

10/29/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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Docket No. 50-440 OL
50-441 OL

NRC STAFF'S MOTION FOR SUMMARY DISPOSITION OF
ISSUE NO. 3

I. INTRODUCTION

The NRC Staff moves the Licensing Board, pursuant to 10 CFR 2.749 of the Commission's Rules of Practice, for summary disposition in its favor of Issue #3 which states that:

Applicant has an inadequate quality assurance program that has caused or is continuing to cause unsafe construction.

As grounds for its motion, the Staff asserts that the attached affidavit of James E. Konklin and Cordell C. Williams, together with the other papers filed in this proceeding, demonstrate that there is no genuine issue of material fact to be heard with respect to Issue #3 and that the Staff is entitled to a decision in its favor as a matter of law.

II. DISCUSSION

The Commission's Rules of Practice provide that summary disposition of any matter involved in an operating license proceeding shall be granted if the moving papers, together with the other papers filed in the proceeding, show that there is no genuine issue as to any material

fact and that the moving party is entitled to a decision as a matter of law. 10 CFR 2.749(d). The use of summary disposition has been encouraged by the Commission and the Appeal Board to avoid unnecessary hearings on contentions for which an intervenor has failed to establish the existence of a genuine issue of material fact. E.g., Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981) and Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550-551 (1980). A material fact is one that may affect the outcome of the litigation. Mutual Fund Investors Inc. v. Putnam Management Co., 553 F.2d 620, 624 (9th Cir. 1977).

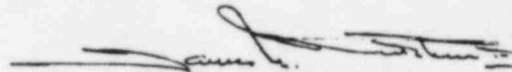
When a motion for summary disposition is made and supported by affidavit, a party opposing the motion may not rest upon the mere allegations or denials of his answer but must set forth specific facts such as would be admissible in evidence that show the existence of a genuine issue of material fact. 10 CFR 2.749(b). All material facts set forth in the statement of material facts required to be served by the moving party will be deemed to be admitted unless controverted by the statement of material facts required to be served by the opposing party. 10 CFR 2.749(a). Any answers supporting or opposing a motion for summary disposition must be served within twenty (20) days after service of the motion. Id. If no answer properly showing the existence of a genuine issue of material fact is filed, the decision sought by the moving party, if properly supported, shall be rendered. 10 CFR 2.749(b).

The Staff submits that the attached affidavit and statement of material facts as to which there is no genuine issue to be heard, together with the other papers filed in this proceeding, demonstrate that there is no genuine issue of material fact to be heard with respect to Issue #3 and that the Staff is entitled to a decision in its favor as a matter of law.

III. CONCLUSION

The Staff's motion for summary disposition of Issue #3 should be granted.

Respectfully submitted,



James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 29th day of October, 1982.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE
ISSUE TO BE HEARD

1. The Licensing Board in admitting Issue #3 intended that it be limited to the "stop work" order issued to Applicants on February 8, 1978, steps taken to remedy the deficiencies that led to that order and residual deficiencies related thereto. LBP-81-35, 14 NRC 682, 687 (1981).
2. The NRC Staff issued an Immediate Action Letter to Applicants on February 8, 1978 because it had discovered significant deficiencies in site construction practices and construction quality assurance at the Perry site. Konklin/Williams Affidavit (Affidavit) at ¶ 6.
3. Applicants took actions to correct these deficiencies. Those actions included (1) a complete revision of the Perry construction QA program, (2) a restructuring of Applicants' QA/QC organization and (3) a major change in the site construction organization. Affidavit at ¶ 7.
4. The Staff initiated an augmented inspection program for Perry to (1) review the revised construction QA program, (2) ensure that the new program was being implemented effectively and (3) ensure that construction completed under the previous program was acceptable. As a result the Staff concluded that the Applicants' construction QA and practices had improved substantially and that construction completed at the Perry site under the previous program was acceptable. Affidavit at ¶ 8.
5. Discrepancies and noncompliances that have been identified by the Staff since the Applicants' correction of the deficiencies that led to issuance by the Staff of the Immediate Action Letter dated February 8, 1978 are neither the result of a breakdown in Applicants' construction QA program nor related to failure to correct the earlier deficiencies in construction practices and QA at the Perry site. Affidavit at ¶¶ 9 and 10.
6. All discrepancies and noncompliances that have been identified by the Staff in inspection reports since February 8, 1978 have been or are being resolved by the Applicants' QA program. Affidavit at ¶ 9.