSHOW: Judge Smith, can I respond?

22 JUDGE SMITH: Yes.

23 MS. DOROSHOW: I think that view is flatly wrong.
24 I think that the Appeal Board was very specific in indicating
25 in the body of its decision, that OARP was one body of

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1 consultants that the Board was interested in reviewing
2 when it mentioned Licensee's other consultants. Certainly
3 RHR perhaps has more relevant evidence and testimony to
4 provide to this proceeding than any other consultant that
5 Licensee has hired to examine the training program. RHR
6 consultants examined operators' perceptions of the training
7 program.

8 And, as a matter of fact, as far as we understand,
9 made findings which were compatible with those made by the
10 Special Master, and were also similar to the same types of
11 training deficiencies which were part of the training program
12 before the accident, which contributed to the accident.

13 I would also like to point out that I think it is
14 most instructive for the Board to look at the language in the
15 conclusion of the Appeal Board Decision, rather than the
16 particulars which might have been discussed in the body of
17 the Decision, which perhaps were only being discussed as
18 methods of suggesting to the Board different approaches it
19 might take.

20 But, as far as the scope of the issue is concerned,
21 the Appeal Board stated that the cheating and the related
22 incidents called into question the adequacy and integrity
23 of Licensee's entire training and testing program. Although
24 we have found that the reopened record on the cheating itself
25 was as fully developed as possible, the impact of those

44 mm 1 findings on the Licensing Board's earlier conclusion on
2 Licensee's training program, was not given the full
3 consideration it warrants.

4 In particular, the Board should have sought further
5 testimony in light of the cheating incidents from the OARP
6 Review Committee whose views the Board previously found so
7 persuasive. This was on page 155 to 166 of the Decision.

8 By no means is the Appeal Board indicating that
9 the exclusive focus should be the OARP Committee and its
10 views on the training program. And I think that if the Board
11 considers the subsequent opinion of the Appeal Board in
12 ALAB 774, which was the June 19th Memorandum and Order
13 denying TMI-A's motions to reopen the record, the Appeal
14 Board was perhaps more clear in the broad scope it intended
15 for these proceedings. It stated on page 9 of that Decision,
16 "to the extent that anything revealed by the OI investigation
17 might be construed as shedding new light on the adequacy of
18 Licensee's existing training program, we have already
19 reopened the record on that score."

20 That is certainly a clear indication that the
21 Appeal Board did intend the scope of this proceeding to be
22 broad, to be viewing the training program as it is currently
23 being implemented today.

24 And I think that in light of the fact that Licensee's
25 training program was widely recognized as a significant cause

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1 of the accident, that after presenting to this Board what it
2 believed at that time to be a response to those serious
3 criticisms -- most every investigation of the accident pointed
4 out those criticisms -- that whereas at the time they were
5 presenting that testimony there was extensive cheating going
6 on and other instances of wrongdoing, that the integrity of
7 their process was not being preserved, and that there are
8 other serious problems in the training program.

9 And, that we are sitting here now five years
10 after the accident with the record still undeveloped on this
11 issue, and insufficient to provide a conclusion that the
12 training program is competent.

13 Does it seriously make any sense to limit the scope
14 of this proceeding to what the Licensee is trying to limit it
15 to? And I suggest that it does make no sense to do that.

16 JUDGE SMITH: What type of hearing, what type
17 of litigation would you envision?

18 What would be the nature of the evidence that you
19 would expect to see?

20 MS. DOROSHOW: We would expect to see consultants
21 or witnesses on Licensee's behalf who have done an extensive
22 evaluation of the implementation of Licensee's training program.
23 That may include -- certainly it should include the RHR
24 people and the raw -- an examination of the raw material that
25 they compiled in their audit of the training department, as

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1 any other people that Licensee has recently had reviewing
2 its training department. And, certainly any witnesses presented
3 should have the capability of giving a thorough evaluation
4 of what the operators perceive -- how the operators perceive
5 the training department is training them.

6 Do they feel that the training and the instruction
7 is adequate to prepare them to safely operate the plant,
8 which is the crux of the issue.

9 JUDGE SMITH: Assuming that the whole OARP comes to
10 a reopened hearing and they say, we have looked over our
11 previous report, and we have looked at subsequent inspections,
12 we looked at the cheating findings and all of that, and our
13 conclusions are such and such. And I think probably what
14 we might expect to hear from them is that their conclusion
15 would be that whatever the problem is, it has been resolved --

16 (Laughter)

17 -- I'm not saying that --

18 MR. AAMODT: You will have to forgive our response.

19 JUDGE SMITH: -- that Licensee would put on
20 testimony of witnesses who could not arrive at that conclusion.

21 Why are you prevented then, from attacking that
22 conclusion by whatever competent evidence is available to
23 you if -- and you have to forgive us for not being up on the
24 RHR report, if that is germane and relevant to the conclusion
25 of the OARP Committee, why would you not be able to use that

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1 information to attack their conclusion?

2 (Counsel Bernabei and Doroshow consulting)

3 In other words, do we have to decide what you are
4 asking us to decide?

5 MS. DOROSHOW: First of all, I think that -- I
6 think an issue which the company, the Licensee may argue
7 is not relevant is, what is the history of the implementation
8 of the training program, and why is it that there were such
9 deficiencies at the time it was presenting a program which it
10 was representing was sufficient?

11 And, how does that history factor into the ability
12 to now evaluate whether these consultants, whoever they have
13 who might be up there stating that everything is fine now,
14 how does that factor in -- and in particular, the specific
15 findings that Judge Milhollin found, as well as the
16 particulars of the RHR audit findings, how is it and what does
17 it say about the competence and integrity of management, for
18 example, that this history developed?

19 And, how does that reflect on the testimony that
20 these consultants would be providing?

21 We won't know -- really, we need to have information,
22 certainly, of what has happened since the RHR report -- how did
23 the company respond to those findings? What has it done?
24 What changes have they made, and are they effective to now be
25 able to conclude after five years of this, that suddenly this

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1 training program is adequate?

2 JUDGE LINENBERGER: Ms. Doroshow, one interpretation
3 I placed on your most recent comments, is that in effect you
4 are asking this Board to relieve you of the responsibility
5 of demonstrating relevancy of the RHR material.

6 I have to assume that may not be a correct
7 interpretation. Would you care to comment on this?

8 If you feel that you can make a case for its
9 relevancy, why are you concerned?

10 If you feel you can't, why would you want the Board
11 to relieve you of that responsibility?

12 MS. DOROSHOW: Well, certainly we are concerned
13 that the path Licensee seems to be going down is to restrict
14 this hearing to, in particular, the OARP Committee. But -- as
15 stated by the Appeal Board. But it seems that the Licensee's
16 interpretation of that language is that that is what the
17 hearing should be about, to bring these people back and let's
18 hear from them again.

19 And my understanding is that is what they are
20 trying to direct the Board to do.

21 MR. GOLDBERG: Judge Smith?

22 JUDGE SMITH: Go ahead, Mr. Goldberg.

23 MR. GOLDBERG: With respect to training, ALAB 772
24 identifies two things that have to be accomplished by the
25 remanded proceeding.

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1 The first is that the OARP Committee, and
2 perhaps other of Licensee's consultants that they may want
3 to produce at the hearing to testify, have to address the
4 current training and testing program in view of cheating.

5 The second thing which the Appeal Board said has
6 to be done is that there has to be a meaningful analysis of
7 that testimony by Licensee's consultants, which would include
8 the effect of cheating and the deficiencies identified in
9 Licensee's training and testing program on the Board's prior
10 favorable findings in Licensee's training and testing programs.

11 That can be accomplished through those findings
12 and the Licensing Board's decisions.

13 So there are two and only two things, I think, that
14 need to be accomplished in the remanded proceedings;
15 testimony by Licensee's consultants, and a meaningful analysis
16 of the effect of that testimony on the Board's prior favorable
17 findings on training and testing.

18 With respect to RHR there was a specific motion to
19 reopen the record on the content of the RHR Report. That
20 motion was denied. We are here now not talking about the scope
21 of this proceeding, but about evidentiary rulings.

22 To the extent that TMI-A believes it is relevant,
23 wants to introduce it into evidence, is not satisfied with
24 the consultants that Licensee calls to testify, they can make
25 their arguments in the course of the hearing.

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1 But I don't understand at this point why we need
2 to resolve whether they can get some of the information which
3 is in the RHR report into evidence, or whether they can call
4 some of the authors of the RHR report, when we are here to
5 define the scope of the proceeding and not what evidence is
6 ultimately going to be deemed admissible.

7 MS.DOROSHOW: I believe that is what we are dealing
8 with. The scope of the proceeding seems to be whether or not
9 we are just limiting this proceeding to OARP -- the OARP
10 Review Committee or not.

11 JUDGE SMITH: No, there would be no hearing under
12 the Administrative Procedure Act, and under the hearing
13 provisions of the Atomic Energy Act, that would permit a
14 unilateral showing by the Licensee of some evidence.

15 The fact that there is going to be a hearing also
16 assumes that you will have -- the participating parties
17 will have a full opportunity to present evidence and to
18 challenge evidence that is relevant.

19 I don't see the basis for your conclusion that the
20 only thing that the hearing will consist of will be the OARP
21 Committee testimony. That may very well be all that the
22 Licensee chooses to offer. But that does not mean that you
23 are limited to challenging whatever they put on by whatever
24 lawful or appropriate means that are available.

25 Maybe if they go that route, they will lose. If

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1 they limit their hearing to that extent, maybe they will
2 lose if you have a case that beats it.

