

ORIGINAL

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PROCEEDINGS BEFORE

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DKT/CASE NO. 50-440-OL & 50-441-OL

TITLE CLEVELAND ILLUMINATING COMPANY
(Perry Units 1 and 2)

PLACE Washington, D.C.

DATE November 15, 1982

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ALDERSON REPORTING

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

4 ----- x
5 In the Matter of: : Docket Nos.
6 CLEVELAND ILLUMINATING COMPANY : 50-440-OL
7 (Perry Units 1 and 2) : 50-441-OL
8 ----- x

9 In the Offices of
10 Alderson Reporting Company
11 400 First Street, N.W.
12 Washington, D.C.

13 Monday, November 15,
14 1982

15 The telephone conference in the above-entitled
16 matter convened, pursuant to notice, at 10:05 a.m.

17 BEFORE:

- 18 JUDGE PETER BLOCH, Chairman
19 Atomic Safety and Licensing Board
- 20 JUDGE FREDERICK SHON, Member
21 Atomic Safety and Licensing Board
- 22 JUDGE JERRY KLINE, Member
23 Atomic Safety and Licensing Board

24 APPEARANCES:

- 25 On behalf of the Applicant, Cleveland
Illuminating Company:
26 JAY SILBERG, Esq.
- 27 On behalf of Intervenor, Ohio Citizens for
28 Responsible Energy:
29 SUSAN HIATT, Esq.

1 APPEARANCES: (Continued)

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3 On behalf of Intervenor, Sunflower Alliance, Inc.,
4 et al.

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6 DAN WILT, Esq.

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8 On behalf of the Nuclear Regulatory Commission:

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10 GEORGE JOHNSON, Esq.

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1 MR. JOHNSON: This is George Johnson for the
2 NRC staff.

3 CHAIRMAN BLOCH: May I ask, Mr. Silberg, are
4 you prepared to comment on the November 4 letter?

5 MR. SILBERG: Yes, but I would think that
6 since the immediate argument is between Ms. Hiatt and
7 Mr. Johnson that that is the appropriate place to
8 start.

9 CHAIRMAN BLOCH: I would have asked staff
10 first, except that I noted that Mr. Johnson is not the
11 regulatory attorney for staff.

12 Mr. Johnson, are you prepared to comment?

13 MR. JOHNSON: Yes, I am, sir.

14 CHAIRMAN BLOCH: Please proceed. I would hope
15 that you could hold your comments to five minutes or, at
16 the absolute maximum, 10 minutes.

17 MR. JOHNSON: I will try to be brief.

18 Our interpretation of the ALAB-675 decision is
19 that the Appeal Board said that, although it was willing
20 to find that the Licensing Board did in fact apply the
21 TMI-Restart criteria in CRI-80-16 with regard to the
22 admissibility of a hydrogen control contention, it did
23 not, we believe, find that it had been correctly
24 applied. I think it is the staff's position that the
25 Appeal Board reserved its views on that question.

1 It is the staff's view that the Licensing
2 Board incorrectly applied the TMI-Restart criteria. So
3 that with regard to the comments in the November 4
4 letter by Ms. Hiatt, we believe that the Appeal Board
5 did not accept the Licensing Board's ruling. That is
6 suggested, not stated outright, but suggested in the
7 second paragraph of her letter to Mr. Cutcheon.

8 However, presuming that the Licensing Board
9 maintains that Issue 8 is admissible, the staff still
10 believes that a specific LOCA scenario involving
11 hydrogen generation, combustion, containment breach, and
12 off-site doses in excess of Part 100 values must be
13 shown to be credible in order to litigate the hydrogen
14 control issue raised Issue 8.

15 CHAIRMAN BLOCH: The specific language that we
16 see as being relevant appears on pages 17 and 18 of the
17 Appeal Board's decision, and I am not sure that it goes
18 quite as broadly as you say. It doesn't specifically at
19 that point, for example, mention Part 100.

