

09/21/82

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
CLEVELAND ELECTRIC ILLUMINATING	)	Docket Nos. 50-440 OL
COMPANY, <u>ET AL.</u>	)	50-441 OL
(Perry Nuclear Power Plant,	)	
Units 1 and 2)	)	

NRC STAFF RESPONSE TO MOTION OF  
OHIO CITIZENS FOR RESPONSIBLE ENERGY  
FOR LEAVE TO FILE ITS CONTENTIONS 21 THROUGH 26

INTRODUCTION

On August 18, 1982, Ohio Citizens For Responsible Energy ("OCRE") moved for leave to file additional new contentions in this proceeding.<sup>1/</sup> The Staff opposes the granting of the motion because OCRE, while establishing, in most instances, the required bases and discussing with sufficient specificity the proposed contention has not demonstrated that, on balance, the standards for late-filed contentions in 10 C.F.R. § 2.714(a)(1)(i-v) have been shown to warrant admission of these contentions.

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<sup>1/</sup> "Ohio Citizens For Responsible Energy Motion For Leave To File Its Contentions 21 Through 26," dated August 18, 1982 (Motion).

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DISCUSSION

Briefly, the Commission's regulations<sup>2/</sup> require that a party set forth with reasonable specificity the contention and its underlying bases. The purpose of this requirement is (a) to assure that the contention raises a matter appropriate for litigation, (b) to establish a sufficient foundation to warrant inquiry into the subject matter addressed by the assertion, and (c) to put the other parties on general notice of what they are to defend or oppose.<sup>3/</sup>

A late-filed contention must comply with additional standards, and its admissibility will be judged by a balancing of the five factors listed in 10 C.F.R. § 2.714(a)(1)(i-v).<sup>4/</sup> The proponent of a contention must affirmatively address these five factors and demonstrate that, on balance, the late filed contention should be admitted as a matter in controversy in the proceeding.<sup>5/</sup>

The admissibility of each contention will be addressed seriatim.

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<sup>2/</sup> 10 C.F.R. 2.714(b).

<sup>3/</sup> Philadelphia Electric Co. (Peach Bottom, Unit 3), ALAB-216, 9 AEC 13, 20-21 (1974).

<sup>4/</sup> Those five factors are:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

<sup>5/</sup> Duke Power Co. (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980).

A. Contention 21

OCRE contends that the placement and orientation of the Perry Nuclear Power Plant (PNPP) turbine-generators are unacceptable because low trajectory turbine missiles could strike safety-related targets, thereby endangering the safe operation of the facility. This contention satisfies the specificity and basis requirements of 10 C.F.R. § 2.714(b).

OCRE alleges that good cause for lateness exists because the Perry SER, dated May 1982, contains "new information" or information that was previously unavailable to them. However, the placement and orientation of the turbine-generators was discussed in the Applicant's FSAR, § 3.5.1.3, and the 1976 Gilbert Report that OCRE cites was referenced in the same FSAR section. This information is thus not "new information or information that was previously unavailable to OCRE. Furthermore, although OCRE has cited the SER as notice of the placement and orientation of the turbine-generators, they have failed to explain the five-month delay for filing this contention after the issuance of the SER. The ACRS report also referenced by OCRE which is dated July 13, 1982 is, of course, more current but the information therein was apparently not relied upon other than as confirmatory of this existing condition. Therefore, OCRE has failed to meet this crucial standard regarding late-filed contentions.

OCRE contends that its participation on this issue will assist in the development of a sound record, (10 C.F.R. § 2.714(a)(1)(iii)) but provides no substantive reason as to how it will do so. OCRE also asserts that the proceeding will not be delayed by admission of this contention (10 C.F.R. § 2.714(a)(1)(v)) because the Applicants have extended the date for completion of construction. However, such

extension does not compel an equal extension of time for the hearing in this proceeding.

OCRE's assertions that there are no other means available to protect OCRE's interest (10 C.F.R. § 2.714(a)(1)(ii)), and that its interest is not represented by another party (§ 2.714(a)(1)(iv)), do not outweigh the negative determinations on the other three factors. Therefore, this contention fails to meet the standards for a late-filed contention.