3 I don't know. That is speculation.

4 I agree with Mr. Goldberg. I think you are
5 trying to argue prospectively, evidentiary problems which
6 haven't come up yet. Or, unlikely to come up. Well, they
7 are likely to come up.

8 MS. DOROSHOW: I think, Judge Smith, that does
9 resolve some of the problem, because what I saw happening
10 was an attempt by the company to limit the scope of this
11 proceeding solely to their ability to present the OARP
12 Committee and whatever --

13 JUDGE SMITH: I am not saying or suggesting at
14 all that the Company should put on evidence more than that.
15 We will issue an order defining the issues, and they they
16 will have to address the issues.

17 But, I doubt if we will issue an order specifying
18 the names of the persons who will have to come to a hearing.
19 Or, bounding, saying "these people and nobody else may come to
20 the hearing and offer evidence." That is going to be
21 the responsibilities of the Parties.

22 MS. BRADFORD: Judge Smith, some of the findings
23 that came out of the cheating hearings, was that the attitude
24 of the operator towards the training program affected how they
25 absorbed the material or how they viewed the material and so

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1 forth.

2 I don't know whether from just allowing or
3 considering allowing the OARP group to come in -- because
4 RHR in a way addressed those issues, the attitude.

5 JUDGE SMITH: If it is relevant, it is relevant.
6 We just can't rule in a vacuum. We can't rule before it
7 comes up, before there is a contextual situation before us.

8 MS. DOROSHOW: Judge Smith, I just would make one
9 more point.

10 Our concern is I think primarily that Licensee
11 through its witnesses will be presenting testimony solely on
12 the issue of what is the current immediate state of Licensee's
13 training program.

14 And what we are most -- what we are additionally
15 concerned with is how the current state of the program can
16 be evaluated in light of the history of this training program.

17 And that is the scope that we would like to see
18 included in this hearing, because that is what we believe is
19 most instructive in determining whether or not you can rely
20 on the current state of the training program. That experience
21 is the only way to view that. And we certainly have a lot of
22 experience in this case.

23 And that I think it would be disingenuous to approach
24 this issue at this point by just reviewing the immediate
25 training program and, you know, what the paper procedures

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1 say is going to happen in the future. And, you know, these
2 are the changes that we have made immediately without looking
3 at really how the training program has gotten to this stage.

4 JUDGE SMITH: Do you think that she is correctly
5 describing the limitation -- do you think she is describing
6 your position correctly?

7 MR. BLAKE: I don't honestly know, Judge Smith.
8 I'm not sure.

9 JUDGE SMITH: It seems to me Ms. Doroshow is
10 saying, "You better not come to the hearing and say this is
11 the present situation out at the training department at
12 TMI-1 and everything is okay."

13 She is saying that the correct scope is the OARP
14 Review Committee should come to hearing responsive to remand,
15 taking into account deficiencies that the various decisions
16 have found in the training program, the cheating, and reevaluate
17 their position.

18 Isn't that the way we read it? Isn't that true of
19 the order?

20 MR. BLAKE: It certainly is the latter. That
21 is what brings us here.

22 We can't just put blinders on and ignore the
23 deficiencies which have been pointed out in the past. We must
24 address that.

25 I, therefore, do not understand what her problem is.
(Board conferring)

mgc 6-1

1 JUDGE SMITH: I think I may have identified
2 a subtle subissue here, and that is, you may be looking
3 at the remand as saying, "Bring back the OARP Review
4 Committee and have them assess the effect of cheating,"
5 as compared to my characterization of it, which was they
6 should assess the findings concerning the deficiencies
7 in the training program and the cheating. That may be
8 a point that may be worthy of resolution. I have not
9 read the remand with that distinction in mind.

10 MR. BLAKE: I had not tried to make such a
11 distinction. It is the broader of those two which I had
12 in mind. I don't know what the OARP report issue would look
13 like, but in terms of the testimony in the proceeding, it
14 has to be the broader of the two which you have identified.

15 JUDGE SMITH: I agree. Then if that is the case,
16 then I think the statement by Ms. Doroshow is without --
17 you have no concern on that?

18 MR. BLAKE: I don't want to be misunderstood.

19 JUDGE SMITH: As I have paraphrased it.

20 MR. BLAKE: I don't want to be misunderstoc
21 have said that I was going to go back in to talk abc
22 cheating events and whatnot. That is a closed book, as
23 far as I am concerned, in reading the Appeal Board order,
24 not the effect of it, not its impact on training, whatever
25 the OARP fellows think now about how it affects an

mgc 6-2

1 assessment of the training program, but as to whether
2 somebody did or whether they didn't, that is not what I
3 meant to include.

4 JUDGE SMITH: Oh, you don't think the remand
5 includes a relitigation of who cheated and who did not?

6 MR. BLAKE: That's correct.

7 JUDGE SMITH: I didn't take that into
8 consideration. I think they have to accept that as a
9 given, the res adjudicata findings on those issues, even
10 whether the company agrees with them or not. The Committee
11 will have to accept the finding that G&H cheated, for
12 example.

13 MR. BLAKE: Correct. I don't really see any
14 confusion there as to that aspect of the remand. I think
15 this whole discussion so far has boiled down to
16 identification of a single dispute, and that is to what
17 extent is the NRC licensing examination sufficiency included
18 in the remand. I don't think anybody can add anything
19 more to it.

20 MR. AAMODT: Would you restate that please?

21 JUDGE SMITH: I think the only dispute that I
22 recognize now as to the scope of the remand on the training
23 issue, the only major dispute is, is the NRC licensing
24 examination to be included? Is the adequacy of that
25 examination to be included in the remanded hearing?

mgc 6-3

1 MR. AAMODT: You say that's a remaining dispute,
2 you say?

3 JUDGE SMITH: That is the most outstanding, single
4 dispute that I have identified so far.

5 MR. AAMODT: The Appeal Board does address that
6 in saying that it can't envision that relitigation with
7 regard to what examination the Staff construct presents
8 and administers, but what it does is point out the validity
9 of the question the Board placed, and that is, when this
10 training program is over, do we have assurance that they
11 can operate this plant safely? And how you separate
12 these two, it seems to me, may be the issue we should talk
13 about.

14 JUDGE SMITH: You have recaptured exactly the
15 argument that has been debated up to this point. So I am
16 simply summarizing what I believe would be the result of
17 discussion with this Board.

18 MR. AAMODT: I guess the question is, could we
19 ask the Licensee to put on a case to prove that its
20 operators can safely operate TMI-1? That's it. That is
21 the question.

22 JUDGE SMITH: I don't want to start the whole
23 discussion, the whole morning discussion over again. I am
24 simply summarizing to this point. I think that has been
25 subsumed in the discussion. That is what is remaining for

mgc 6-4

1 the Board to decide now, is whether the sufficiency of the
2 NRC licensing examination is an appropriate issue on remand?

3 MR. BLAKE: Judge Smith, there is one other
4 issue, I don't think as large as that, but certainly you
5 see or raise the question of whether or not the
6 non-licensed operator training was also involved in the
7 remand. I don't want to be misunderstood on that one either.
8 I don't think there's any way other than maybe asking the
9 Appeal Board if they have a view --

10 JUDGE SMITH: As I sit here now, I can't point
11 to any basis to bring that -- speaking of jurisdiction,
12 I can't point to any basis for bringing that into the
13 remanded hearing, but we will reserve decision with that
14 in mind. You are correct. That is also a main issue.

15 I think we should leave, then, the issue of
16 training on the remand.

17 Let's take a ten-minute break at this point.

18 (Recess.)

19 JUDGE SMITH: With respect to the TMI-1 leak
20 rate testing, we will follow the same procedure. We will
21 have parties other than Applicant address their proposal,
22 their definition of that issue.

23 Do you agree with that description of the issue,
24 Ms. Doroshow?

25 MS. DOROSHOW: No, we don't agree with it at all.

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1 The significance of the TMI-1 leak rate testing issue is
2 the effect or the impact it has on the integrity of the
3 management. It certainly should not be limited to the
4 issue of what were the procedures before the accident and
5 the procedures presently in effect.

6 As to the issue of procedures, I think it is clear
7 that the issue here is whether data was falsified and
8 documents were destroyed in violation of their license and
9 the NRC regulations under the Atomic Energy Act, and what
10 is the significance if that was occurring, of the company's
11 failure to inform the NRC of this, as well as their failure
12 to inform the NRC of defective procedures that they may have
13 been using.

14 The question is, was there a failure of
15 Licensee to comply with its regulations regarding both
16 record-keeping and the testing performance?

17 In addition, there was an OI investigation
18 recently released on this issue which revealed significant
19 conflicts in testimony by a number of individuals who were
20 interviewed by OI, including management personnel. I think
21 that that's a very significant integrity issue that needs
22 to be examined.

23 And another important issue, I believe, is, if
24 the procedures for leak rate testing before the accident
25 were being violated, if documents were being falsified and

mgc 6-6

1 destroyed, was this how the operators at Unit 2 learned
2 how to do a similar thing for which the company has recently
3 been indicted and pled guilty on?

4 JUDGE SMITH: Ms. Doroshow, I think the discussion
5 we had on the training program might be instructive. And
6 that is, I don't think today is the time to talk about
7 particular evidence which would go in support or against
8 Licensee's version of the events, but as to what the actual
9 description of the issue is. The actual evidence, I
10 suppose, would be outside of the purpose of this morning's
11 conference.

