

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

September 7, 1982
SECRETED
USNRC

Before the Atomic Safety and Licensing Board SEP -9 A11:48

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
Docket Nos. 50-441
50-441
(Operating License)

MOTION TO SEVER THE PNPP UNIT 2
OL PROCEEDING FROM THAT OF UNIT 1

Ohio Citizens for Responsible Energy ("OCRE") hereby moves the Licensing Board to sever the OL proceeding for Unit 2 of the Perry Nuclear Power Plant from that of Unit 1.

As shown in Attachment 2 of "Ohio Citizens for Responsible Energy Motion for Leave to File its Contentions 21 through 26," dated August 18, 1982, Applicants have applied for an extension of construction completion dates for the Perry reactors. Applicants have requested that the completion date for Unit 1 be changed from 1982 to 1985 and that for Unit 2 from 1984 to 1991. It is the latter change that concerns OCRE.

OCRE believes that it is improper to conduct an operating license proceeding at this time for a nuclear facility that will not operate until 1991, if then. ^{1/} Between now and 1991 it is likely that numerous changes will be made in the technology and

1/ The conditions cited by Applicants for the extensions, particularly the lack of demand for electricity and difficulties in obtaining financing, are not likely to be ameliorated in the near future. OCRE thus suspects that Unit 2 may be delayed further or may even be cancelled.

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regulation of nuclear reactors. Scientific research, which is never static, will probably reveal new facts on the safety of nuclear power plants, the hazards of radiation, the feasibility of nuclear waste disposal, and a myriad of other issues. The NRC will undoubtedly promulgate new regulations to which Perry Unit 2 must comply. ^{2/} The courts will further interpret the laws and NRC's implementation of same; just this year two landmark decisions were reached: PANE v. NRC and NRDC v. NRC, which, respectively, interpreted NEPA to include psychological stress and declared the S-3 table invalid. Congress may pass new laws concerning nuclear technology. To continue the consideration of Unit 2 at this time would ignore these substantial uncertainties caused by its delayed operating date.

Another area of concern to OCRE is the fact that considerable construction has yet to be completed on Unit 2. Undoubtedly deficiencies in that construction will occur. OCRE believes that these problems must be addressed publicly within the hearing structure provided by the NRC's rules of practice.

New information such as this will necessitate the re-opening of the record. However, this is rather difficult; the party so moving must meet a strict legal burden. 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). For this reason it is preferable that separate OL pro-

^{2/} The degree of compliance of a nuclear facility with NRC regulations is always litigable. Indeed, such issues should be resolved in the public forum afforded by NRC licensing proceedings.

ceedings be conducted for the two units.

In addition, OCRE would note that the Advisory Committee on Reactor Safeguards (ACRS) did not consider it appropriate to include Unit 2 in its recent evaluation of PNPP. In fact, the ACRS report dealt only with Unit 1. This raises an interesting legal complication. In Duke Power Company (McGuire Nuclear Station, Units 1 and 2) LBP-77-20, 5 NRC 680 (1977) the board ruled that safety issues are not subject to summary disposition until after the SER and ACRS letter have been issued. Since the ACRS letter for Unit 2 has not been issued, all safety issues in this proceeding, even if dismissed for Unit 1, must remain in this proceeding for Unit 2. This has the effect of unnecessarily delaying this proceeding throughout the intervening years, until 1991, or even beyond. Of course, this will cause a great amount of expense and effort for all parties, which could be avoided by severing the Unit 2 proceeding from that of Unit 1. If Unit 2 is ever substantially complete and ready for operation, then is the time to conduct its OL proceeding, not now.

OCRE thus concludes that the separation of Units 1 and 2 in this proceeding is just and proper and prays that the Licensing Board is so moved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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This is to certify that copies of the foregoing MOTION TO SEVER THE PNPP UNIT 2 OL PROCEEDING FROM THAT OF UNIT 1 were served by deposit in the U.S. Mail, first class, postage prepaid, this 7th day of September, 1982 to those in the service list below.

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