8/12/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.	)	Docket Nos. 50-440 50-441
	)	
(Perry Nuclear Power Plant, Units 1 and 2)	)	

NRC STAFF MOTION FOR CLARIFICATION OF, AND RESPONSE TO, LICENSING BOARD SPECIAL PREHEARING CONFERENCE ORDER

Introduction

The NRC Staff moves the Licensing Board to clarify its special prehearing conference order (SPC Order) of July 28, 1981, in regard to the status of Lake County Disaster Services Agency and Lake County Board of Commissioners; to identify which of the admitted contentions belongs to each admitted Intervenor; and to identify which admitted Intervenor shall be responsible for discovery by the Staff for each admitted contention. The Staff also hereby provides the Board with its written discovery plan and submits its position concerning the admissibility of contention 6.

Discussion

(1) By Petition dated March 11, 1981, Lake County Board of Commissioners and Lake County Disaster Services Agency petitioned to intervene in this proceeding. The NRC Staff determined after extensive discussions with their attorney, that both petitioners wanted to be admitted pursuant to 10 C.F.R. §2.715 - the interested state provision - rather than as parties pursuant to 10 C.F.R. §2.714. The Staff supported

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their admission as they requested it. See Staff answer dated April 7, 1981. The Licensing Board's order dated April 9, 1981 apparently (page 8) admitted Lake County Board of Commissioners and Lake County Disaster Services Agency as parties in a paragraph which admitted other parties pursuant to 10 C.F.R. §2.714. On June 9, 1981, Lake County Board of Commissioners and Lake County Disaster Services Agency filed a brief indicating on page 1 their understanding that they were admitted pursuant to 10 C.F.R. §2.715. The Licensing Board's Order of July 28, 1981 on page 2 again lists Lake County Board of Commissioners and Lake County Disaster Services Agency as parties to this proceeding. The Board did not indicate whether Lake County Board of Commissioners and Lake County Disaster Services Agency were admitted as parties under §2.714, or were admitted as participants under the "interested state" provisions of §2.715. The Staff requests that the Licensing Board issue a memorandum clearly delineating whether Lake County Board of Commissioners and Lake County Disaster Services Agency are parties admitted pursuant to 10 C.F.R. §2.714 or participants pursuant to 10 C.F.R. §2.715(c).

(2) It appears to the Staff from the transcript of the special prehearing conference and from the use of the term "Sunflower" in the SPC Order that the Licensing Board and all of the parties intended that the Sunflower Alliance, Inc., Northshore Alert, Citizens for Safe Energy, Evelyn Stebbins, Richard Sering, David Nash, Gail Caduff Nash, Linda Qualls, David Qualls, Wes Gerlosky, Margaret Gerlosky, William Brotzman and Cummings Homsted Park Corp. all be consolidated as one intervening party to be referred to as "Sunflower." In addition the above-mentioned people filed only one petition. The individuals named in that petition

did not file any contentions. The Board's order does not mention whether or not these individuals are to be consolidated under the name of "Sunflower." The Staff therefore, requests that this Licensing Board clarify its order by formally consolidating these parties.

(3) The Commission's regulations provide that a petitioner for leave to intervene shall be made a party only upon satisfying the interest and aspects requirements of 10 C.F.R. §2.714(a) and the contention requirement of 10 C.F.R. §2.714(b). Since the requirements of both Sections 2.714(a) and 2.714(b) must be satisfied to become a party, the Board always identifies those contentions of a petitioner it has found admissible when it grants Intervenor status to the petitioner. In its SPC Order the Board identified 17 party intervenors.[1/] The Board has found seven valid contentions and set them forth on pages 97 and 98 of the SPC Order, to be interpreted in pari materia with the rest of the order. However, the Board has not identified for each listed party intervenor the contention or contentions it found to be valid for that party so as to authorize intervention. Such identification is necessary for the orderly conduct of future activities in this proceeding. The Staff requests the Board to set forth for each intervenor its admitted contention or contentions.

(4) On pages 94 and 95 of its SPC Order the Board established a scheme for intervenors to submit their discovery request through a Board

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1/ This list includes Lake County Board of Commissioners and Lake County Disaster Services Agency about whose status the Staff has requested clarification. See, paragraph (1), supra.

"designated lead intervenor" for purposes of discovery by intervenors. However, the Board does not discuss whether that lead intervenor would also be responsible for providing responses to discovery by the Staff upon the intervenors.[2/] The Staff requests a designation by the Board of the intervenor or intervenors responsible for responding to discovery by the Staff concerning each contention.

(5) The SPC Order (page 92) requires the service of a "written plan for the order's discovery of information." As we stated in our brief on Parties and Contentions dated May 27, 1981, page 13, the Staff will timely seek by interrogatories the identity of persons and graphics which support the contentions of intervenors and thereafter seek all bases, facts, and analyses of intervenors which support their position, either by interrogatories or deposition or both. The results of the aforesaid discovery may lead the Staff to subpoena documents or file requests for admissions.

(6) The SPC Order, page 96, also requested advice as to whether contention 6 (regarding ATWS) should be excluded "because of the effect of a proposed rulemaking on the subject." While it is true that the Staff has submitted a proposal f rulemaking relating to the ATWS issue to the Commission (SECY-80-409, dated September 4, 1980), the Commission has not acted upon the proposal. Thus, as of the date of this filing, there is not pending a proposed rulemaking on the ATWS issue appropriately noticed in the Federal Register. In these circumstances,

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2/ Discovery by intervenors or the applicants upon the Staff is, of course, governed by 10 C.F.R. §§2.720(h), 2.740(f)(3), 2.740a(j), 2.741(e) and 2.744.

considerations as to admissibility of a contention where the contention involves a matter which is the subject of a proposed rulemaking is not pertinent as to a contention regarding ATWS and should play no part in determining the admissibility of contention 6.

Conclusion

For the reasons set forth above, the Staff moves the Board:

1) to clarify its special prehearing conference order of July 28, 1981, in regard to the status of Lake County Disaster Services Agency and Lake County Board of Commissioners;

2) to clarify its order by consolidating all admitted parties which sponsored the petition to intervene filed March 15, 1981 by Sunflower, et al.;

3) to identify which of the admitted contentions belongs to each admitted Intervenor; and

4) to identify which admitted Intervenor shall be responsible for discovery by the Staff for each admitted contention.

Respectfully submitted,

Charles A. Barth
Counsel for NRC Staff

Janice E. Moore
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 12th day of August, 1981.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF MOTION FOR CLARIFICATION OF, AND RESPONSE TO, LICENSING BOARD SPECIAL PREHEARING CONVERENCE ORDER in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail this 12th day of August, 1981.

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Administrative Judge
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Washington, D.C. 20555 *

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Administrative Judge
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