12 MS. DOROSHOW: Well, on that point, I would just
13 reemphasize that it is not the question as to whether the
14 procedures are adequate before or after the accident. It's
15 whether data was being destroyed and falsified, and was
16 that a violation of regulations, and how does that impact
17 on management integrity?

18 MR. BLAKE: Judge Smith, I think I can help the
19 argument. I didn't mean by the specific language of the
20 procedures here to so restrict it. In the interest of
21 trying to cut short or maybe head off some of these
22 arguments, let me give you another way of looking at these
23 same words.

24 We do have an OI investigative report on TMI-1
25 leak rate testing. And recently we have sent out -- I don't

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1 know whether all the parties or the Board have seen it --
2 a second investigative report on the same subject by
3 Edwin Stier. I would envision that both of those, if you
4 take Ms. Doroshow's approach to the hearing, would come in.
5 From our part, I don't envision us taking on, either within
6 or without the relevant standpoint of the hearing, those
7 reports. And all the subjects that she is talking about
8 are addressed in those.

9 So I do this by trying to alert the other parties.
10 I didn't have in mind to bring in just Procedure X, Y, Z
11 type and talk about whether or not it was adequate.
12 Obviously it's the practices that went into those procedures,
13 their implementation, administration of those procedures,
14 what records were kept and what weren't, and management
15 involvement.

16 The words here -- in trying to cut off some of
17 the argument, I didn't intend that. I thought this was an
18 appropriate way of phrasing it.

19 JUDGE SMITH: So there is not substantial
20 disagreement in your mind with the way Ms. Doroshow
21 described the issue?

22 MR. BLAKE: That's right. I'm trying to do this
23 to cut off --

24 MS. BRADFORD: I have one question. Mr. Blake's
25 comments raise a question in my mind. I understand the

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1 scope of those two investigations was considerably different,
2 in that the NRC investigation examined only one year, and
3 the Stier investigation examined the total history or at
4 least back to 1974.

5 MR. BLAKE: I agree. I would expect to put in
6 the Stier report.

7 MS. BRADFORD: All right.

8 JUDGE SMITH: Do you have any additional comments?

9 MS. AAMODT: I don't see where No. 2, the leak
10 rate testing procedures presently in effect, is an issue.
11 I think the issue is the management integrity issue, the
12 integrity of the operators issue. It's not a matter of
13 whether or not they can presently do leak rate testing
14 procedures according to technical specifications.

15 MR. AAMODT: We would concur with Ernie's
16 comment, that perhaps if the word "procedure" were changed
17 to "practice," that that opens the door for us to ask
18 the question which is of particular interest to us, and
19 that is to what extent we may be assured that the practices
20 will be adhered to. And that comes within the scope of
21 the integrity issue.

22 JUDGE SMITH: I hear you arguing at cross
23 purposes with Mrs. Aamodt, and that's a practice I don't
24 recommend generally.

25 MR. AAMODT: No, it's consistent. What I am saying

mgc 6-9

1 is that we are concerned that whatever -- this is our
2 concern. It is that whatever procedures are written, which
3 the plant personnel are required to follow, the issue is
4 not whether -- we feel in time the issue will not be
5 whether or not those procedures are adequately drawn. The
6 issue is whether or not the plant practices will be
7 adequately carried out.

8 JUDGE SMITH: Mr. Jordan?

9 MR. JORDAN: I don't perceive a lot of difference.
10 I had worked up a rework of this language that I think would
11 encompass this, if you would like to hear it.

12 JUDGE SMITH: All right.

13 MR. JORDAN: The purpose of the remanded hearing
14 on TMI-1 leak rate testing is to address allegations of
15 leak rate testing falsification at TMI-1, prior to the
16 TMI-2 accident, and the leak rate testing procedures and
17 practices presently in effect for TMI-1 and to determine
18 the implications of the Board's findings on leak rate
19 falsification with respect to the management's competence
20 and integrity of General Public Utilities.

21 JUDGE SMITH: On this -- Mr. Goldberg?

22 MR. GOLDBERG: It appears the parties are pretty
23 much in agreement. I have some language that is parallel
24 to the language I suggested for the training issue, for
25 the broad issue of the TMI-1 leak rate testing.

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2 Are Licensee's past and current leak rate
3 testing practices at TMI-1 such that there is reasonable
4 assurance that Licensee has managerial competence and
5 integrity to operate TMI-1 without undue risk to the
6 public health and safety?

7 MS. AAMODT: Judge Smith, I want to reiterate
8 again, I made the motion that was upheld by the Appeal
9 Board, and my conception of that motion was simply, did
10 Licensee cheat or didn't they cheat? Did they cheat on
11 their leak rate testing? Did they violate technical
12 specifications or didn't they?

13 Any plant can now put a procedure into effect
14 which will say, "We are going to adhere to the technical
15 specifications." Any plant can demonstrate that ability,
16 instant ability, right now. I'm not interested in that,
17 and I don't think that we should be interested in that.
18 We are looking at the integrity issue. Did this plant
19 violate the technical specifications at Unit 1 or didn't
20 they? And that's what I feel is the only issue in this
21 proceeding.

22 I am not interested in a finding as to what they
23 can do in the future and what they promise they will do
24 and what they say they are doing right now, what procedure
25 they can write up right now. I'm just interested in what
they did do, because it's on past behavior that would

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predict future performance.

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JUDGE SMITH: I just can't reconcile your
statement with Mr. Aamodt's statement.

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MR. AAMODT: I went one step further. I would
bow to this one.

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1 JUDGE SMITH: Anything further?

2 Mr. Au?

3 MR. AU: I would just say that I agree with
4 the restatement of this issue. But I think one point
5 that has been left out is there should be some questioning
6 concerning management attitude towards the leak rate testing
7 program itself, and whether management ignored erroneous
8 results which were generated by the program.

9 MR. BLAKE: Judge Smith, I think Mr. Jordan did
10 a good job in recapturing -- I think it might be better,
11 because I don't know what those specific allegations are that
12 he is talking about -- I think if he could identify them, it
13 might be helpful. I think if we got rid of the allegations,
14 I think the thrust of what he had to say would make sense.

15 JUDGE SMITH: I would like to read more carefully
16 what he said. I think we would prefer revised.

17 I do have some confusion as to what the status of
18 that particular issue is with respect to this Board. Is
19 that encompassed in your motion for a stay? It is?

20 MR. BLAKE: Yes, sir.

21 JUDGE SMITH: Okay.

22 On the other hand, as I understand some of the
23 pleadings, you had assumed that the TMI-1 leak rate issue
24 had been subsumed by the TMI-2 leak rate issue?

25 MR. BLAKE: No.

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2 What I had said in my pleadings was that
3 we envisioned just under the remand in ALAB 738, needing
4 as well to address practices at TMI-1. I just couldn't have
5 foreseen a hearing where we talked only about what occurred
6 at Unit 2 pre-accident in a given area, and didn't put it
7 in some context about the unit we were talking about.

8 JUDGE SMITH: Okay.

9 Now, let's assume that the Commission receives the
10 report of the Office of Investigation on the TMI-2 leak rate
11 issue, the so-called Hartman allegations and lifts the stay
12 of ALAB 738 while they are considering your stay. I think
13 as I have described the problem, maybe I have answered it
14 to myself that it is of no moment. We will proceed on the
15 TMI-1 leak rate issue until told not to.

16 That leads us to the next point, and that is,
17 can we now avoid the inconvenience of all gathering together
18 in this room again in the event that the Commission does lift
19 the stay of ALAB 738 and --

20 MR.BLAKE: I should think so. To the extent any
21 of us thinks we can't, we could certainly start on the
22 telephone. I don't see the need right off the bat for a
23 prehearing conference.

24 JUDGE SMITH: Even though we do not have the
25 jurisdiction to proceed on TMI-2 leak rate issue, I assume no
one objects to us exploring the possibility that that matter

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1 may be back in hearing before us. I am inviting now any
2 comments that you might have which will enable us to proceed
3 with that without an initial prehearing conference.

4 Now is your opportunity. I am saying it may very
5 well be that the Commission, if they should remove the stay
6 of ALAB 738 without further ado, we would just issue a
7 Memorandum and Order commencing the prehearing procedures on
8 it.

9 MS. DOROSHOW: I would just like to comment that
10 we would have no objection, except that we would hope or we
11 would ask that we then be granted extended discovery on that
12 issue, particularly in light of the fact that there does not
13 seem to be an adequate OI investigation in the works at this
14 point, and that Judge Rambo has just this week denied the
15 NRC access to the Grand Jury transcripts from the criminal
16 proceeding. And that we see that there would be a genuine
17 need to do some extensive discovery on that issue.

18 JUDGE SMITH: Perhaps I am looking for trouble.
19 Maybe we should just wait until the Commission acts on that
20 stay and see what is necessary. Maybe we will have a telephone
21 conference, or maybe we will have to come back up.

22 Going then to the issue with respect to
23 Mr. Dieckamp. I read that as being a rather narrow issue.
24 I think the Appeal Board has pretty much described on paper
25 what we received before -- do you have that?

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1 MR. BLAKE: Our language pretty much tracks the
2 footnote on page 10 132.

3 JUDGE SMITH: I do have one suggestions as to
4 an addition on that issue. Let's look at the language on
5 page 134. I think that you have picked that up quite well.
6 However, I think there is an unstated implication in that
7 language that should be addressed, and that is -- it is sort
8 of a bridge between Item 1 and Item 2. Item 1 wants to know
9 whether anyone interpreted the pressures in containment spray
10 at the time in terms of core damage.