20 Are you familiar with the language I am
21 talking about?

22 MR. JOHNSON: I have been using the issuances,
23 but I have the Opinion, just let me turn to the page.

24 CHAIRMAN BLOCH: Off-the-record.

25 (Discussion was held off the record.)

1 CHAIRMAN BLOCH: Back on the record.

2 During the off-the-record discussion, the
3 staff tried to clarify which published opinion we should
4 be referring to. We failed to reach any agreement on
5 that.

6 The Board would like now to read the passage
7 that it is concerned about. The passage stages on the
8 Opinion, page 17 and following: "The given hydrogen
9 generation mechanism thus has obvious relevance to the
10 efficacy of a hydrogen control system, in order to
11 litigate meaningfully the adequacy of such a system, a
12 particular accident or accidents should be specified.
13 For the hydrogen control contention admitted, and
14 restated by the Licensing Board here, must therefore be
15 construed in the context in which it was raised, i.e.,
16 Sunflower's motion to resubmit Contention 7. It is
17 clear from Sunflower's motion and contention that it
18 remains concerned with a hydrogen explosion of the
19 magnitude and type which occurred at Three Mile Island
20 Unit 2. While Sunflower asserts that 'other accident
21 sequences, e.g., ATWS, can also lead to fuel clad
22 melting and subsequent hydrogen generation,' it
23 recognizes, albeit reluctantly, that it must be bound by
24 TMI-1 Restart and a one-LOCA scenario."

25 That is the key passage that we are concerned

1 about. It suggests that you need to have a scenario in
2 order to determine whether hydrogen release can be
3 controlled. It also suggests rather strongly that the
4 scenario must be a LOCA scenario.

5 Of course, this is a passage from an Appeal
6 Board decision in which directed certification was
7 denied, so we are talking entirely about dictum, but we
8 are talking about dictum from the people who are going
9 to review our decision, so that there is some weight
10 here.

11 Mr. Johnson, could you continue?

12 MR. JOHNSON: Yes, that was the passage that I
13 was speaking of. I was just referring to the footnote
14 on that same page.

15 The staff's position is that we read those
16 passage in ALAB-675 to require litigation of the
17 credibility of the specific accident scenario, despite
18 its non-inclusion in the language of Issue No. 8. As a
19 result, we disagree with OCRE that the parties are under
20 no obligation to demonstrate the existence of a credible
21 accident scenario.

22 CHAIRMAN BLOCH: Could you explain further,
23 though, why that is relevant in the context of a
24 discovery request for an admitted contention?

25 MR. JOHNSON: All right. In the passages you

1 just read, in footnote 13, the Appeal Board states that
2 the rate and quantity of hydrogen generation is a
3 significant element of any hydrogen control contention,
4 since the adequacy of hydrogen control measures would
5 depend on the rate and the quantity of hydrogen
6 generated.

7 Therefore, we believe that in the context of
8 discovery, especially with regard to discovery against
9 staff, that in order to show that the discovery is
10 necessary to a proper decision in the proceeding, that
11 can only be done by relating the interrogatories or the
12 discovery to a particular accident scenario, and we
13 don't have one.

14 CHAIRMAN BLOCH: I take it that the attempt
15 was to ask for a scenario, and you say that you don't
16 know one.

17 MR. JOHNSON: We believe that the issue can
18 only be litigated in the context of a postulated
19 specific accident scenario.

20 CHAIRMAN BLOCH: And that it is not proper in
21 the course of discovery to ask the staff what that
22 scenario might be.

23 MR. JOHNSON: I believe that it is our
24 position that the intervenor has an obligation to come
25 forward and state a specific accident scenario.

1 CHAIRMAN BLOCH: For discovery purposes?

2 MR. JOHNSON: For purposes of litigating the
3 contention.

4 CHAIRMAN BLOCH: That would be at the summary
5 disposition stage or at the evidentiary hearing. But it
6 is kind of strange that you require a showing of proof
7 as a condition for discovery, isn't it?

