

March 9, 1983

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 RESPONSE IN SUPPORT
OF APPLICANTS' MOTION TO STRIKE
OCRE REFERENCES TO "SYNERGISTIC EFFECTS"

I. INTRODUCTION

On February 18, 1983, Applicants moved ^{1/} to strike all references to "synergistic effects" on polymers at Perry Nuclear Power Plant which were contained in the OCRE Response to NRC Staff Motion for Summary Disposition on Issue #9, dated February 7, 1983. Applicants argue that OCRE's introduction of the separate issue of synergistic effects relating to polymer degradation improperly broadens the scope of Issue 9. The scope of Issue 9, Applicants state, is limited to the claim "that polymeric materials in safety related equipment degrade more rapidly when exposed to the relatively low radiation dose rates normally experienced in commercial nuclear power plants than when exposed to the high dose rates used in equipment qualification testing." Id. at 1-3. As discussed below, the

1/ Applicants' Motion to Strike References to "Synergistic Effects" in OCRE Response to NRC Staff Motion for Summary Disposition of Issue #9.

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Staff supports Applicants' motion to strike on the ground that OCRE's attempt to raise the matter of synergistic effects on polymer degradation improperly expands OCRE's original contention far beyond its stated concern and basis for Issue #9 which was limited to the accelerated method for radiation testing of materials.

II. DISCUSSION

A. Though Recast in General Terms, Issue 9 Should Be Limited In Scope By the Basis Provided in the Original Contention

Applicants' motion to strike references to synergistic effects in OCRE's response to the Staff's motion for summary disposition of Issue 9 is based on Applicants' position, shared by the Staff, that, although recast in general terms by the Licensing Board, Issue 9 is nevertheless limited to the concerns stated by OCRE in its original Contention 19, upon which Issue 9 is based. As admitted by the Licensing Board, Issue 9 states:

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.

Memorandum and Order (Concerning Motions to Admit Late Contentions), dated July 22, 1982, at 6. As proffered by OCRE, ^{2/} however, Contention 19 provided only one basis and stated only one concern: that recent Sandia National Laboratory experiments indicate that polymers may degrade more rapidly when exposed to lower levels of radiation for long periods of time than when exposed to high levels of radiation for shorter periods,

^{2/} Ohio Citizens for Responsible Energy Motion for Leave to file its Contentions 17, 18 and 19, dated April 22, 1982, at 5-6.

and that use of the latter method for polymer qualification may overestimate the useful life of polymers subject to radiation induced degradation. As noted by Applicants in their motion to strike, OCRE provided no notice in its original contention or otherwise until its February 7, 1983 response to the Staff's motion for summary disposition of Issue 9, that it wished to litigate any issue other than the accelerated radiation aging method of polymer qualification testing.

The Appeal Board has already had the occasion to note in this proceeding that it is improper for a licensing board to broaden a contention, through rewording or otherwise, beyond the bases presented by the intervenor. Specifically, the Appeal Board interpreted the Licensing Board's opinion on the scope of Sunflower Alliance's hydrogen control contention as limiting that contention to "the context in which it was raised: i.e., [a] contention ... predicated on the assumption of a TMI-2 type accident ..." ALAB-675, 15 NRC 1105, 1115 (1982). To do otherwise, the Appeal Board stated, would "expand improperly Sunflower's contention beyond its own self-imposed limitations." Id. ^{3/} Thus, in recasting OCRE's contention into a generally worded issue, the Licensing Board did not thereby expand the scope of the admitted contention beyond the limitations of the underlying concerns of the intervenors.

^{3/} In a somewhat different context, the Licensing Board in Illinois Power Company, et al. (Clinton Power Station, Unit 1), LBP-81-61, 14 NRC 1735, 1737 (1981), has ruled that a general contention is necessarily limited by the basis provided:

Where a contention is made up of a general allegation which, standing alone, would not be admissible under 10 CFR § 2.714(b), plus one or more alleged bases for the contention set forth with reasonable specificity, the scope of the matters in controversy raised by such contention are limited by the specific alleged basis or bases set forth in the contention.