11 Item 2 wants to know who or what was the source of
12 the information.

13 Bridging that, the third issue is, ascertain
14 whether the "anyone" referred to in Issue No. 1 communicated
15 their knowledge to Mr. Dieckamp.

16 It is not exactly a quibble. I just see a void.
17 I want to know what the source of the information was. But it
18 doesn't specifically include tracking through and seeing --
19 trying to see if there is a chain of events from the information
20 imparted to those in the control room to Mr. Dieckamp.

21 I think that was probably intended by that, at
22 least. That would have to be part of the issue.

23 I see you are nodding your head in agreement?

24 MR. BLAKE: I agree. I'm not sure which way we would
25 get at it. I had envisioned here, for example, not only

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.1 Mr. Dieckamp would be here, but individuals upon whom you
2 relied, for example, would come to answer questions and give
3 testimony. Where did you get your information, who did you talk
4 with? - The other three named individuals that were referred
5 to here, what you think is not only a natural point of their
6 testimony, but who did you talk to about it, who else
7 did you tell. And we could link those a little, perhaps.

8 But certainly, I agree that is the sense of it.

9 MS. DOROSHOW: Judge Smith, may I make a comment?
10 Several comments?

11 We believe that there are other issues that are
12 important to examine here. In particular, we think that it
13 needs to be determined what steps Mr. Dieckamp took to
14 correct the misstatement of facts he made when he learned it
15 was a misstatement.

16 Why did he send out the telegram? Did he expect it
17 to be relied upon, or did he expect it to be important to
18 the regulatory process? And, was the information
19 relied upon?

20 JUDGE SMITH: You expect to have Congressman Udall
21 here?

22 MS. DOROSHOW: We don't expect to have Congressman
23 Udall here. But, we expect that these are certainly valid
24 questions that we should be examining Mr. Dieckamp about.

25 We also think that it is conceivable there may be

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1 an opportunity to bring an individual from that staff, although
2 that is pure speculation on our part.

3 I guess the point is that the material false statement
4 issue needs -- the legal criteria which needs to be met for
5 determining whether such a material false statement was sent, under
6 the NRC Regulations and its case law, needs to be examined.

7 For that reason, I think it is very important
8 that it be determined whether Mr. Dieckamp knew or should have
9 known that this information was false and wasn't material,
10 wasn't relied upon. And, did he expect that it could be
11 relied upon. Was it important to the regulatory process.

12 MR. AAMODT: There is one additional point, Judge
13 Smith, as raised by the Appeal Board on page 133, second
14 paragraph.

15 "We remand to the Board for further hearing on the
16 significance of Dieckamp's Mailgram vis-a-vis Licensee's
17 competence to manage TMI safely." That has to be the ultimate
18 question resolved under this issue.

19 MR. JORDAN: We have nothing further.

20 JUDGE SMITH: Do you wish to comment on the
21 effect of the telegram. Ms. Doroshov has suggested not only
22 should we apply the order to Mr. Dieckamp's situation to when
23 he sent the telegram, but events following the telegram. That
24 is, the effect of it and what eventually was the damage caused
25 by the telegram.

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1 MR. BLAKE: I don't know how to put on evidence
2 of what the impact was. I don't know how to do it with
3 respect to what was on his mind, or what was on his mind
4 subsequent to the Mailgram. I think we would have to cope
5 with those, what the nature of the examination is at the time.

6 JUDGE SMITH: You would not foreclose that as an
7 appropriate area of inquiry as to what the situation with
8 respect to Mr. Dieckamp's actions and state of mind were after
9 the telegram?

10 MR. BLAKE: No. I can't foreclose those now. I
11 can't see particularly their materiality to the inquiry and
12 the importance of the Mailgram -- the state of mind of the
13 individual at the time he sent the Mailgram, and therefore
14 what it represents.

15 JUDGE SMITH: Anything further?

16 MS. DOROSHOW: Just one more point. I guess I
17 would just like to reemphasize that it is also important to
18 examine if Mr. Dieckamp should have known, or should have
19 sought to discover the facts before he did make this statement,
20 exactly what he did to do that. But, given his position in the
21 company and the fact that he was representing GPU, and he
22 was a very high level official of that company, should he
23 have known before he sent the telegram what the facts were.

24 JUDGE SMITH: Anything further on that issue?

25 (No response)

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1 I would like to have a statement from the Intervenors
2 as to their intentions with respect to their participation.

3 I assume from your presence here that you intend
4 to actively participate in any hearing on these issues. Is
5 that the case? I do not ask that of TMI-A. I think that
6 is evidenced by your previous participation. But, I would
7 like to make that clear that you do intend to pursue these
8 issues through to its conclusion.

9 MS. DOROSHOW: Yes.

10 MS. BERNABEI: Yes.

11 MS. BRADFORD: Yes.

12 JUDGE SMITH: Is that the intention of the Aamodt
13 family?

14 MS. AAMODT: We would like to pursue the option
15 of consolidating with another party and not being
16 present at the hearings.

17 JUDGE SMITH: Not being present at the hearing?

18 MS. AAMODT: That's right.

19 JUDGE SMITH: Do you want to discuss that now,
20 UCS? I would like to have an explanation of the extent you
21 intend to participate.

22 MR. JORDAN: UCS' primary interest in the remanded
23 hearing is in the training issue because the training questions
24 have thrown, in the inadequacies and inabilities so far to
25 have findings on the issue -- thrown into question in our

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1 view, the Licensing Board's original findings -- closely
2 related to the Licensing Board's original findings on a
3 number of technical issues that UCS participated on in the
4 so-called hardware design hearings in which procedures and
5 practices and operator actions to be relied on in large part
6 for a number of issues accordingly. UCS will put its primary
7 emphasis on the training program question.

8 I do not foresee any participation on the
9 Dieckamp Mailgram issue.

10 We are interested in the leak rate qualification
11 issue.

12 JUDGE SMITH: You are?

13 MR. JORDAN: Yes. Particularly the implications
14 with respect to management competence and integrity.

15 Our main focus is the training issue.

16 JUDGE SMITH: Mr. Au?

17 MR. AU: Commonwealth is interested in all three
18 issues. We will be participating in hearings.

19 That does not necessarily mean we will be
20 sponsoring any witnesses or providing any direct testimony
21 on these issues.

22 I believe we are primarily interested in the TMI-1
23 leak rate testing issues.

24 JUDGE SMITH: Have you made a considered
25 determination that you are not interested in the Dieckamp

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1 telegram issue?

2 MR. AU: No, we have not made a final decision on
3 that.

4 JUDGE SMITH: I understand that UCS intends to
5 be present at the hearings on the issues they have stated,
6 Not just at briefings and proposed findings?

7 MR. JORDAN: No, that is correct.

8 In fact, I would say we have not identified
9 witnesses yet, but we intend and hope to call witnesses.

10 MS. AAMODT: Mr. Smith, we made a motion on the
11 Department allegations on April 16, 1983. We made the motion
12 on the TMI Unit 1 leak rate falsification February 24th, 1984.
13 And we litigated the training issue by ourselves in February
14 1981. And we spent many, many weeks preparing for that, and
15 then coming to the hearings and making findings the entire
16 summer of 1981 on the training issue and then attending the
17 cheating hearings and making findings on that and so forth.

18 It is now four years later and our resources have
19 been essentially eaten up by this proceeding that has
20 essentially not listened to our findings, not listened to our
21 conclusions and yet has come to the conclusion where these
22 very issues that we have raised -- the training issue in
23 particular -- is still an open issue.

24 JUDGE SMITH: Mrs. Aamodt, I want to interrupt
25 you right there. The Members of the Licensing Board and

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1 myself have spent untold hours and hours and days and weeks
2 listening to you and carefully evaluating your proposed findings
3 and your motions, and that simply is not true.

4 MS. AAMODT: What I am saying, Judge Smith --

5 JUDGE SMITH: You haven't prevailed every time you
6 have wished. That is another point.

7 MS. AAMODT: We have prevailed to the point where
8 we are here back litigating an issue which we said was not
9 properly litigated in the first place in 1981.

10 What we are saying is, that we do not have the
11 resources to attend this hearing to represent our own
12 interests, and we wondered whether the Board can do something
13 to bridge this gap in our resources to be able to have our
14 interests represented here.

15 We wondered whether you could comment on that.

16 JUDGE SMITH: This has come up many times in
17 this hearing. As you know, we cannot provide any financial
18 assistance to Intervenor. You know that.

19 The only other possibility is that we could call
20 our own experts, and that can only be done under very, very
21 tight circumstances. If I am not mistaken, I think the
22 Appeal Board may have alluded to that in this ALAB. I am
23 not sure.

24 But, I don't see those circumstances prevailing
25 here. I think before we can do that, we must first find that

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1 the record would not be adequate, would not be a reliable
2 record to support a decision without the Board calling experts
3 as compared to whether it is a nice idea to call experts.
4 We are sharply restricted on when we can call our own
5 witnesses.

6 So, with those two considerations, I am not
7 aware of any assistance that we can extend you.

8 MS. AAMODT: Are you able to provide transcripts
9 so that we can follow the hearings?

10 JUDGE SMITH: Most specifically we may not, except
11 to the extent they are put in the Public Document Room.

12 MS. AMMODT: Can transcripts be put in the Exton
13 Library so that we don't have to travel an hour and a half
14 to use them?

15 JUDGE SMITH: I don't know. I have had so many
16 discussions in this case about the Public Document Rooms and
17 where they should be and transcripts, I just don't know where
18 we are or where we have been.

