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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Richard F. Cole
Dr. Charles N. Kelber

'93 DEC 27 02:00

SERVED DEC 27 1993

In the Matter of

Docket No. 50-440-OLA-3-R

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, et al.

ASLPP No. 93-683-02-OLA-3-R

(Perry Nuclear Power Plant,
Unit 1)

December 27, 1993

ORDER

(Admitting Contention and Establishing Schedule)

1. Pursuant to our previous October 18, 1993 order, the petitioners have filed their supplemental petition in this license amendment proceeding setting forth a single contention that the petitioners assert raises "a pure issue of law."¹ In their answers to the supplemental petition, the NRC staff and the licensees do not oppose the admission of the petitioners' proffered contention.

Although we have a number of questions regarding the admissibility of the petitioners' proffered contention, the

¹ Petitioners' Supplemental Petition for Leave to Intervene (Nov. 12, 1993) at 1.

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positions of the staff and the licensees in their answers leave us with no practical alternative but to admit the contention as pled. Accordingly, the petitioners' contention as set forth on page 1 of their supplemental petition is admitted.

2. In a December 22, 1993, telephone conference the petitioners, the staff, and the licensees each stated that they needed no discovery on the petitioners' contention. This being the case, the petitioners shall file a motion for summary disposition on their contention by February 10, 1994. The staff and the licensees shall each file an answer to the petitioners' motion by March 2, 1994. Although we currently are of the view that cross motions for summary disposition would be the most appropriate and efficient procedure for resolving the petitioners' contention, we will reserve final judgment on that question until after the petitioners' motion is filed.

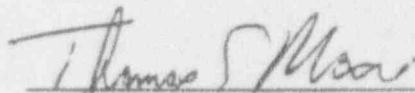
3. In addition to any other matters that the parties wish to address in their filings, we suggest that all parties analyze and discuss the following:

- a. What is the relationship, if any, of 10 C.F.R. § 50.36 to the petitioners' contention?

b. Under Part 50, Appendix H, II., B., 1., are there any changes in the reactor vessel material surveillance program withdrawal schedule that would not be reflected in a change in the limiting conditions of operation of the Perry facility?

c. If, as posited in Generic Letter 91-01 (Jan. 4, 1991), the removal of the reactor vessel material surveillance program withdrawal schedule from a facility's technical specifications will not result in any loss of clarity related to the requirements of Part 50, Appendix H, how is the removal of this duplicative matter from a facility's technical specifications violative of 10 C.F.R. § 50.36? It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

December 27, 1993

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, ET AL.
(Perry Nuclear Power Plant, Unit 1)

Docket No.(s) 50-440-OLA-3

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER ADMITTING CONTENTION have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas M. Moore, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

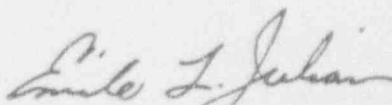
Administrative Judge
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Dated at Rockville, Md. this
27 day of December 1993


Office of the Secretary of the Commission