Contention 22

OCRE has indicated that it has certain concerns about the Mark III Containment, and adopts as this contention the concerns identified by Mr. J. M. Humphrey, a former General Electric employee who formulated a list of twenty-two issues for resolution in connection with the Grand Gulf facility. OCRE cannot adopt wholesale the safety issues involving the Grand Gulf facility without establishing a basis for their applicability to the Perry facility.<sup>6/</sup> The Staff contends that OCRE has failed to state a specific contention bearing on this proceeding; OCRE has failed to identify with reasonable specificity which of the sixty-six (66) sub-elements of the twenty-two issues might be pertinent, nor has an adequate basis been provided for the "laundry list" of Humphrey assertions so as to warrant their litigation in this proceeding.

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<sup>6/</sup> "A contention cannot be automatically discarded by a hearing board simply because it repeats a contention advanced in a different proceeding. We think it obvious, however, that a carry-over contention must be subjected to especially careful scrutiny by the board at the prehearing stage. The board must satisfy itself not only that the contention applies to the facility at bar but, as well, that there has been sufficient foundation assigned for it to warrant its further exploration. If it appears to the board that the intervenor has no basis for offering the contention other than that it was advanced in some earlier proceeding, summary disposition of it will be mandated." Cf. Duquesne Light Company (Beaver Valley Power Station, Unit No. 1) ALAB-109, 6 AEC 342 (1973).

OCRE states that its first notice of the Humphrey concerns was the SER, dated May 1982. OCRE has, however, failed to explain the five-month delay (since issuance of the SER) in filing this contention. In light of this excessive delay, OCRE has not made an adequate showing on the good cause for late-filed contentions standard of 10 C.F.R. § 2.714(a)(1).

OCRE has not made an adequate demonstration of how its participation will aid in the development of a sound record. Nor has OCRE shown how the admission of this contention would not delay the proceeding or broaden the issues of the proceeding.

The Staff concedes that there are no other existing parties to represent OCRE's interest in the proceeding, nor are there other means available to protect OCRE's interest. The positive determinations on these standards do not outweigh the negative determinations on the remaining three standards. Therefore, the Staff opposes admission of these contentions to the proceeding.

#### Contention 23

OCRE contends that Applicant's seismic analysis (and the NRC Staff's review of same in the SER) is deficient because this analysis totally neglects the response of the core thermalhydraulic design to a seismic event. This contention satisfies the specificity and basis requirements.

OCRE states that the May 1982 SER constituted their first notice of this issue. However, OCRE has failed to address the lapse of a five month delay (since issuance of the SER) in filing this contention. OCRE cites the 1976 study by Dr. Webb as an additional basis for their position; the 1976 report obviously cannot be viewed as new information. The ACRS report, dated July 13, 1982, which also discusses this issue, was not the document of primary reliance in formulating this contention, but appears only

confirmatory of what had appeared in the SER. Therefore, OCRE has not satisfied the good cause for lateness standard in filing this contention.

OCRE has again failed to substantively show how its participation on this issue will assist in developing a sound record. In addition, the admission of this issue will broaden the issues and may delay this proceeding.

The negative determinations on these three standards outweigh the positive determinations on the remaining two standards i.e. the availability of other means whereby the OCRE's interest will be protected and the extent to which OCRE's interest will be represented by existing parties. (10 C.F.R. § 2.714(a)(i)(ii and iv)). Therefore, the Staff objects to the admission of this contention.

#### Contention 24

OCRE contends that in-core thermocouples should be used at PNPP in conformance with the requirements of Regulatory Guide 1.97, Revision 2 and TMI Action Plan item II.F.2. This contention satisfies the specificity and basis requirements of 10 C.F.R. § 2.714(b).

OCRE has stated that they assumed in-core thermocouples were to be installed at PNPP because they were used at the Grand Gulf facility (Motion, at 7). However, the Regulatory Guide does not require the installation of in-core thermocouples. The debate over the installation of in-core thermocouples is apparently ongoing, and OCRE has relied on information as a basis for this contention that dates as far back as 1976 (Dr. Webb's article entitled The Accident Hazards of Nuclear Power Plants) to November 1981 ("Thermal Analysis of In-Core Thermocouples in BWRs"). None of this information could be considered "new information" or information that was previously unavailable to OCRE. Again, this crucial standard of good cause for lateness is not satisfied.