19 It seems to me we have discussed every conceivable
20 aspect of transcripts and Public Document Rooms.

21 Are you making a request that has not been made
22 before? We have a Public Document Room in Harrisburg and
23 in State College.

24 MS. AAMODT: Both an hour and a half away from us.

25 JUDGE SMITH: Now your request is you have one

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1 where?

2 MS. AAMODT: Half an hour away from us in
3 Exton Public Library, which is a large library.

4 MR. AAMODT: That would only be a half an hour
5 away.

6 JUDGE SMITH: I simply don't know.

7 MS. AAMODT: May we make a motion that the
8 documents and transcripts be placed in the Chester County
9 Library in Exton, Pennsylvania?

10 JUDGE SMITH: You have that motion and we will
11 consider it.

12 MS. AAMODT: Thank you.

13 MR. GOLDBERG: Judge Smith, I have a few comments
14 on the participation by the Intervenors.

15 With respect to the Aamodts, if I heard Ms. Aamodt
16 correctly, I believe she said she is considering not attending
17 the hearing. Did I hear that correctly? Not participating
18 in the hearing?

19 MR. AAMODT: We are considering that, yes.

20 JUDGE SMITH: That is correct. I was balancing
21 that idea against your request for the transcripts.

22 I don't know where we come out on that.

23 MR. GOLDBERG: I guess the Aamodts' move to
24 reopen on the TMI-1 leak rate testing practices, the motion
25 was granted. And now they are saying they may not participate

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1 in the hearing. I want to give that some thought. I may
2 want to file a written motion on that.

3 With respect to UCS, UCS did not participate in
4 the original management phase of this proceeding, nor did it
5 participate in the reopened proceeding on cheating. They have
6 participated in the Commission's Immediate Effectiveness
7 Review, and they did file briefs with the Appeal Board on the
8 appeals from the Licensing Board Decision on Management and
9 Cheating issues.

10 I am somewhat curious as to what -- on what
11 authority they believe they can participate now in this
12 reopened remanded proceeding once again on issues on which
13 they did not participate at all when they were originally
14 litigated?

15 MR. JORDAN: Your Honor, are you awaiting a
16 reply from UCS?

17 JUDGE SMITH: I noticed you were consulting.

18 MR. JORDAN: I have gone over this briefly
19 earlier. In fact, UCS has participated at every stage
20 beginning after the issuance of the Special Master's Report,
21 including commenting on the Special Master's Report and
22 at every stage since that time.

23 As I said, the Special Master's Report and the
24 Cheating Findings that are related to the cheating, raised
25 questions concerning the remedies, the reliance upon

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1 procedures and practice and operator actions with respect
2 to many of the issues that the UCS had previously litigated
3 as design issues. Those include, for example, reliance on
4 feed and bleed, the adequacy of ECCS, question of core
5 uncovering, core-level measurement, preventing premature
6 operator termination of safety system, safety grade
7 pressurizer heaters, and safety grade PORVs.

8 These are all listed, by the way --

9 JUDGE SMITH: I think we recited all of those in
10 our initial decision reserving jurisdiction.

11 MR. JORDAN: Yes.

12 JUDGE SMITH: I can see the difficulty here. There
13 is no question about it. The Union of Concerned Scientists
14 participated very broadly, more than any other Intervenor on
15 the issues of the operator actions.

16 I specifically recall day after day Mr. Pollard
17 highlighting that very point about the proper training of
18 operators. There is no doubt that that aspect was thoroughly
19 litigated by UCS.

20 MR. JORDAN: I guess I take it that that answers
21 the question of UCS' participation on operator training.

22 JUDGE SMITH: The suggestion is that you defaulted
23 by not participating in any subsequent aspects. The suggestion
24 is UCS then defaulted by not participating on the cheating
25 aspects of the reopened hearing, and therefore must now take

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1 the proceeding as a finding. That is the suggestion.

2 I am not saying that is what we are going to do.

3 MR. JORDON: That is the suggestion. I think the
4 flaw in that is in particular, whatever the question of
5 individuals cheating or not, the problem that arises at the
6 cheating incident revealed the question of broader failure
7 than just the cheaters themselves, broader failure of the
8 training program.

9 Once you get to that point then UCS -- indeed,
10 the issues are once again central to the question. It seems
11 there is a difference between whether Joe Smith cheated on
12 a particular issue and particular exam, and whether the
13 overall outcome of that particular cheating incident shows
14 that UCS' concerns were back to the core and had really not
15 been resolved by the proceeding in which UCS had participated.

16 JUDGE SMITH: Do you have a formal motion that UCS
17 be barred from participation?

18 MR. GOLDBERG: No. I just know that UCS
19 participated with respect to design issues, not with respect
20 to management or cheating issues.

21 It is very clear to me from reading ALAB 772 that
22 this proceeding is not about design issues. And we are not
23 going to be addressing as UCS did in its brief on appeal, the
24 effect of this on the design part of the case.

25 JUDGE SMITH: You don't want to address the Board's

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1 obligation about their very heavy participation in operator
2 actions.

3 MR. GOLDBERG: There is no question about their
4 involvement in this proceeding with respect to design issues,
5 including operator action as it affects the design and the
6 hardware at the plant.

7 It is also clear that they participated to no
8 extent at all on the litigation of the management issues and
9 when those issues were reexamined in a reopened proceeding on
10 cheating, they did not participate at all on those.

11 And now we are back to correct deficiencies in
12 the record with respect to the management issues and cheating
13 issues, not design issues. And I think it is clear that this
14 proceeding by virtue of ALAB 772 is limited to the management
15 issues as affected by the cheating issues. And that is the
16 extent of it.

17 JUDGE SMITH: Do you have a view, Mr. Blake?

18 MR. BLAKE: No.

19 MS. DOROSHOW: Judge Smith, I guess the question is,
20 could UCS have participated in the reopened proceedings? And
21 I think clearly they could have if they wanted to.

22 JUDGE SMITH: Are you sure you are helping them
23 now?

24 MR. POLLARD: I am beginning to wonder myself.

25 MS. DOROSHOW: But the issue here, we have a remand

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1 of that proceeding. And it is fairly clear that with respect
2 to contentions that any party can cross examine on any other
3 party's contentions. And basically they clearly have had
4 an interest in the operator training issue all along.

5 And it is a significant basis for -- as I understand
6 UCS' position, a significant basis for the Board's decision
7 that certain of the questions that they raised are not
8 important because of the fact that operator training would
9 just take care of it. And I think that -- it has always been
10 that that's been a significant issue for --

11 JUDGE SMITH: We observed that in our initial
12 decision.

13 Okay, now what is the status of your comment? I'm
14 sorry, are you making a motion or not?

15 MR. GOLDBERG: No, I am not making a motion. I
16 was asking for an explanation from UCS as to their participa-
17 tion in this case given the fact that they didn't participate
18 in any of the management cheating issues. That they were
19 only concerned in the beginning with litigating the design
20 and hardware part of the case.

21 Now we are back here in a remanded proceeding on
22 issues in which they did not participate at all in the original
23 litigation. And I think it is important to understand that
24 we are not back here on the design of TMI-1. That we are
25 talking about the concern the Appeal Board had in ALAB 772

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1 with the management findings, management competence and
2 integrity as affected by the cheating incidents, and that is
3 the extent of this proceeding.

4 JUDGE SMITH: I just misunderstood your point
5 entirely.

6 You wish to make it clear that their participation
7 is not going to serve to enlarge the scope of the remanded
8 proceeding?

9 MR. GOLDBERG: That is certainly the concern that I
10 had.

11 JUDGE SMITH: You are not challenging their right
12 to come to this hearing?

13 MR. GOLDBERG: I am not challenging it. I wanted
14 an explanation from them as to the extent of their
15 participation.

16 JUDGE SMITH: Now that you received the explanation,
17 are you satisfied?

18 MR. GOLDBERG: I am not satisfied if they are going
19 to propose findings about how what we come up with here
20 affects the prior design findings of the Licensing Board,
21 which are not the subject of the proceeding, which are
22 currently under review by the Commission.

23 JUDGE SMITH: Right. We will take that up in the
24 context of the situation.

25 Anything further?

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Ms. Aamodt?

MS. AAMODT: Mr. Smith, I want to make clear that we have continued interest in this hearing. But, we could not continue without transcripts available at some place where we don't have to travel three hours roundtrip every time we need to use a transcript.

We also would remind you that we are 45 miles from the plant. But, having the hearing in Harrisburg, which is 12 miles further from our home, in addition to the 45 miles, adds 25 miles on every day we travel to the hearing roundtrip.

JUDGE SMITH: We are not allowed to take an action specifically designed to assist you. We are prohibited by statute. The Chairman of our Commission has been threatened has been threatened with contempt of Congress if he violates that provision of the law.

MS. AAMODT: But you do put transcripts here in Harrisburg to help people who live in this area.

JUDGE SMITH: If we believe that the NRC's responsibility to generally inform the public as to the Commission's business, and particularly the public hearings, then we order a document to be placed in the Public Document Room. But we cannot take an action specifically designed to assist an Intervenor in a litigation.

MS. AAMODT: I would remind you there is great interest in this hearing in Chester County also, being a

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1 host county for people who would evacuate from this area.

2 There is also interest in that there is a proceeding
3 at Limerick. These TMI documents are reference documents for
4 those who are interested in the licensing of the Limerick
5 reactors.

