

11/9/82

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. 5

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 #5 which states that:

Applicant has not demonstrated the safety of its reactor from an unrecoverable loss of coolant accident, which could occur from a pipe break in the scram discharge volume. See NUREG-0785.

As grounds for its motion, the Staff asserts that the attached affidavit of Nicholas E. Fioravante and the other papers filed in this proceeding demonstrate that there is no genuine issue of material fact to be heard with respect to Issue #5 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

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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 #5 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 #5 should be granted.

Respectfully submitted, .



James M. Cutchin, IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 3th day of November, 1982.

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

1. The Licensing Board admitted Issue #5 because NUREG-0785, Safety Concerns Associated with Pipe Breaks in the BWR Scram System, "pointed out that a pipe break in the scram discharge volume could lead to an unrecoverable loss of coolant accident." LBP-81-24, 14 NRC 175, 216-217 (1981).
2. The postulated break in a scram discharge volume pipe that is described in NUREG-0785, if not isolated, would be the equivalent of a small unisolated break in the bottom of the reactor vessel. Affidavit of Nicholas E. Fioravante (Affidavit) at ¶ 4.
3. In the scenario described in NUREG-0785 the coolant discharged from the reactor vessel would not be available for return to the vessel and also could cause failure of the ECCS equipment. Affidavit at ¶ 4.
4. The scenario described in NUREG-0785 is not applicable to the Perry-type BWR 6/Mark III containment design, and thus an SDV pipe break in nuclear plants of that type poses no threat to the long-term cooling capability provided by the ECCS. Affidavit at ¶ 5.
5. In the BWR 6/ Mark III design the coolant discharged from an SDV pipe break will remain inside the primary containment where it is available for recirculation to the reactor vessel. Affidavit at ¶ 6.
6. The ECCS, the residual heat removal system and the reactor core isolation cooling system in the BWR 6/Mark III design are located outside of the primary containment, are protected from flooding or

other adverse effects resulting from the break and thus will remain available to protect the core until the break is isolated. Affidavit at ¶¶ 6, 7 and 8.

7. An SDV pipe break in the Perry plant will not cause an unrecoverable loss-of-coolant accident. Affidavit at ¶ 9.