

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

July 6, 1982  
USNRC

Before the Atomic Safety and Licensing Board M1103

In the Matter of )  
)  
CLEVELAND ELECTRIC ILLUMINATING )  
COMPANY, Et Al. )  
)  
(Perry Nuclear Power Plant, )  
Units 1 and 2) )  
\_\_\_\_\_ )

*WJA*  
Docket Nos. 50-440  
50-441  
(Operating License)

OCRE REPLY TO STAFF AND  
APPLICANT RESPONSES TO  
MOTION TO RESUBMIT CONTENTION 15



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 to Resubmit Contention 15, dated June 1, 1982. The Applicant opposes the admission of the contention, while the NRC Staff argues that its consideration be deferred until the Commission develops guidance on the application of the April 27 Appeals Court decision in NRDC v. NRC to individual licensing proceedings.

The Applicant is apparently confused as to the intent and scope of Contention 15. OCRE, in submitting this contention, seeks to have considered in this proceeding the effects on the biosphere of the radioactive materials produced by the operation of the Perry Nuclear Power Plant. Specifically, OCRE wants assurance that the activities authorized by the operating license can be conducted without endangering the health and safety of the public. 10 CFR 50.57(a)(3). These activities have as their inevitable consequence the production of large quantities of radioactive waste, the effects of which on human health are

pernicious, which remain dangerous for thousands of years, and for which there are no proven disposal methods (NRDC v. NRC, slip op. at 12-13).

The National Environmental Policy Act (NEPA) requires the consideration of, inter alia, "any adverse environmental effects which cannot be avoided should the proposal be implemented. . . . the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented." 42 USC 4332 (2) (C). The nuclear waste problem involves all of these factors, and the individual licensing action is the appropriate forum for evaluating these factors since it is the operation of individual facilities that produces these wastes. It is OCRE's belief that until the waste problem is solved, no additional wastes should be generated.

OCRE chose in its original November motion to argue the ineffectiveness of the Waste Confidence Proceeding because this was the only avenue available at that time. Thus, the Waste Confidence Proceeding was only a means by which OCRE sought the admission of Contention 15. Contention 15 was not and is not limited to the Waste Confidence Proceeding.<sup>1/</sup>

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<sup>1/</sup> OCRE does maintain, however, that the Waste Confidence Proceeding and all other legislative/administrative efforts to solve the nuclear waste problem are ineffective. An effective waste disposal program must be based on viable technology, which is now non-existent.

The April 27 Appeals Court decision provided another, more direct avenue for the admission of Contention 15. NRDC v. NRC requires that the environmental effects of nuclear waste be considered in individual licensing decisions. Slip op. at 46-47. This is what OCRE sought originally. OCRE thus maintains that its June 1 motion is both logical and timely.

The Applicant also raises the issue of whether NRDC v. NRC can be legally invoked as authority since it is under appeal. The Staff may also have had this in mind when recommending the deferral of this issue until the Commission develops the appropriate policy.<sup>2/</sup> OCRE would not object to the deferral of this contention, if both this proceeding and construction on the Perry facility were suspended as well.<sup>3/</sup> OCRE contends that the continued expenditure of funds for the construction of PNPP will prejudice the ultimate outcome of any NEPA review, which must, in OCRE's opinion, include the consideration of nuclear waste storage and disposal. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2) CLI-78-14, 7 NRC 952(1978).

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<sup>2/</sup> The Staff's argument that good cause for late filing cannot be determined until this guidance is issued is illogical. The Staff, in recommending deferral, essentially suggests that OCRE has filed its motion too early.

<sup>3/</sup> Suspending this proceeding also avoids the question of whether this deferral would be so lengthy as to require re-opening of the record, with the higher legal burden placed on the party so moving, when such appeals are resolved and the Commission guidance issued. See 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).

Nuclear waste management is a fundamental issue in the debate on the desirability of nuclear power as an energy source. That it be considered in this proceeding is a moral, as well as a legal, imperative.

Respectfully submitted,



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