6 I also would say that the public would be better
7 served if this hearing were in the vicinity of the Three Mile
8 Island plant, and parking were not an obstacle and so forth
9 to public attendance at these proceedings. So that it would
10 not solely benefit us in placing this hearing in the vicinity
11 of the plant, or 12 miles to the other side of southeast of
12 the reactor, rather than 12 miles north of the reactor.

13 It would certainly benefit the public to have the
14 hearing in an area where they could park without paying large
15 fees and be able to even find a parking place.

16 JUDGE SMITH: would you care to address Mr. Goldberg's
17 concern about whether you actually will come to hearings and
18 participate?

19 MS. AAMODT: What is that?

20 JUDGE SMITH: Do you intend to actually physically
21 come to the hearings?

22 MS. AAMODT: We are considering that. But, we have
23 to consider whether our interests would be served just as well
24 by consolidation with another intervening group. Or, whether
25 the obstacle would be so great in traveling -- how your

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1 scheduling would be. Whether the scheduling would be
2 similar, for instance, to what it was during the reopened
3 hearing on cheating where we came here five days a week.

4 That was a very difficult schedule for us to keep
5 and physically we don't know whether we would be able to keep
6 such a schedule.

7 So, those are all matters that we would need to
8 consider; the availability of transcript, where you will have
9 the hearings, how you will schedule the hearings, what kind of
10 acceleration you will impose. The acceleration was very
11 difficult during the reopened hearing. It is something that
12 we wouldn't like to have to deal with again.

13 We only had the prefiled testimony for five days
14 before the hearing began. That kind of obstacle -- those kinds
15 of considerations will be ones that we will need to seriously
16 consider. Because of this great delay -- I remind you there
17 has been a tremendous delay since the time that we made our
18 motion, when we were prepared to move forward, and the present
19 time. We do have other activities and plans.

20 JUDGE SMITH: We move now to discovery requirements.
21 Is an order authorizing discovery appropriate?

22 MR. BLAKE: Did we discuss Intervenors --

23 JUDGE SMITH: No, we haven't, not adequately, no.

24 I do take Ms. Aamodt's comment that she will
25 discuss consolidation, but what can we do about the Intervenors?

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2 Would you, Mr. Jordan, be prepared to assume
3 responsibility to be lead Intervenor on the training issue?

4 MR. JORDAN: I don't know that I can say that
5 today.

6 What we would like to do is to propose that we
7 consult with the Intervenors -- the Intervenors consult
8 together and report to the Board on July 11th -- I believe it
9 is the 11th -- it is the Wednesday after the 6th, which is
10 the day that all Parties' comments are due to the Commission
11 on the restart, the immediate effectiveness of the restart.

12 JUDGE SMITH: It strikes me there is sort of a
13 natural division of issues here among the Intervenors. That
14 a natural allocation would be training by UCS. That requires
15 the technical strengths that they would bring forth.

16 The Aamodts would pursue the issue of succeeding
17 of getting into hearing largely TMI-1 leak rate.

18 I know you have been very interested, Ms. Doroshow,
19 on the Dieckamp issue.

20 That is what I would suggest as possible division
21 of responsibilities for the purposes of taking Lead Intervenor
22 responsibilities.

23 I propose that and ask you to consider it.

24 MR. AAMODT: We would like to have the time to
25 do what Mr. Jordan suggested.

MS. DOROSHOW: We would like to consider it also.

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1 JUDGE SMITH: Now with that, would an order
2 authorizing discovery be appropriate?

3 Mr. Blake?

4 MR. BLAKE: Mr. Smith, with there being some question
5 at least about I believe today what the issues are and what
6 is in and what is out, I think for purposes of formal discovery
7 it would probably be best served to wait for the Licensing
8 Board's decision on what the issues are.

9 Now I say that at the same time making the offer to
10 the Parties that we don't have to wait for any Licensing Board
11 order. If they have questions of us, if they want documentation
12 now, if they want to talk with people now, let us know and
13 we will get about this without awaiting your order.

14 JUDGE SMITH: Any other comments on that area?

15 We should have an order out -- we will shoot for
16 next week at having an order out.

17 MS. DOROSHOW: As far as TMI-A is concerned, we
18 are certainly interested in a formal discovery process.

19 To pick up on a point Mr. Jordan raised earlier,
20 the fact that July 6th is the date that comments are due by
21 all of the Parties in this proceeding to the Commission on the
22 immediate effectiveness of a shutdown order on TMI, that the
23 Parties are very involved in preparing those particular
24 comments right now, that it seems to be important that we
25 not begin the discovery process until after that date, so that

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1 we will have an opportunity to basically decide what we are going
2 to need, of our grasp on the situation.

3 JUDGE SMITH: So in effect you in essence agreed,
4 perhaps for different reasons, with Mr. Blake?

5 MS. DOROSHOW: Yes.

6 JUDGE SMITH: No problem. In our order we will
7 authorize formal discovery to begin, and that should issue
8 the end of next week. Perhaps at the beginning or early in
9 the week. It depends on when we get our transcript.

10 How about the schedule then for hearing. Any
11 comments on that?

12 MR. JORDAN: Your Honor, we have two main proposals
13 with respect to the structuring of the hearing. The first one
14 is a little more significant.

15 In our view the most appropriate structure would
16 be to have a period of discovery, essentially a quick
17 document exchange; perhaps a week of interrogatories;
18 followed by filing the Licensee's testimony which in this
19 case would serve in the nature of FASR, SER, since there is
20 none of that sort of thing. And the focus, as has already been
21 said, will undoubtedly be on the OARP Committee and so on.

22 And then to have a period of a couple of months
23 for extensive discovery. We envision taking depositions of
24 all witnesses and whoever else would be relevant. Perhaps
25 operators and so on, to examine the issues that I described

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1 to you earlier.

2 After that period of discovery, have a deadline
3 set for the Intervenors to file their testimony -- say two
4 or three weeks after the discovery period closes. A period,
5 say a week or two for the Licensee to file any rebuttal
6 testimony.

7 We see that as a structure that would give us an
8 expeditious way to run a hearing. And we would envision
9 perhaps -- this is speaking only for UCS, and I know TMI-A
10 is concerned with the time limits. We were thinking of
11 perhaps a month of initial discovery followed by, say,
12 two weeks to Licensee testimony, two months discovery,
13 depositions, et cetera, and then two weeks of our testimony,
14 one week Licensee final rebuttal. Something like that.

15 MR. BLAKE: Mr. Jordan's view of expeditious
16 and mine are I think quite different. Let me respond to
17 the basis for the schedule which he has outlined.

18 The basis is that we don't have information yet
19 on these subjects and therefore cannot go along with the
20 process he outlined.

21 These investigative reports have been on the
22 streets literally for years. We have the OI investigative
23 report, we have the Stier investigative reports. There is
24 a lot of information on the subject. There is more detail in
25 this particular area than he would ever get in an FSAR in

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1 an undertaking in the subject area addressed by the
2 contention.

3 With respect to training, we have the enormity
4 of the record. You are going to get within the week the
5 OARP reconstituted Review Committee to look at the training
6 program addressed as the subject of the ALAB 772. There
7 is a lot of information on this.

8 And to start from scratch at this juncture and
9 have a very extensive discovery schedule, I think doesn't
10 square with this proceeding.

11 I suggest rather that discovery with all the
12 information that is already available to the parties that
13 are interested, ought to be fairly short and certainly ought
14 to be sufficient and still can be short.

15 I propose that we set discovery of whatever the
16 parties want, be completed by the end of August. And by
17 complete I mean inquiries, be they interrogatories or
18 requests for documents, be submitted in time so that the
19 response can be within the normal time of the NRC Rules
20 of Practice, they can provide responses by the end of August.

21 JUDGE SMITH: What about depositions?

22 MR. BLAKE: We would include depositions as well in
23 that. We went through in the cheating proceedings -- my
24 recollection is as well originally with maintenance people --
25 with TMI-A in particular, and I think with the Applicants as

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1 well, of scheduling people for depositions --

2 MR. AAMODT: It was a dreadful schedule. It was
3 an unbearable schedule, we would never like to see it again.

4 MR. BLAKE: I started to say it worked pretty well.

5 MR. AAMODT: It was abominable by any standard.

6 MR. BLAKE: I think that informally we had worked
7 out a schedule. I think the tough thing was the final
8 deadline which set up for example on cheating, to accommodate
9 them and get them in.

10 But I thought we had done fairly well in
11 establishing and setting dates for those depositions.

12 But I meant to include them as well.

13 MS. DOROSHOW: Judge Blake, can I make a comment
14 on this.

15 First of all, just with regard to the recent
16 comment of Mr. Blake about the deposition schedule in the
17 cheating reopened hearings. It was extremely difficult to
18 meet that schedule. As a matter of fact we were receiving
19 NRC Staff investigations dealing with interviewing the very
20 people we had been deposing the day before, and it was chaos.

21 And I gather that Licensee's counsel has never
22 really realized from our perspective how chaotic it truly was.

23 JUDGE SMITH: I can imagine. I can appreciate that.
24 I can remember other cases where events were unfolding as we
25 were discovering.

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1 I don't think we have that situation here. I think
2 that the fundamental facts upon which this reopened hearing --
3 to which they will inquire, are already in existence. We have
4 an OI report on leak rate. That is not part of our consideration
5 here. I think these facts are in existence. I don't know
6 what else will be coming out.

7 MS. DOROSHOW: I think a key problem here -- I
8 think for instance with the Dieckamp Mailgram issue, certainly
9 the issue has been investigated, but it has never been properly
10 resolved because there have been so many conflicting things
11 in the record. And that certain people have never been
12 properly investigated on the issue.