8 MR. JOHNSON: It is a question of relevance in
9 our mind.

10 CHAIRMAN BLOCH: Let me ask you this, if we
11 were to ask the following two questions of staff, I
12 would like to know if the staff might be willing to
13 answer. The first question is: "If there were a worst
14 case small break LOCA, and operator error defeated all
15 make-up water and heat removal systems leading to core
16 uncovering and to oxidation of 80 percent of the zirconium
17 cladding, would the hydrogen suppression system be
18 adequate? That is question one. Question two: How
19 likely is that?

20 MR. JOHNSON: Could you restate that?

21 CHAIRMAN BLOCH: Let's make that off the
22 record, since it is all put on the record.

23 (Off the record.)

24 CHAIRMAN BLOCH: Back on the record.

25 Could you respond?

1 MR. JOHNSON: I don't believe I can respond to
2 that question. I would have to consult the staff.

3 CHAIRMAN BLOCH: You would have to decide
4 whether or not it would be feasible to answer that
5 question, or what is your answer?

6 MR. JOHNSON: I don't have an answer.

7 CHAIRMAN BLOCH: Okay.

8 Have you completed your discussion of the
9 ALAB?

10 MR. JOHNSON: Yes, I have.

11 CHAIRMAN BLOCH: Mr. Silberg, before you
12 begin, there is a loose-end which I think we should
13 clean up. I suspect that it is already cleaned up in
14 the discovery process. But we have been asked to
15 clarify for the record what hydrogen control system
16 Applicant is using. Would you do that for us now?

17 MR. SILBERG: The only document on the record
18 in the LN-1 which I can cite to is a letter which was
19 referred to in the Appeal Board Order, which said that
20 we will have a distributed ignition system. We have not
21 yet filed with the staff, to my knowledge at least,
22 design criteria for the reservation concerning that
23 system.

24 CHAIRMAN BLOCH: Now will you please comment
25 on the ALAB, and also on the question that the Board is

1 suggesting that it might ask.

2 MR. SILBERG: All right.

3 First, I think that it is clear that we are
4 dealing only with LOCA, that is pursuant to the
5 Commission's Order in the TMI-Restart, CLI-80-16, where
6 they said under Part 100, this is the only way we can
7 litigate hydrogen control beyond 10 CFR 50.44. Under
8 Part 100, hydrogen control measures beyond those
9 required by 50.44 would be required if it is determined
10 that there is a credible loss of coolant accident
11 scenario. Then it goes on with the rest of the text.
12 They were only dealing with LOCA.

13 The staff has said in their letter of October
14 29 that -- I will read it: "The NRC staff has not
15 identified an accident scenario for PWRs that is
16 equivalent to the TMI-2 accident."

17 Our answers to interrogatories that were filed
18 on October 29, this is Applicant's answer to OCRE's
19 fifth set of interrogatories, answered the question
20 which OCRE had posed, which is what do we consider to be
21 the equivalent of a TMI-2 accident.

22 CHAIRMAN BLOCH: Off the record for a moment.

23 (Discussion off-the-record.)

24 CHAIRMAN BLOCH: Back on the record.

25 Mr. Silberg.

1 MR. SILBERG: In our answer, we stated that we
2 did not believe that there is a credible accident
3 scenario for Perry which is equivalent to a TMI-2, and
4 we went into some detail explaining what the TMI-2
5 accident was, nine pages of response as to why that is
6 not a suitable equivalent for Perry.

7 I understand from OCRE's letter that they are
8 planning to submit, I believe by today, their answers to
9 our interrogatories which supposedly will include their
10 views on the TMI-2 type accident scenario. The
11 responses that are in to date would indicate that there
12 is no equivalent scenario.

13 My judgment is that if we try to answer your
14 question, the current hydrogen control system,
15 recombiners, would not be sufficient to control the type
16 of oxidation postulated in your first question.
17 However, I think we would say, in answer to the second
18 question, that that scenario was highly improbable at a
19 minimum. Whether we could further quantify that, I
20 would doubt, but our position would certainly be that
21 postulating the operator defeating all make-up water
22 systems and all the heat removal systems would be highly
23 incredible.