The Staff again asserts that OCRE has failed to demonstrate how its participation on this proposed contention could assist in development of a sound record. Admission of this proposed contention will also broaden the issues and may delay this proceeding. The balancing of these three negative determinations against the positive determinations that there are no other means to protect OCRE's interests, or that OCRE's interest will not be represented by an existing party are the basis of the Staff's objection to admission of this contention.

Contention 25

OCRE contends that Applicants are not prepared to prevent, discover, assess and mitigate the effects of steam erosion on components of PNPP which will be subjected to steam flow. This contention satisfies the specificity and basis requirements of 10 C.F.R. § 2.714(b).

OCRE has indicated that two 1982 NRC Information Notices constituted first notice of the alleged condition at PNPP. Information Notice 82-22 is dated July 9, 1982 and Information Notice 82-23 is dated July 16, 1982. Once OCRE had received such notice, this contention should have been filed. Instead, OCRE allowed more than two months to elapse, without explanation, before raising the issue. At an earlier stage in this proceeding, such a delay may not have been excessive; at this stage, a sixty-day delay is. Therefore, the Staff asserts that OCRE has failed to satisfy the good cause for lateness standard.

OCRE has failed to demonstrate how its participation on this proposed contention, as well as the others, would assist in the development of a sound record. In addition, the admission of this issue will broaden the issue and may likely delay this proceeding.

Although there are no other available means to protect OCRE's interest, nor are there any existing parties to represent OCRE's interest, the Staff objects to the admission of this contention on balance of the other three negative determinations.

Contention 26

OCRE contends that neither the fire suppression system proposed by the Applicant nor the system proposed by the Staff is sufficient to protect the control room personnel and equipment from the adverse toxicological and environmental effects of the systems themselves. This contention meets the specificity and basis requirements of 10 C.F.R. § 2.714(b).

OCRE alleges that the SER provided their first notice of the potential problems with a fire suppression system. However, Applicant's FSAR also provided notice, in 1980, that a carbon dioxide fire suppression system was to be used. The SER more properly constitutes OCRE's first notice of the Staff's suggested alternate use of Halon 1301. Therefore, the SER did not contain "new information" or previously unavailable information except with regard to the Staff's alternative fire suppression system. OCRE has failed to provide any justification for its two years delay in filing an initial contention on this matter, as could have been done on the basis of information contained in the FSAR. Furthermore, it has failed to provide a justification for its five-month delay since the issuance of the SER. Consequently, OCRE has not made an adequate showing on the the good cause for late filed contentions standard of 10 C.F.R § 2.714(a)(1).



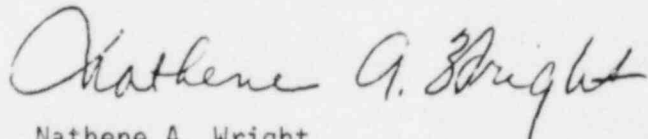
Again, OCRE has not made an adequate demonstration of how its participation on this issue will aid in the development of a sound record. Nor has OCRE shown how the admission of more contentions would not delay the proceeding or broaden the issues of the proceeding.

The Staff concedes that there are no existing parties to represent OCRE's interest, nor are there other means available to protect OCRE's interest. The negative determinations on the other standards outweigh the positive determination on these two standards. On balance, the Staff opposes the admission of this contention to the proceeding.

### III. CONCLUSION

For the reasons stated above, OCRE's motion for leave to file proposed contentions 21 through 26 should be denied, and the proposed contentions rejected.

Respectfully submitted,



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Counsel for NRC Staff

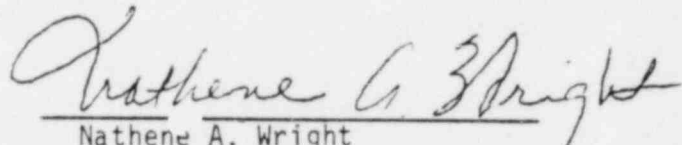
Dated in Bethesda, Maryland  
this 21st day of September, 1982



\*Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
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\*Atomic Safety and Licensing Appeal  
Board Panel  
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