June 1, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	'82 JUN-3 P12:23
CLEVELAND ELECTRIC ILLUMINATING COMPANY, Et Al.	)	Docket Nos. 50-440 50-441
(Perry Nuclear Power Plant, Units 1 and 2)	)	(Operating License)

OCRE REPLY TO STAFF AND APPLICANT RESPONSES TO MOTION TO FILE CONTENTIONS 17, 18, AND 19

Pursuant to the Licensing Board's Procedural Order of August 4, 1981, OCRE hereby files this reply to the responses of Staff and Applicant to Ohio Citizens for Responsible Energy Motion for Leave to File its Contentions 17, 18, and 19 dated April 22, 1982. Both Staff and Applicant advanced various arguments opposing the admission of the contentions; OCRE addresses below the reasons why these arguments do not bar the admission of the three contentions.

Contention 17: Substratum Placement of Water Intake S ructure

The Staff contends that there must be a "significant difference" in environmental impact before alternatives can be considered under NEPA, and since the fish entrainment/impingement losses are considered "minimal and insignificant" in the DES for Perry, NUREG-0884, the NEPA evaluation of alternative intake structures is not required. The Applicant even goes so far as to allege that OCRE agrees with this conclusion of the DES. Although OCRE does not disagree with the numbers pre-

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sented in Table 5.2 of the DES, OCRE does not agree that these entrainment/impingement losses are insignificant, or that the radial well type of intake design would result in no significant difference.

The PNPP entrainment/impingement losses are projected to be several orders of magnitude lower than such losses presently incurred at other power plants on Lake Erie (DES at p. 5-11). However, the impact of the radial well design (zero entrainment/ ngement losses) would be several orders of magnitude less than this. OCRE is at a loss as to why a reduction in annual fish impingement from 10^7 to 10^4 is considered a significant difference (favoring the closed-cycle cooling system over once-through cooling), yet a reduction from 10^4 to zero is considered insignificant.

Both Staff and Applicant arguments obfuscate the fact that this is a simple NEPA issue; when a clearly superior alternative to a proposed action exists, NEPA requires that it be considered (42 USC 4332, 10 CFR 51.23(f), and 10 CFR 51.52(c)).

Although FSAR data do indicate that the stratigraphy of the PNPP site may be less suitable to the employment of the radial well design than is the Grand Gulf site, perhaps some design changes could correct this problem.[1/] The burden of proof is

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1/ OCRE feels that the Applicant's use of the 5 gpm figure to allege that 14,000 wells would be needed is inappropriate; the 5 gpm value corresponds to shallow residential wells (DES Section 4.3.5). Such wells should obviously not be compared to a highly engineered structure.

on the Applicant to show that the implementation of the Grand Gulf intake design (or some modification thereof) is totally impossible for the Perry site (10 CFR 2.732).

Staff and Applicant further suggest that NRC consideration of alternative intake designs may be precluded by the Federal Water Pollution Control Act (FWPCA).[2/] OCRE would note that this suggestion is indeed speculative, and that the section of FWPCA cited, 33 USC 1371(c)(2), refers to the discharge of effluents, not the impacts of water intake structures. Furthermore, if OCRE were to take the Staff's advice and await the issuance of future FWPCA certifications or permits, OCRE predicts that it would then be chided for failure to file at an earlier date (e.g., at the issuance of the DES).

OCRE maintains that this contention is not untimely. This Intervenor has only recently learned of this superior intake design. Applicant's claim that the Federal Register notice of publication of the Grand Gulf DES provided "constructive notice" of the Grand Gulf intake design in June 1981 is misleading. The Federal Register notice may have given notice of the availability of the DES; but, since the notice did not divulge in detail the specific contents of the DES, it cannot be construed that notice was given of the specific intake design. OCRE's serendipitous discovery of the radial well design in the Grand Gulf FES should

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2/ Staff's speculation is contingent upon possible limitations imposed by future OEPA certifications.

thus constitute good cause for filing at this time.

As far as Applicant's other arguments regarding the past availability of information on this intake system design and the suggested availability of other means by which to protect its interests, OCRE believes that it is fundamentally unjust to expect an all-volunteer public interest group with limited financial resources to be intimately familiar with every esoteric document ever published and to participate in various other proceedings, the only result of which would be to dilute OCRE's effectiveness in this proceeding.

The law (NEPA) requires that alternatives to a proposal be considered. The Applicant has not done this. OCRE contends that this alternative must be evaluated before PNPP can be licensed.

Contention 18: Use of Commercial Spent Fuel for Nuclear Weapons

Both Staff and Applicant argue that this contention should be rejected because the use of nuclear waste for nuclear weapons is not a currently active proposal. Applicant also believes that the recent passage of the Hart Amendment to the NRC authorization bill by the Senate will effectively prevent any such usage.

OCRE would note that this plan was proposed for a short time by Kenneth Davis of the Department of Energy (128 Cong. Rec. S2961). The proposal was apparently withdrawn because, according to Senator Hart, the DOE did not intend to spend money this year to obtain commercial spent reactor fuel for weapons use (128 Cong. Rec. S2959, emphasis added).

OCRE also notes that the Departments of Defense and Energy both oppose the Hart Amendment because it would forclose the

option of using spent fuel for military purposes (see DOD and DOE letters in 128 Cong. Rec. S2960-61). Many senators were careful to point out that the amendment would not foreclose this option, since the law could always be changed if circumstances (e.g., a plutonium shortage) made this desirable. Indeed, much of the debate is support of the amendment cited the deleterious effect the plan would have on the public image of the nuclear industry, rather than concerns over nuclear proliferation and war. Thus, one can certainly suspect that this amendment, the Senate passage of which was apparently predicated on the fear of public opinion, could be easily rescinded should the winds of public sentiment blow in another direction.