13 JUDGE SMITH: That's correct. But there is not
14 going to be, as far as I can see, new inspection reports,
15 new investigation reports, or new progress reports.

16 MS. DOROSHOW: There certainly will be tremendous
17 need for us to inquire into certain facts and conclusions
18 which were reached by the various investigations, particularly
19 the 0760 investigation. We have never, for instance, seen a
20 number of the interviews that took place, which would have
21 relevance to the Dieckamp Mailgram issue.

22 And, we have never seen yet a report which
23 adequately resolved the conflicts in the evidence.

24 The same thing with the Unit 1 leak rate
25 investigation.

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1 JUDGE SMITH: You are alluding to a report that
2 exists?

3 MS. DOROSHOW: The NUREG 0760, which is the
4 document prepared on the withholding of information which
5 was, I guess, termed by the Appeal Board as conclusory in
6 its dealings wiht the Dieckamp Mailgram issue.

7 In addition, the unit 1 leak rate investigation,
8 there are such significant conflicts and issues left hanging,
9 in our opinion the investigation was totally inadequate. It
10 had significant defects in it which are going to require an
11 extensive effort on our part to get the issues resolved and
12 the fadts known.

13 I don't believe that that investigation is very
14 helpful in actually portraying what the facts really were with
15 regard to that issue.

16 And in addition, I just want to reemphasize that
17 we have to resolve these issues now through litigation
18 process. And that it is only th rough this discovery, the
19 proceeding discovery process, that we are ever going to be
20 able toadequately resolve these issues.

21 I would just like to suggest another discovery
22 schedule which, given the fact that TMI-Alert intends to be
23 involved in all three of these issues, I think that
24 our schedule should be given the most consideration as far
25 as Intervenors are concerned, in that we will have the most

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1 difficulty meeting the deadlines, and that we will have the
2 most extensive discovery requests and interrogatories and
3 depositions to do.

4 JUDGE SMITH: Well, our Lead Intervenor concept
5 would not be consistent. We would expect if UCS is the
6 Lead Intervenor on that issue, we would expect them to carry
7 the greater burden of discovery, with you putting your input
8 into them.

9 MS. DOROSHOW: I guess the question really is the
10 Unit 1 leak rate issue, and exactly who is going to be taking
11 the lead on that one.

12 And that, I believe, is something that requires an
13 extensive amount of discovery.

14 I could go through in more detail with the Board
15 some of the discrepancies and inadequacies of that report. I
16 don't think I need to. But I would just like to state that
17 they are significant, and they are going to require an awful
18 lot of effort on our part to get these things resolved so
19 there is an adequate record presented in this proceeding.

20 The only way we can do that is through the discovery
21 process. It has taken the OI investigators a substantial
22 amount of time just to do their own investigation into this;
23 months of interviews.

24 I think we need to be given the opportunity to
25 also interview as many people as necessary, and to ask as

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1 many questions as necessary in order to resolve the
2 conflicts in the testimony and the report.

3 The schedule that we had worked up was six weeks
4 for overall requests for documents on interrogatories; meaning
5 three weeks for the Intervenors to get the requests out and
6 three weeks -- and the mutual requests out and three weeks
7 for response time.

8 Then approximately three and a half months for
9 depositions. And sometime in the midst of the deposition
10 process, perhaps six weeks into it, to have another round of
11 paper discovery, another round of document requests, or
12 interrogatories based on the depositions. And that would be
13 another six weeks.

14 So, I guess we are talking about something like
15 five months. And, you know, I don't think we are exaggerating
16 in portraying what exactly we are going to need based on the
17 information we already have on these issues.

end T9

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1 MR. JORDAN: Your Honor, if I may, one point:
2 We do, as I say, hope to call witnesses with capability to
3 examine the training program. They, of course, will be
4 people who have not been involved before. They are going
5 to need time that of course the Licensee's witnesses do
6 not need, having been involved in it for a considerable
7 period. That's one of the reasons that we think it's
8 important to structure it with the Licensee's testimony
9 coming at the beginning, essentially, of the process to
10 allow the Intervenors and the other parties to develop --
11 essentially to respond to those positions.

12 JUDGE SMITH: When you alluded to Licensee
13 testimony, I'm not sure that I understood you. What do
14 you mean by that?

15 MR. JORDAN: I mean Licensee's direct testimony.

16 JUDGE SMITH: I see.

17 MR. JORDAN: With a built-in period of a week
18 or two weeks to file rebuttal after the Intervenors do,
19 to catch up in fact with whatever has happened in the
20 interim.

21 As to whether it is Licensee testimony or perhaps
22 if the representation is -- and I don't say that it has
23 been -- that the OARP -- the new OARP report that's about
24 to come out will be substantially what the testimony will
25 be, that may be what is needed. But the point is to get

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2 the major information over which the dispute -- on which
3 the dispute will center.

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4 JUDGE SMITH: You are suggesting that approach
5 in lieu of, for example, the depositions?

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6 MR. JORDAN: No. I think the depositions would
7 then follow. That would allow significant sharpening and
8 enhancing of the depositions in the discovery process after
9 that.

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10 JUDGE SMITH: Anything further?

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11 MR. JORDAN: I had one other point. I throw it
12 out as a proposal to consider at this time, and perhaps
13 we can decide later. And that is that we consider taking
14 the depositions -- the depositions be taken of all the
15 witnesses, all the parties involved, and that the
16 depositions be the evidence with no need for further
17 hearing, except upon a showing of some sort that an addition-
18 al hearing is necessary. That would certainly tighten
19 things up at the end. It is what is being proposed now
20 in the hearings at Comanche Peak.

20

21 JUDGE SMITH: I understand that recommendation,
22 the recommended approach at Comanche Peak. I want to point
23 out that this case has a little bit different process, and
24 that is, we have, for example, the Dieckamp issue, an
25 issue which was not considered by any party. And the
criticism of the Board is that it was the Board's default.

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So that's not going to work in this case.

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The notice of hearing requires the Licensing Board to make findings on mandated issues, as compared to issues raised by the Intervenors. So we have to be a full participant in hearing the evidence, particularly when we are talking about issues of credibility.

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MR. JORDAN: That's fine with us.

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JUDGE SMITH: So it just won't work, although I appreciate that approach, that recommendation.

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MS. DOROSHOW: Judge Smith, I just want to also make the point that we don't have any intention of duplicating the discovery by any means, that we recognize that there will be Lead Intervenors, and that we certainly do not have the resources to duplicate any efforts. We are very strapped as it is, and I just hope the Board can be assured that that's how we will approach the discovery process. It's just that we are anticipating a need for time to be able to get the discovery that we need.

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MR. JORDAN: Your Honor, I have one other point that would help us set the context for whatever schedule, and that is that the recent leaks in the steam generator tubes at TMI-1 of course raise the question of whether the unit is physically ready to restart or is likely to delay that such that this hearing will have no impact on a potential restart.

mgc 10-4 1

2 I think it would be useful to get an evaluation
3 from Staff and the Applicant what the likely impact of that
4 leaking is on the potential restart, the timing.

5 JUDGE SMITH: The Board members themselves have
6 big problems with other cases in our priorities. We always
7 have to -- these days, you always have to look at which of
8 our cases are so-called impacted cases. We would like to
9 regularly have information as to the extent that our
10 hearing has impacted on the restart.

11 Are you asking for that information now?

12 MR. JORDAN: Yes, sir. It seems to me, the
13 existence of the steam generator tube leaks is raising
14 serious questions about whether there is any need to have
15 a prompt schedule or not. It will help you in evaluating
16 your schedule.

17 MR. BLAKE: I can't be very helpful on it. I'm
18 aware that there are a couple of leaks, but I really haven't
19 enough information to be of help to the parties -- what
20 the effect of it is and whether or not that has a physical
21 effect on the plant's readiness.

22 JUDGE SMITH: You are aware that there are what?

23 MR. BLAKE: There have been recently -- what
24 I have seen from press accounts -- leaks in steam generator
25 tubes at TMI Unit 1. I take it that that is what
Mr. Jordan is referring to.

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MR. JORDAN: Yes.

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MR. BLAKE: I don't know what the impact is.

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JUDGE SMITH: Let's ask for a little bit more studied approach. Let's ask for a report both from the Staff and from you in which you tell us when -- absent hearings, your best estimate of when the unit will be ready for operation, absent adjudications.

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MS. DOROSHOW: Judge Smith, I would just like to add -- and I assume that this would be possible -- that we would have an opportunity to comment on any submission of that sort by the Licensee or Staff on that issue. TMI-ALERT is involved in the steam generator problem ourselves. We are starting hearings on that issue on July 16th, and I think that the Commission has to make a "no significant hazards" consideration before it can restart the plant.

JUDGE SMITH: We are simply not interested in the technical aspects of the steam generator tube problem. That is not our concern.

We want simply for the Board's conflict scheduling considerations, we want this information, and we don't want to make a big deal out of it. I don't want to have a big dispute as to the accuracy of it. I would expect them to give us an accurate estimate, and I would expect the Staff -- certainly you are going to have a right to comment, but we are not going to have a big

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inquiry into that.

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MS. DOROSHOW: It's a very complicated case.

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That's the only reason, and there are a lot of variables.

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JUDGE SMITH: We have enough complications of

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our own. We don't want to borrow any.

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Although I asked you to consult about Lead

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Intervenors, we did not provide for any means of getting

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the product of that consultation. When can you report to

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the Board?

