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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
COURTNEY A. GERMIDY
CLERK

In the Matter of)

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY, ET AL.)

Docket No. 50-440-OLA

(Perry Nuclear Power Plant,)
Units 1 and 2))

NRC STAFF MOTION FOR RECONSIDERATION

I. INTRODUCTION

By Memorandum and Order (Granting Petition to Intervene) dated June 11, 1990 the Atomic and Safety Licensing Board (the Board) tentatively granted a petition to intervene filed by Ohio Citizens for Responsible Energy (OCRE) and provided the Licensee, Cleveland Electric Illuminating Company et. al. (CEI) and NRC staff (Staff) the opportunity to seek reconsideration of the Memorandum and Order within ten and fifteen days, respectively. LBP-90-15, slip op., 31 NRC _____. The Staff seeks reconsideration of that Memorandum and Order.

II. DISCUSSION

The Memorandum and Order questioned whether the cycle-specific parameter limits are conditions of operation required to be in the technical specifications (TS) by 10 C.F.R. § 50.36 (LBP-90-15 at 9) and whether the methodology of calculating cycle-specific parameters required by the TS allows for "excessive discretion or judgement" by the Licensee. Id. at 10. The Board asked whether the proposed amendment constitutes an unlawful abdication of

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Commission responsibility to pass on the question of whether a licensee's activities meet the standards of the Atomic Energy Act. Id. The Board also questioned whether the cycle-specific parameters are conditions or limitations necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety.^{1/} The Board also stated that OCRE's contention, asserting deprivation of future hearing rights by removal of the cycle-specific parameters is actually an issue of reduction of safety margins. Id. at 10.

The attached affidavit of Daniel Fieno explains why the Staff determined that no issue of significant safety hazard exists in removal of the numerical values of cycle-specific parameters from technical specifications and demonstrates that there is no "excessive discretion" allowed by such removal.^{2/} Affidavit, ¶¶ 3-4. To the contrary, the affidavit shows that no discretion is being given licensees by allowing the specific characteristics in physical, mathematical limits of each core design to be recorded in the Core Operating Limits Report. Id., ¶ 4. In addition, the affidavit shows that relocation of NRC-approved computer code calculation of cycle-specific values does not involve conditions of reactor operation necessary to obviate the possibility of an

^{1/}This was the Appeal Board's interpretation of matters required for TS by 10 CFR § 50.36 in the Trojan proceeding. Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 274 (1979).

^{2/}In its earlier responses, the Staff did not, as the Licensing Board suggests in the Memorandum and Order dated June 11, 1990, at 6, address OCRE's proposed contention on the merits, but rather, argued that it is without basis.

abnormal situation or event giving rise to an immediate threat to public health and safety as described in 10 C.F.R. § 50.36. Id.

¶ 4. As stated by Mr. Fieno, who assisted in preparation of Generic Letter 88-16, the only change proposed by the amendment requested by the Licensee is to record the particular physical numerical values of each reload core in a document at the plant (the COLR) rather than in the TS as presently required. Id. ¶¶ 3-4. This simply means that the mathematical curves or numerical values representing heat and power flow, computed by an NRC-approved computer code for each core design will be recorded at the plant, but the actual operating limits for the core design (i.e. the acceptable calculational method and acceptance criteria) remain unchanged in the TS. Id. ¶ 4. In other words, only the mathematical description of the inherent physical limits designed into each core is being deleted from the TS. All regulatory limits for operation remain the same. Id., ¶ 3. Varying numerical values of heat/power ratios result from rearrangement of new and irradiated fuel at each reload but occur within the existing regulatory design limits and accident analyses. Id., ¶ 2. The relocation of a computer-generated mathematical description of a specific core from TS to plant document does not raise an issue of safety since this description is not related to core operating limits. Id., ¶ 4. Consequently, the explanation in the affidavit of the provisions of Generic Letter 88-16 provides good cause for the Board to reconsider its Memorandum and Order and to reverse its tentative decision.

In addition, the Staff believes the Board has incorrectly determined that OCRE's contention raises an issue of reduction in safety margins by removal of the cycle-specific parameters. In fact, the opposite is true. As pointed out by Staff and Licensee in two prior responses, OCRE has specifically stated there is no safety significance to removal of the cycle-specific parameters. Indeed, even after "prompting" by Licensee and Staff in their responses to OCRE's intervention petition and contention, OCRE has steadfastly held to its original position that there is no issue of safety raised by the proposed amendment.^{3/} Thus, the Board's determination that OCRE's contention raised an issue of reduction in safety margins is not supported by OCRE's specific statements in its pleadings, in spite of three opportunities to revise its position provided by the Board. Consequently, the Staff believes the Board should reconsider its interpretation of OCRE's contention and determine that the contention asserts only a right to hearing on matters not required to be in TS and, thus, is without a basis.

Accordingly, the Board should find that OCRE has not raised an issue which can be litigated and has not demonstrated standing to intervene by challenging an aspect of the proceeding. Since OCRE has not asserted that the cycle-specific parameters are required to be in the TS by 10 C.F.R. § 50.36 and has agreed that no safety issue is raised by deleting this information from the TS, OCRE has

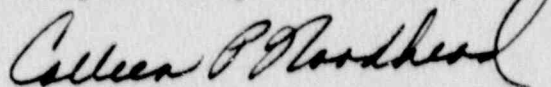
^{3/}As previously indicated in Staff's responses, OCRE asserts only, that because cycle-specific parameters have "traditionally" been in TS, they should remain subject to hearing rights. No other reason has been provided by OCRE.

not raised an issue of law or fact concerning the proposed amendment and thus has not complied with the requirements of 10 C.F.R. § 2.714 on which a grant of hearing depends. The Board should reconsider its grant of hearing since OCRE has not challenged the proposed amendment as a reduction in safety margins but has specifically stated otherwise.^{4/}

III. CONCLUSION

For the reasons stated the Board should reconsider and reverse its June 11, 1990 Memorandum and Order.

Respectfully submitted,



Colleen P. Woodhead
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of July, 1990

^{4/}In the Staff's view, the Board has raised the issue of safety margin and compliance with § 50.36 entirely sua sponte.