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UNITED STATES OF AMERICA

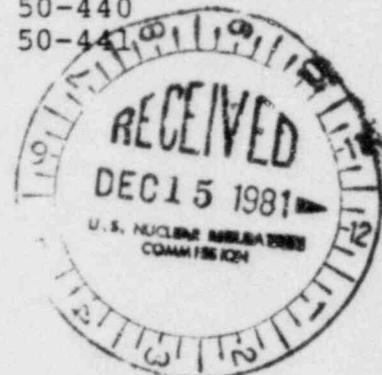
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
REGULATORY & SERVICE  
BRANCH

In the Matter of )  
 )  
THE CLEVELAND ELECTRIC ILLUMINATING )  
COMPANY, et al. )  
 )  
(Perry Nuclear Power Plant, )  
Units 1 and 2) )

Docket Nos. 50-440  
50-441



APPLICANTS' MOTION TO DISMISS  
ATWS CONTENTION

Applicants respectfully request that the Licensing Board dismiss Issue #6 in this proceeding, the anticipated transient without scram ("ATWS") contention.

The Special Prehearing Conference Memorandum and Order<sup>1</sup> admitted in this proceeding a contention dealing with one aspect of ATWS events.

Issue #6: Applicant should install an automated standby liquid control system to mitigate the consequences of an anticipated transient without scram.

14 NRC at 220. However, because Applicants had observed that the Commission was proposing to initiate a rulemaking on ATWS,

1 Special Prehearing Conference Memorandum and Order Concerning Party Status, Motions to Dismiss and to Stay, the Admissibility of Contentions, and the Adoption of Special Discovery Procedures, LBP-81-24, 14 NRC 175 (1981).

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the Licensing Board requested that the parties submit briefs on the effect which such proposed rulemaking would have on the contention's admissibility. 14 NRC at 232. On September 9, 1981, the Board reserved its decision on the effect of the rulemaking, noting that the Commission had not yet published the notice of the proposed rulemaking in the Federal Register.<sup>2</sup>

On October 2, 1981, the Licensing Board ruled on Applicants' objection to the admissibility of the ATWS contention.<sup>3</sup> The Board pointed out that the Commission had still taken no action on publishing the proposed rulemaking in the Federal Register, notwithstanding a June 22, 1981 Commission memorandum authorizing that publication. Because there was no pending rulemaking on ATWS, the Board rejected Applicants' objection to the contention.

The situation has now changed. On November 24, 1981, the Commission published in the Federal Register a notice of proposed rulemaking on ATWS.<sup>4</sup> Now that the Commission has

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2 Memorandum and Order Concerning the Status of Ashtabula County and Objections to the Special Prehearing Conference Order, dated September 9, 1981, p. 8. The Memorandum and Order also suspended discovery on the contention and extended the time for Sunflower Alliance to file its brief on admissibility.

3 Memorandum and Order Concerning Ohio Citizens for Responsible Energy's Motion for Leave to File a Contention about Electromagnetic Pulses; And Possible Readmission to Discovery of the ATWS Contention, dated October 2, 1981.

4 "Standards for the Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants". 46 Fed. Reg. 57521 (1981).

formally commenced a rulemaking proceeding on ATWS, the obstacle which the Licensing Board pointed out in its October 2, 1981 Memorandum and Order, no longer exists. The ATWS contention should therefore be dismissed.

In addition to the reasons which Applicants have previously set forth,<sup>5</sup> two other arguments compel the dismissal of the ATWS contention in light of the on-going rulemaking proceeding. The first is that the Commission has expressly stated in the Supplementary Information accompanying the proposed rules that no immediate ATWS modifications beyond those already required need be implemented pending completion of the rulemaking.

The Commission believes that the likelihood of severe consequences arising from an ATWS event during the two to four year period required to implement a rule is acceptably small. The judgment is based on (a) the favorable experience with the operating reactors, (b) the limited number of operating nuclear power reactors, (c) the inherent capability of some of the operating PWRs to partially or fully mitigate the consequences of ATWS events, (d) the partial capability of the recirculation pump trip feature to mitigate ATWS events that has been implemented on all BWRs of high power level, and (e) the interim steps taken to develop procedures and train operators to further reduce the risk from some ATWS events. On the basis of these considerations, the Commission believes that there is reasonable assurance of

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<sup>5</sup> See Applicants' Brief on the Effect of Pending Commission Rulemaking on Admissibility of Issue #6 (Anticipated Transients Without Scram), dated August 11, 1981; Applicants' Brief on Contentions of Sunflower Alliance, Inc. et al., dated May 22, 1981, pp. 24-25.

safety for continued operation until implementation of a rule is complete. The implementation schedule contained in this rule balances the need for careful analysis and plant modifications with the desire to carry out the objectives of the rule as soon as possible.

46 Fed. Reg. at 57523 (emphasis added). If the Commission believes that operating plants can continue to operate during the pendency of the rulemaking proceeding with "reasonable assurance of safety," then it should necessarily follow that a facility which will not be in commercial operation for two and a half years<sup>6</sup> does not require design modifications (such as recommended by Issue #6) to meet the requisite level of safety.

The second additional reason for dismissing the contention is that the specific design modification which it discusses is dealt with in the proposed rulemaking. The contention calls for Applicants to install an automated Standby Liquid Control System ("SLCS"). Each of the two NRC-proposed ATWS rules<sup>7</sup> deals with the automatic SLCS initiation. The first of the NRC proposed rules provides that

changes in mitigation capability [such as automatic SLCS initiation] are required through the specification of acceptance criteria for evaluation models, and mitigating system design criteria.