24 CHAIRMAN BLOCH: I guess that the problem is
25 that you would want to compare that to the a priori

1 knowledge of whether or not TMI-2 might itself have
2 existed. I think probably in the view of everyone at
3 that time was that that accident also was highly
4 incredible, wasn't it?

5 MR. SILBERG: I guess that depends on your
6 definition. It was at least within the realm of
7 accident analyzed in WASH-1400. However, I think the
8 postulated similar accident today, in light of what has
9 been learned, in light of the changes in design and
10 procedures, certainly would be highly incredible.

11 CHAIRMAN BLOCH: It sounds to me like it
12 wouldn't be that difficult for the Applicant, at least,
13 to answer those questions. It would help the Board to
14 know where --

15 MR. SILBERG: I believe we have already
16 answered that.

17 CHAIRMAN BLOCH: That particular scenario? In
18 other words, you have stated that you could not control
19 the amount of release involved in an 80 percent
20 oxidation of the zirconium clad?

21 MR. SILBERG: No, I don't think we say that,
22 but I do think we say, in trying to compare the TMI-2
23 scenario with Perry, I think we show narratively, at
24 least, why this kind of a situation is incredible.

25 CHAIRMAN BLOCH: I think it would be helpful

1 for us to have an answer to the first question. If we
2 were to agree with your reasons for thinking that it is
3 incredible, what would the situation on hydrogen control
4 be.

5 MR. SILBERG: I don't think we can answer that
6 at the present time because the design for the
7 distributed ignition system is not complete. I think we
8 would stipulate, if we are talking about any relatively
9 rapid generation of hydrogen, that the recombiners would
10 not be adequate. They were not designed with that kind
11 of an accident in mind.

12 CHAIRMAN BLOCH: Okay.

13 MR. SILBERG: But I don't think that we could
14 answer at the present time at least --

15 CHAIRMAN BLOCH: You said, we could stipulate
16 that. Would you consider your present statement on the
17 record to be that stipulation, or do you want to
18 consider putting it in writing?

19 MR. SILBERG: I would certainly want to
20 consult with my witnesses, but I have never heard anyone
21 state that the recombiners could stand 80 percent fire
22 oxidation. I will be to confirm that.

23 CHAIRMAN BLOCH: Have you completed your
24 discussion.

25 MR. SILBERG: I also have a question in that

1 there is on the street a proposed rule, and it is my
2 recollection that the 80 percent number is greater than
3 what is postulated in the proposed rule. Of course, it
4 is a proposed rule, and not a final rule, we may be
5 getting into an area where we are on a different
6 wavelength than the Commission is.

7 CHAIRMAN BLOCH: We would be pleased to have
8 you comment on the lesser requirements that you believe
9 are included in the proposed rule.

10 Have you completed your argument, Mr.
11 Silberg?

12 MR. SILBERG: Yes.

13 CHAIRMAN BLOCH: We have a lead intervenor,
14 which is OCRE. So the procedure should be that OCRE
15 will comment, and Mr. Wilt will comment only if he has
16 something additional that has not been attended to.

17 Ms. Hiatt.

18 MS. HIATT: I would first state that I think
19 the proposed rule on hydrogen control I think postulates
20 75 percent metal water reaction. I wanted to clear that
21 up first.

22 MR. SILBERG: That is my recollection.

23 MS. HIATT: The problem that arises here is
24 that OCRE had sent discovery requests to staff, and
25 staff on October 29 informed OCRE that they will not

1 voluntarily answer any of them. They believe that they
2 are supposedly not related to Issue 8. Then, of course,
3 it gets back to the TMI-2 type accident scenario. The
4 problem appears to be what is the credible TMI-2
5 equivalent accident scenario for Perry.