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MR. JORDAN: I propose July 11th. I should think

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we could put our -- we could deliver a report to you in

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Bethesda on July 11th.

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JUDGE SMITH: That may mean that we would not have

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any ruling on that in our memorandum order on this

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prehearing conference, but would require a supplemental one.

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About July 11th will be fine. In fact, if you

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choose to telephone report it, just a simple listing of

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the Intervenors, give us a telephone call to the panel

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personnel, followed by letter, would be fine.

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I have a question of you, Ms. Doroshow. Your

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participation in this has been largely since I have been

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active in this proceeding. What is your status in the

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case? Are you representing --

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MS. DOROSHOW: I have been representing

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TMI-ALERT as a member of that organization, along with

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1 Ms. Bradford. We have basically shared the responsibilities
2 of the case.

3 I have not been representing them as counsel.

4 JUDGE SMITH: I understand you are, however --
5 we can exclude the "however" -- I understand you are.

6 MS. DOROSHOW: Yes.

7 MR. GOLDBERG: Judge Smith, when is it that you
8 would like the report from the Staff and the Licensee on
9 the start-up date projection for TMI-1?

10 JUDGE SMITH: As soon as that information can
11 reliably be given to us.

12 MR. GOLDBERG: I can report now that we have
13 inspectors looking at the leaks in the generators right
14 now, but they have not at this point been able to determine
15 the impact of that on restart. We haven't received any
16 detailed information from the Licensee on it. So we're
17 going to require that we get that information from the
18 Licensee and to have our inspectors do evaluations before
19 we will be able to give you a date for projected restart,
20 as it may be impacted by the steam generator problem.

21 JUDGE SMITH: Is the steam generator problem the
22 basing item or basing consideration?

23 MR. GOLDBERG: I don't know at this point. It may
24 or may not be. We'd have to consider it.

25 JUDGE SMITH: Anything further?

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1 MR. BLAKE: Did you say anything further on
2 anything?

3 JUDGE SMITH: On anything.

4 MR. BLAKE: I have what I hope is an administerial
5 task. We have been carrying, each of us, for some time
6 now a failry extensive service list. I'm not even sure
7 that we all have the same service list. But I have a
8 couple of suggestions about the service list, and I think I
9 need somebody to tell me that it's all right to drop people
10 before I can. I have a couple of candidates for drops.

11 One of those is Mr. Levin, whom I continue to
12 carry, at least on my service list, and I think it squares
13 with the Licensing Board for an earlier attempt to find
14 out whether or not people had a continuing interest.

15 JUDGE SMITH: There are people on that service
16 list that need a stake driven through their heart to get
17 off it. Mr. Levin does not belong on any service list
18 anymore, as far as the parties are concerned.

19 I have had communications with -- through the
20 secretary on the service list. I haven't looked at one
21 recently, but I thought we had reduced it quite a bit.
22 I don't think Mr. Levin appears on the service list that
23 is issued by the Board.

24 MR. BLAKE: We don't normally see your service
25 list. All we see is the order. We don't normally know who,

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2 for example, to send it to. I'm not sure that we have your
3 most recent guidance. All I have is my own. I see the
4 Staff's and the other parties'.

5 JUDGE SMITH: All right. I hate to go by
6 memory, but --

7 MR. BLAKE: Let me throw out a couple of others,
8 and if you could be helpful or issue something for the
9 parties, I think it would be helpful.

10 JUDGE SMITH: Okay.

11 MR. BLAKE: I would propose to drop Ms. Gail Phelps.
12 This was Gail Bradford who became Gail Phelps, and who,
13 I understand, is no longer involved in anything. I carried
14 her because they had a contention, but I would like to be
15 able to drop them. What I would like to be able to send
16 is -- in terms of parties other than the NRC -- I would
17 intend to send one to Mr. Goldberg, I would expect to send
18 one now to Mr. Au, representing the Commonwealth, I would
19 expect to send on to the Aamodts, I would expect to send one
20 both to Washington and to Harrisburg for TMI-A, and I am
21 using Ms. Doroshow's address at the Christic Institute.

22 MS. BERNABEI: I also will be entering a formal
23 appearance, and I would like to be added to the service
24 list.

25 MR. BLAKE: I am suggesting that I will send
one to Washington and one to Harrisburg for TMI-A. I can

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ship yours to your address, as opposed to Ms. Doroshow. That
2 would be my proposal.

3 MS. BERNABEI: Since we are at different
4 addresses, I would ask that it be sent to the two of us, as
5 it has been done in different situations, if it's possible.

6 MR. BLAKE: I understand your request. If you
7 really mean to stick by that, I would like to start getting
8 them at three different principal addresses that we have --
9 that is, Parsipanny, Three Mile Island, and Washington.

10 If you are agreeable to that, I'm agreeable to
11 sending them to you.

12 MS. AAMODT: We're with you. One to you.

13 MS. BERNABEI: Okay. That's fair enough.

14 MR. BLAKE: Agreed?

15 MS. BERNABEI: Agreed.

16 MR. BLAKE: I will no provide them to you.

17 I would propose to drop Angry TMI PIRC, Gail
18 Phelps.

19 JUDGE SMITH: Angry TMI?

20 MR. BLAKE: PIRC, P I R C (spelling). I would
21 propose to continue to carry Ms. Weiss, unless Mr. Jordan
22 wants to be Ms. Weiss, for UCS. And I think that's it.

23 Now we have been carrying Mr. McBride and
24 Mr. Maupin because of their interest that started in the
25 cheating proceeding, and I would undertake to contact them,

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2 and I will alert the Board as to what I hear about their
3 continuing desire. I don't know otherwise how to do that,
4 to be fair to those individuals. They may have, because
5 of TMI leak rate testing, for example, a continuing interest.
6 I don't know the answer.

7 JUDGE SMITH: I know that Mr. McBride happens
8 to be present and is prepared to speak to that.

9 MR. MC BRIDE: Mr. Chairman, my name is
10 Michael F. McBride. I represent a number of the present
11 and former operators at Three Mile Island. I suspect we
12 will be involved from time to time in these proceedings
13 through the discovery process during the hearings and
14 the remaining issues about whether people can be deposed,
15 whether they are going to require subpoenas, whether things
16 might impact on possible criminal proceedings, any number
17 of issues.

18 And so I have been getting served by all the
19 parties regularly since the cheating case began. I would
20 request that I continue to be served. I will be happy to
21 alert everyone when they no longer have an interest in
22 being served. We have had a major interest in a number
23 of pleadings that people have filed along the way, and I
24 think we expect to have involvement from time to time.

25 MR. BLAKE: Do you know of Mr. Maupin's
continued interest or not?

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2 MR. MC BRIDE: I can't speak for him. I can
3 say, however, that Mr. David Cole, who used to represent
4 Operator W, I think can safely be dropped from anyone's
5 list, because my understanding is, he is now in the State
6 Attorney General's Office, and I doubt seriously that he
7 continues to represent Operator W.

8 MR. BLAKE: He does not continue to represent
9 Operator W, and I don't know that Mr. W has any counsel
10 at this point identified. I can confirm what Mr. McBride
11 said.

12 JUDGE SMITH: Who is Mr. Maupin?

13 MR. BLAKE: Maupin was Mr. Gary Miller's counsel.

14 JUDGE SMITH: I think we should keep him.

15 MR. MC BRIDE: I think he wants to be continued.
16 That was my understanding, as of the leak rate testing.

17 MR. BLAKE: I think you can assume he will be on,
18 unless you hear differently from me after I contact him.

19 MR. MC BRIDE: Mr. Chairman, while I'm on my
20 feet, I wonder if I could provide the Board with a copy
21 of Judge Rambo's decision of three days ago with respect to
22 the leak rate grand jury record matter, which I think may
23 be of some interest to you?

24 I also have one additional copy which I would
25 be happy to provide to the Intervenors here. I'm sorry I
didn't get more copies. But it does bear directly on what

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the status of those records is, and whether people will be
allowed access to them.

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JUDGE SMITH: I understand she did turn down
the NRC's request.

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MR. MC BRIDE: That's correct.

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MS. DOROSHOW: It seems to me, the parties should
2 be served with this, if this is being distributed.

3 MR. MC BRIDE: It's a courtesy. You can accept
4 it or not. He doesn't have to do it. It's a public
5 record.

6 (Mr. McBride distributes the document to the
7 Board and parties.)

8 JUDGE SMITH: It's an accomodation.

9 MS. DOROSHOW: It also seems to be relevant to
10 the proceedings.

11 MR. MC BRIDE: I'm just trying to do everyone a
12 favor. I was here, and I have the copies.

13 JUDGE SMITH: I can save you, at the outset of
14 this proceeding, a lot of trouble if you will be a little bit
15 more selective in your objections on this type of thing.
16 It's going to cost us all a lot of energy and needless
17 problems. You allude to your busy schedule in the months
18 ahead. If your busy schedule is going to include worrying
19 about that type of trivia, then there's no possible way
20 we can ever get through this.

21 Okay. Anything further?

22 (No response.)

23 JUDGE SMITH: If not, the prehearing conference
24 is adjourned.

25 I was addressing my remarks to Ms. Doroshow and

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my advice to her.

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(Whereupon, at 12:30 p.m., the prehearing

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conference was adjourned.)

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC COMMISSION

In the matter of: Three Mile Island Nuclear Station

Date of Proceeding: 28 June 1984

Place of Proceeding: Harrisburg, Pa.

were held as herein appears, and that this is the original
transcript for the file of the Commission.

Mimie Meltzer
Official Reporter - Typed


Official Reporter - Signature