

4/27/83

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)

)
Docket No. 50-440 OL
50-441 OL

NRC STAFF'S ANSWER IN SUPPORT OF
APPLICANTS' MOTION FOR RECONSIDERATION AND
CLARIFICATION OF THE LICENSING BOARD'S MEMORANDUM
AND ORDER ON SUMMARY DISPOSITION OF ISSUE NO. 9

I. INTRODUCTION

By Memorandum and Order (Polymer Degradation: Summary Disposition) dated March 30, 1983 the Licensing Board, subject to satisfaction of two conditions, summarily disposed of Issue No. 9 with the exception of one fact as to which it found there remained a genuine issue to be decided. By their motion dated April 14th^{1/} Applicants seek clarification by the

^{1/} Applicants' Motion for Reconsideration and Clarification of the Licensing Board's March 30, 1983 Memorandum and Order on Summary Disposition of Issue No. 9 dated April 14, 1983.

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Board of one of the two conditions and reconsideration by the Board of its finding that one genuine issue of fact remains to be decided.^{2/}

For the reasons discussed below the NRC Staff supports the Applicants' motion.

II. DISCUSSION

A. The Request for Clarification

The Licensing Board has required that:

Applicant and staff must, as a condition to the grant of summary disposition, file a stipulation committing applicant to completing its environmental qualification program for electrical equipment by November 1985. Memorandum and Order at 19.

The Board indicated that it has imposed this condition on its grant of summary disposition because there is some ambiguity about whether the rule, 10 CFR 50.49(g), requires "that full-scale equipment qualification must be completed by November 30, 1985" for the electrical equipment at the Perry facility. Memorandum and Order at 9. Applicants state that their interpretation of the rule is that the schedule for completion of

2/ That genuine issue of fact is:

Whether the inspection and maintenance program will be adequate to assure that safety functions will not be inhibited by radiation-induced embrittlement of polymers. Memorandum and Order at 18.

The condition, clarification of which is requested, is the Board's requirement that:

Applicant and staff must, as a condition to the grant of summary disposition, file a stipulation committing applicant to completing its environmental qualification program for electrical equipment by November 1985. Id. at 19.

environmental qualification in 10 CFR 50.49(g) applies to the Perry facility. Motion at 3. Applicants also state that they do not object to stipulating that Perry shall meet the schedule established by 10 CFR 50.49(g) for completing the environmental qualification program as that program applies to Issue No. 9. Motion at 3-4. However, Applicants request that the Licensing Board confirm that it did not intend by its interpretation of the rule and its condition to require that Applicants waive their right under 10 CFR 50.49 to seek from the Commission itself "in exceptional cases" an extension beyond November 30, 1985 for completion of environmental qualification. Motion at 4. The Staff agrees with the Applicants' interpretation of the rule, including the schedule in § 50.49(g), as applying to the Perry facility and supports their request for clarification by the Board of its ruling to confirm that it did not intend by its condition on summary disposition to require Applicants to waive any of their rights under the rule.

B. The Request for Reconsideration

Issue #9 reads:

Applicant has not demonstrated that the exposure of polymers to radiation during the prolonged operating history of Perry would not cause unsafe conditions to occur. LBP-82-___, 16 NRC ___, (July 12, 1982).

The Board found that OCRE had failed to demonstrate that degradation of polymers in non-electrical equipment could cause a safety problem at Perry. Memorandum and Order at 10. Moreover, the Board noted that significant dose-rate effects to polymers should not occur at Perry during about six years at the highest radiation levels expected and that the occurrence of a dose-rate effect is not the equivalent of a

safety problem. Id. at 11-12. In addition, the Board found that almost 10 years of exposure at the highest radiation levels expected at Perry would be required before degradation of polymers in electrical equipment arguably might cause a safety problem. Id. at 13. Nevertheless, based on speculated uncertainties about the degradation rates of polymers, the Board also found that "a good inspection and maintenance program becomes essential to plant safety." Id. at 17. Thus, the Board concluded that the following genuine issue of fact remains to be decided:

Whether the inspection and maintenance program will be adequate to assure that safety functions will not be inhibited by radiation-induced embrittlement of polymers. Memorandum and Order at 18.

The Applicants request that the Board reconsider its ruling and grant in its entirety the Staff's motion for summary disposition of Issue No. 9. Motion at 2.

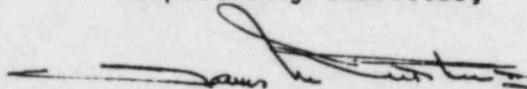
Applicants note that in ruling on the Staff's motion for summary disposition the Board did not address the factual material presented by the Staff and the Applicants to demonstrate that the Applicants' inspection and maintenance program will be adequate and that OCRE presented no evidence to the contrary. Motion at 7. They point out that NRC regulations do not require that the maintenance and surveillance program be completed early enough to be litigated in the hearing and that, in light of Applicants' commitment to develop a program that meets Regulatory Guide 1.33 (Rev. 2) prior to fuel loading of Unit 1, OCRE has provided no basis for its bare assertion that a reasonable program will not be available when needed. Motion at 5 and 7. OCRE should have provided an evidentiary level showing that an inspection and maintenance plan meeting Regulatory Guide 1.33 (Rev. 2) would be inadequate or that a plan meeting the Regulatory

Guide could not be available when needed. It did neither. Absent such an evidentiary level showing by OCRE there is no genuine issue of material fact regarding either the adequacy or the timely availability of the program for the Board to decide. Finally, the uncertainties in the Board's analysis of when degradation of polymers in electrical equipment arguably might cause a safety problem at Perry are plainly not large enough to support a conclusion that the portion of the program related to inspection and maintenance of polymers will be needed earlier than several years after fuel load. Thus to require that it be available earlier than presently planned is not justifiable from a safety standpoint. The Staff agrees with the Applicants arguments and supports their request that the Licensing Board reconsider its ruling, address the factual material presented by the Staff and Applicants, and grant the Staff's motion for summary disposition of Issue No. 9 in its entirety.

III. CONCLUSION

For the reasons discussed above, the Licensing Board should grant Applicants' motion.

Respectfully submitted,



James M. Cutchin IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 27th day of April, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER IN SUPPORT OF APPLICANTS' MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE LICENSING BOARD'S MEMORANDUM AND ORDER ON SUMMARY DISPOSITION OF ISSUE NO. 9" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 27th day of April 1983:

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