B. The Basis for Issue 9 Is a Concern for the Adequacy of Accelerated Radiation Testing of Polymers and OCRE Has Not Justified Its Attempt to Expand the Scope of Issue 9 to Include Consideration of Synergistic Effects

As previously indicated, the explicit basis limiting the scope of Issue 9 is OCRE's allegation that accelerated radiation testing methods may be inadequate to properly qualify polymers for nuclear power plant use. This was, and until OCRE's response to the Staff's motion for summary disposition of Issue 9, has been the single reason for the concerns raised in Issue 9. Indeed, the Licensing Board, concerned over the generality of Issue 9 as admitted, directed OCRE to particularize its concerns, "by providing greater specificity as to the basis for believing that particular wires or other locations are potentially dangerous" Memorandum and Order of July 12, 1982, at 6. As noted by the Staff in its motion for summary disposition, OCRE claims to have provided its "particularization" in OCRE Supplemental Response to Applicants' Second Set of Interrogatories and Request for Production of Documents to Intervenor Ohio Citizens for Responsible Energy, dated February 7, 1983. However, no mention at all is made of "synergistic effects" in this response to the Licensing Board's direction to provide greater specificity to OCRE's contention, and the introduction of concerns over synergistic effects (as well as OCRE's introduction of general concerns over Applicants' compliance with new Section 50.49)^{4/} appears to be an after-

^{4/} The context in which OCRE interjected the consideration of "synergistic effects" was OCRE's rebuttal to the Staff's argument in support of summary disposition of Issue 9 to the effect that, since the new 10 CFR § 50.49 (48 Fed. Reg. 2729, January 21, 1983)

thought to justify the litigability of OCRE's challenge to the use of the accelerated radiation aging method of equipment qualification testing.

Issue 9, as originally proffered as OCRE Contention 19 and grounded upon the specific basis offered in support of OCRE Contention 19, is necessarily limited to a consideration of the accelerated radiation aging method for qualifying polymers. Introduction of a consideration of synergistic effects or more under Issue 9 would constitute an expansion of Issue 9 for which a demonstration of good cause and a favorable balancing of the late-filing factors under 10 CFR § 2.714(a) is necessary. See Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), LBP-73-31, 6 AEC 717, 718-720, appeal dismissed as interlocutory, ALAB-168, 6 AEC 1155 (1973); Statement of Consideration - Rules of Practice, 43 Fed. Reg. 17798, 17799 (April 26, 1978). No such good cause for expansion of Issue 9 has been shown. OCRE's attempt to expand the scope of Issue 9 to include synergistic effects is improper

4/ (FOOTNOTE CONTINUED)

permits accelerated aging in electrical equipment qualification testing, Issue 9, by questioning such qualification testing methodology, constitutes a challenge to testing methodology explicitly sanctioned by the new regulation. 10 CFR § 50.49(e)(5). OCRE responded that Section 50.49(e)(4) and (e)(7) require radiation dose-rate effects and synergistic effects, respectively, to be included in the equipment qualification program and further asserted, for the first time, that:

[t]he true issue at stake here is whether Applicants will comply with NRC's regulations in their design of an equipment qualification program. The degree of compliance with regulations is always litigable in licensing proceedings.

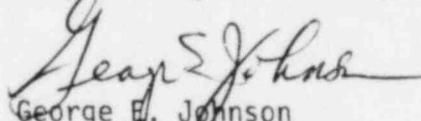
OCRE Response to NRC Staff Motion for Summary Disposition of Issue #9, at 5. In point of fact, the "true issue at stake" in Issue 9 has never been anything more than the adequacy of a specific testing method (accelerated radiation aging) which forms a part of the qualification program for polymers.

and OCRE's references to such effects should be stricken from its February 7, 1983 response to the Staff's motion for summary disposition of Issue 9.

III. CONCLUSION

For the foregoing reasons, the NRC Staff supports Applicants' motion to strike references to "synergistic effects" in OCRE's response to the Staff's motion for summary disposition of Issue 9.

Respectfully submitted,


George E. Johnson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 9th day of March, 1983

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN SUPPORT OF APPLICANTS' MOTION TO STRIKE OCRE REFERENCES TO 'SYNERGISTIC EFFECTS'" 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 9th day of March, 1983:

*Peter B. Bloch, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Donald T. Ezzone, Esq.
Assistant Prosecuting Attorney
105 Main Street
Lake County Administration Center
Painesville, Ohio 44077

*Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Susan Hiatt
8275 Munson Road
Mentor, Ohio 44060

*Mr. Glenn O. Bright
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Daniel D. Wilt, Esq.
P. O. Box 08159
Cleveland, Ohio 44108

Jay Silberg, Esq.
Shaw, Pittman, Potts and Trowbridge
1800 M Street, NW
Washington, DC 20036

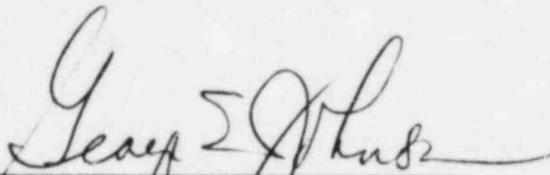
Terry Lodge, Esq.
Attorney for Intervenors
915 Spitzer Building
Toledo, Ohio 43604

John G. Cardinal, Esq.
Prosecuting Attorney
Ashtabula County Courthouse
Jefferson, Ohio 44047

*Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555


George E. Johnson
Counsel for NRC Staff