It should also be remembered that the Hart Amendment is not yet law; it must be approved by the House, whereupon it must cross the President's desk. Therein lies the obstacle. OCRE concurs with the statement made by former Commissioner Bradford in a recent speech: "any crew that would forge ahead with a billion tax dollars for Clinch River while flirting with the notion of proclaiming ketchup to be a nourishing vegetable in school lunches is not a force to be underestimated" (see NUREG/BR-0032 (NRC News Releases), Vol. 2, No. 11, at p. 5).

The Congressional Record also controverts Applicant's suggestion that the technology required to affect this proposal may not be available. Senator Percy remarked that laser isotope separation technology could be ready by 1987 to refine plutonium in wastes from the Hanford reactor (p. S2978). This application is essentially the same as that required for the use of commercial spent fuel. Senator Tower, in his opposition to the amendment,

indicated that the use of spent fuel, made feasible by laser isotope separation technology, might be more cost-effective than building new production reactors (p. S2979).

The Applicant errs in its analysis of "OCRE's underlying assumption . . . that if spent fuel from commercial power plants is not available for this nation's nuclear weapons program, there will be insufficient plutonium to arm this nation's nuclear weapons" (Applicant's Answer at 11-12). This is not OCRE's "fantastical argument." It is the Applicant's argument, as is best evidenced by the statement in Attachment 2 to OCRE's motion.[3/] That the Reagan administration also foresees a plutonium shortage is demonstrated by the fact that the administration approached Great Britian with an offer to purchase British plutonium, supposedly for the Clinch River Breeder Reactor (see "Plutonium for Sale" by Walter C. Patterson, The Bulletin of the Atomic Scientists, May 1982, pp. 55-56).

Thus, OCRE maintains its conclusion that the use of commercial spent fuel for nuclear weapons, far from being remote and speculative, may well be a reality in the near future. Consequently, this is an effect of PNPP operation which must be considered under NEPA. OCRE fears that if this NEPA evaluation were deferred until such a proposal becomes publicly unveiled, it may face a formidable obstacle in seeking the readmission of the issue. E.g., if the

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3/ Curiously, others in the nuclear industry do not share the Applicant's enthusiasm for this plan. Some have referred to it as a public relations disaster.

record had to reopened, this Intervenor would face a significantly higher legal burden (Kansas Gas and Electric and Kansas City Power and Light (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Public Service Company of Oklahoma (Black Fox, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979)).

The Applicant rightly concludes that such a NEPA analysis "would require the Licensing Board to assess both the increased risk and total environmental cost of a nuclear war" (Applicant's Answer at 11, footnote 7). However, Applicant's claim that this analysis would be impossible because of classified information is best contradicted by the success of the public educational programs conducted by groups such as Physicians for Social Responsibility. Using unclassified information, these groups have vividly demonstrated the horrific consequences of nuclear war and have convinced many that the risk of nuclear war is too great to be accepted. OCRE thus suggests that the unclassified information now available is sufficient to support such an analysis, and that this analysis must be performed before Perry can be licensed.[4/]

Contention 19: Polymer Degradation from Radiation Exposure

Both Staff and Applicant attack OCRE's filing as untimely, claiming that the information cited in the Science News article

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4/ Applicant's claim that consideration of this issue is precluded by 10 CFR 50.13 is erroneous. 10 CFR 50.13, which exempts nuclear facilities from having to withstand the effects of an attack, is totally irrelevant to the matter at hand. Contention 18 does not deal with facility design.

was available in June 1981. That article constituted OCRE's first notice of that information. Science News is a credible publication which is perused with diligence by OCRE; upon discovering that article, OCRE assumed that the information was indeed recent.

OCRE does not believe that the documents cited by Applicant (or the June 1981 Sandia reports) can be considered "information widely available previously." OCRE would repeat here its concerns regarding the injustice of expecting a public interest group with limited resources to be familiar with esoteric documents.

If any groups are familiar with these documents, they would be the nuclear industry and the NRC. Yet they have consistently ignored the problem of dose rate effects on radiation-induced polymer degradation. For example, the language concerning realistic dose rates in the proposed rule on Environmental Qualification of Electric Equipment for Nuclear Power Plants (47 FR 2876) was deleted in the final rule, apparently under pressure from the industry (see Memorandum for Raymond F. Fraley, Executive Director ACRS, from Robert B. Minogue, Director ONRR, dated April 16, 1982). 5/ OCRE thus considers site-specific litigation to be the only means by which to effectively address this problem.

OCRE also feels that the Perry plant should merit special attention in this regard, since it is the prototype 238 size

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5/ OCRE cites this as a prime example of the ineffectiveness of citizen and public interest group participation in the NRC rulemaking process.

BWR/6 (PSAR Section 1.3.1.1) and therefore might have a radiation environment quite different from those plants preceding it. Applicant's argument that "many commercial reactors have already operated for long periods of time" (Applicant's Answer at 20) ignores the fact that these early reactors are small and of different design. In fact the example cited by Applicant, Yankee Rowe, is a PWR. Comparison with these plants is obviously inappropriate. OCRE maintains that Contention 19 is timely and should be admitted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing OCRE REPLY TO STAFF AND APPLICANT RESPONSES TO MOTION TO FILE CONTENTIONS 17, 18, AND 19 were served by deposit in the U.S. Mail, first class, postage prepaid, this 1st day of June, 1982 to those on the Service List below.

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