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6 The currently estimated commercial operation date of Perry Unit 1 is May, 1984. Unit 2 is currently targetted for commercial operation in 1988.

7 The NRC's proposed rulemaking sets forth three alternate approaches for an ATWS rule -- two proposed by NRC (one of these by the Staff and the other by former Chairman Hendrie) and a third proposed in a rulemaking petition filed by a number of electric utilities. See 46 Fed. Reg. at 57522.

46 Fed. Reg. at 57524. This is in contrast to the earlier Staff proposals in which automatic SLCS initiation was specifically required.<sup>8</sup> Thus, the first NRC proposed rule explicitly rejects an across-the-board requirement for automatic SLCS initiation in favor of an analytical approach. As stated in the proposed rule:

ATWS mitigating systems must be automatically initiated when the conditions monitored reach predetermined levels and continue to perform the function without operator action unless it can be demonstrated that an operator would have adequate information and would reasonably be expected within the time available to take the proper corrective action.

Proposed § 50.60(b)(3), 46 Fed. Reg. at 57525.

The second NRC-proposed rule would explicitly require the automatic start of the SLCS under circumstances diagnosed to be ATWS sequences. 46 Fed. Reg. at 57525. In the language of the proposed regulation:

(1) Boiling water reactor licensees receiving an operating license after August 22, 1969, shall:

. . . .

(ii) Provide equipment to automatically deliver liquid

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<sup>8</sup> See NUREG-0460, "Anticipated Transients Without Scram for Light Water Reactors", vol. 4 (1980). As stated on the Supplementary Information accompanying the ATWS rulemaking:

The mitigation capability of BWR's was expected to be increased by providing automatic initiation of the Standby Liquid Control System and increase its flow capacity.

46 Fed. Reg. at 57523.

reactivity poison so that either of two independent reactor coolant replenishment system trains expected to be available during ATWS events can successfully bring the reactor to stable hot shutdown.

Proposed § 50.60(c)(1)(ii), 46 Fed. Reg. at 57531.

The third proposed alternative ATWS rule, proposed in a rulemaking petition by a number of electric utilities<sup>9</sup> would set forth specific requirements for each category of light-water reactors. For units such as Perry, the proposal calls for

(1) a means to trip the recirculation pumps upon receipt of a signal indicative of an ATWS event; (2) an independent, redundant and diverse electrical means to initiate a reactor scram upon receipt of a signal indicative of an ATWS event; and (3) a scram discharge volume system designed and installed such that it will have sufficient capacity to receive water exhausted by a full reactor scram.

45 Fed. Reg. at 73080. Under this proposal, automatic SLCS initiation would clearly not be required.

With the ATWS rulemaking now in progress, it would be both unnecessary and counterproductive to litigate Issue #6. The risk of inconsistent results must be considered. Let us suppose that Issue #6 were litigated. If the Licensing Board ultimately ruled that automatic SLCS initiation should not be required and the Commission then adopted a rule requiring

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<sup>9</sup> Electric Utilities Petition, PRM-50-29, 45 Fed. Reg. 73080 (1980) and 46 Fed. Reg. 10501 (1981).

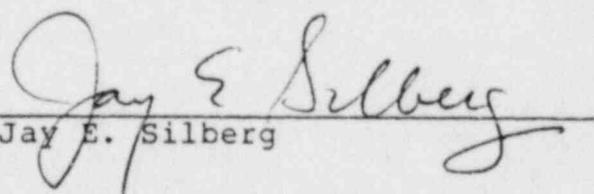
automatic initiation, the generic rule would presumably govern. On the other hand, if the Board ruled that automatic SLCS initiation should be required and a generic rule not requiring automatic initiation were promulgated, the generic rule would also presumably govern. See 10 CFR §50.54(h). Litigating the issue in this proceeding would therefore be a fruitless exercise.

The NRC is entitled to make policy on a generic basis if it chooses to do so. State of Minnesota v. U. S. Nuclear Regulatory Commission, 602 F. 2d 412, 416-17 (D.C. Cir. 1979); Ecology Action v. Atomic Energy Commission, 492 F. 2d 998, 1002 (2d Cir. 1974); see also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc. 435 U.S. 519, 535 n. 13 (1978). The Commission has begun such a generic process to determine what its policy should be regarding ATWS events in general and automatic SLCS initiation in particular. The Commission has also stated that there is reasonable assurance of safety while the rulemaking is pending without additional ATWS modifications. Under these circumstances Applicants respectfully submit that litigation of Issue #6 would be inappropriate.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By:

  
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Dated: December 9, 1981

UNITED STATES OF AMERICA

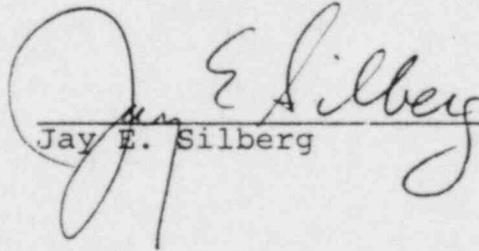
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Motion to Dismiss ATWS Contention" were served by deposit in the U. S. Mail, First Class, postage prepaid, this 9th day of December 1981, to all those on the attached Service List.

  
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Jay E. Silberg

Dated: December 9, 1981

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