6 I would note that in CLI-81-15, the Maguire
7 Decision, the subject views of Commissioners Gilinsky
8 and Bradford state that 10 CFR Part 100, under which
9 this contention will be litigated, being an accident
10 involving core melt and fission product release as being
11 credible.

12 They also note that Part 100 was written in
13 1962, before there was a general awareness of the
14 hydrogen generation problem, and that if this same part
15 were being written today there would probably also be
16 inclusion of hydrogen generation.

17 Since 10 CFR Part 100 considers an accident
18 having core melt and fission product release as
19 credible, it must also follow that an accident having a
20 great quantity of hydrogen associated with it would also
21 be credible.

22 I think the other part is, looking at some of
23 the equivalencies to the TMI-2 accident may be narrow.
24 I think that applicant has done that as well as the
25 staff, although the staff refuses to even answer in an

1 acceptable the interrogatories directed to it as to what
2 the staff considers to be the TMI-2 type accident.

3 I think that at the very least they should
4 state that in writing under oath and affirmation that
5 they think there is no credible accident.

6 CHAIRMAN BLOCH: May I ask the staff whether
7 they have, in fact, stated in answers to the
8 interrogatories their belief that there is no credible
9 accident.

10 MR. JOHNSON: Other than in the letter from
11 Mr. Cutcheon to Ms. Hiatt, I don't believe the staff has
12 answered this question. It is the staff's position that
13 it will not answer these interrogatories that are
14 involved here voluntarily at this time.

15 CHAIRMAN BLOCH: I note, Ms. Hiatt, because of
16 the change in the staff's position on what it will do
17 voluntarily and what it will not, you are going to have
18 to file a motion to compel to get a ruling from the
19 Board. Do you have a time schedule in which you can
20 file such a motion along with good cause for why it is
21 being filed somewhat late?

22 MS. HIATT: I don't know that a motion to
23 compel is what you would call it. I guess it is filing
24 with the presiding officer and trying to show that they
25 are relevant.

1 CHAIRMAN BLOCH: I accept your correction. It
2 is, in fact, the procedure that Sunflower has just
3 followed with some of its interrogatories.

4 MS. HIATT: I would say, perhaps, November
5 30th might be an appropriate time, the reason for delay
6 being that it was not until October 29 when I was even
7 informed that the staff would not be answering these
8 interrogatories at all.

9 The interrogatories, by the way, were
10 submitted on September 13, and it is today November 15
11 and we are just having this call trying to clarify the
12 problem here. It will take some time for OCRE to
13 demonstrate why the answers to the interrogatories
14 should be filed by the staff under the regulatory
15 procedure.

16 CHAIRMAN BLOCH: Have you finished your
17 presentation?

18 MS. HIATT: Yes.

19 CHAIRMAN BLOCH: Mr. Wilt, have you any
20 additional comments not covered by OCRE?

21 MR. WILT: No, Your Honor.

22 CHAIRMAN BLOCH: Would the staff like to
23 comment on the schedule for filing the motion?

24 MR. JOHNSON: The deadline of the 30th that
25 Ms. Hiatt has suggested seems appropriate.

1 CHAIRMAN BLOCH: Mr. Silberg, would you
2 comment on that?

3 MR. SILBERG: I don't have any comments on the
4 schedule, no, sir.

5 CHAIRMAN BLOCH: Then that schedule is
6 approved.

7 The Board is prepared to continue. Are there
8 any other necessary matters to be discussed this
9 morning?

10 There being none, the conference is
11 adjourned. I want to thank the parties for their
12 participation.

13 (Whereupon, at 10:30 a.m., the conference was
14 adjourned.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
NUCLEAR REGULATORY COMMISSION

in the matter of: CLEVELAND ILLUMINATING COMPANY (Perry Units 1 and 2)

Date of Proceeding: November 15, 1982

Docket Number: 50-440-OL & 50-441-OL

Place of Proceeding: Washington, D.C.

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Patricia A. Minson

Official Reporter (Typed)

Patricia A. Minson

Official Reporter (Signature)