

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF INSPECTION AND ENFORCEMENT
Richard C. DeYoung, Director

In the Matter of)	
)	
CLEVELAND ELECTRIC ILLUMINATING)	Docket Nos. 50-440
COMPANY, et al.)	50-441
(Perry Nuclear Power Plant,)	
Units 1 & 2))	(10 CFR 2.206)

DIRECTOR'S DECISION UNDER 10 CFR 2.206

During the course of the ongoing operating license proceeding for Cleveland Electric Illuminating Company's (CEI) Perry Nuclear Power Plant (PNPP), Ms. Susan L. Hiatt, on behalf of the Ohio Citizens for Responsible Energy (OCRE), filed a motion before the Atomic Safety and Licensing Board (ASLB) for summary disposition and dismissal of the license application on the basis that CEI had made material false statements in its application concerning the use of herbicides to control vegetation along transmission lines. On May 9, 1983, the ASLB ruled that the motion was directed at an issue not permitted before the Board and consequently denied the motion. The Board, however, asked the NRC Staff to provide OCRE's documentation to the appropriate persons for consideration as a petition for enforcement action under 10 CFR 2.206. Notice of receipt of the petition for handling as a 2.206 request was published in the Federal Register on June 14, 1983 (48 FR 27327). OCRE supplemented its petition by letter dated July 5, 1983.

8311290359 831115
PDR ADOCK 05000440
G PDR

OCRE contends that information given in response to a staff question on use of herbicides along transmission line right-of-ways, and used by the staff in preparing the Draft and Final Environmental Statements, was subsequently contradicted in a submission by the licensee to the Ohio Power Siting Board. The licensee did not change the information previously provided to the NRC. Thus, OCRE contends, the licensee made a material false statement either in its original statement to the Commission or by its failure to correct it. Consequently, OCRE requests that the licensee's operating license application be dismissed, its construction permit be revoked or a civil penalty be assessed. For the reasons set forth below, OCRE's request for action is denied.

Background

Prior to granting a construction permit to CEI 1/ for the Perry facilities, the Commission prepared a Final Environmental Statement (issued April 1974). In that statement, the Commission discussed the proposed methods for initial clearing and maintenance of transmission line right-of-ways for the licensee's two proposed lines--the Macedonia-Inland line and the Perry-Hanna line. CEI indicated in Section 3.9 and Appendix B3.9 of its Environmental Report for its construction permit that, when permitted and where feasible, it would use herbicides on

1/ CEI is the applicant, acting as agent for the other co-owners Duquesne Light Company, Ohio Edison Company and Toledo Edison Company. CEI is responsible for all submittals to the NRC and for construction and operation of the PNPP facility. Other co-owners have responsibilities for those portions of the distribution system offsite within their respective service areas.

selected plants as a basal spray before cutting. Where such use was not feasible, mechanical clearing would be used. The Environmental Report indicated that, in service areas of Ohio Edison, herbicides would be used for clearing, with extra care taken in certain areas and in compliance with all regulations. (FES-CP, Section 2.2.1.2, p. 5-22 and 5-23). The Commission found no significant effects from such proposed practices and imposed no specific limitations on use of the herbicides when the construction permit was issued.

The applicant submitted its PNPP Environmental Report - Operating License Stage (ER-OL) on June 20, 1980. It was docketed on June 19, 1981. The staff then initiated its operating license environmental review.

The applicant indicated in Section 5.5 of the ER-OL that, "The operation and maintenance methods for the transmission system are unchanged from those described in the ER-CP. The estimated effects of the operation and maintenance of the transmission system are also unchanged." ER-OL, p. 5.5-1. In section 2.2 of the ER-OL, the applicant also reported the results of its construction monitoring program and of terrestrial ecology studies conducted onsite between March and October 1972. In Section 2.2.2.2.3, the applicant indicated that the spotted turtle (clemmys guttata), a species listed as "endangered" by the State of Ohio, had been found onsite in several locations, including the transmission corridor in the southeastern part of the site.

As part of its environmental analysis for the operating license review, the NRC staff posed a number of questions to the applicant. On July 31, 1981, the staff asked the applicant to "Provide an assessment of the effects of transmission line maintenance procedures on the spotted turtle (clemmys guttata). Indicate whether herbicides will be used along any portions of the Perry Transmission lines." Question 290.08. The applicant's response on November 20, 1981 was "It is not the policy of CEI to use herbicides for vegetation control along the Perry transmission lines. CEI cuts the vegetation with a bush hog. To date, there have not been any apparent effects on the spotted turtle."

In January 1982, the Ohio Power Siting Board denied joint applicants, CEI and Ohio Edison, a certificate of environmental compatibility and public need for the Perry-Hanna transmission line.

In its Draft Environmental Statement, issued in March 1982, and its Final Environmental Statement, NUREG-0884, issued in August 1982, the staff described the facility and related environment for areas where additional or changed information existed and any changes in the staff's evaluation of the environmental effects of operating the PNPP facility in light of information gained since the FES-CP was issued in April 1974. The staff noted in the FES that the Perry-Macedonia-Inland line was under construction but that the originally proposed Perry-Hanna line had

been denied approval by the Ohio Power Siting Board. The staff stated that, when final alignments for the Perry-Hanna line are approved by the State, the applicant will be required to provide a description and analyses of any changes pursuant to conditions of the construction permit. 2/ NUREG-0884, § 4.2.7, p. 4-10. The staff also discussed the presence of the spotted turtle onsite and noted that it was the staff's understanding that the applicant was currently discussing with the Division of Wildlife of the Ohio Department of Natural Resources habitat requirements and methods of protection. NUREG-0884, 4.3.7.2, p. 4-25.

In its discussion of environmental consequences, the staff summarized as follows:

"Maintenance procedures for vegetative control along the PNPP transmission lines will consist of periodical mechanical cutting employing a bush hog. The applicant indicates that it is not his policy to use herbicides for vegetation control along the PNPP transmission lines. Thus, it is the staff's evaluation that adverse impacts from the maintenance activities will be minimal."
NUREG-0884 at 5-8.

The construction permits state:

- 2/ Before engaging in a construction activity that may result in a significant adverse environmental impact that was not evaluated or that is significantly greater than evaluated in the Final Environmental Statement, Applicants shall provide written notification to the Director, Division of Site Safety and Environmental Analysis; and

If unexpected harmful effects or evidence of irreversible damage are detected during facility construction, Applicants shall provide to the Commission an acceptable analysis of the problem and a plan of action to eliminate or significantly reduce the harmful effects or damage. (See License Conditions F.6 & F.7 construction permit numbers of CPPR-148 & CPPR-149).

With respect to any impacts of PNPP operation on the spotted turtle, the staff found that to date, the spotted turtle's habitat has not been affected by activities at PNPP and that the applicant was discussing the possible effects of future construction and operating activities on the turtle with the State of Ohio.

In October 1982, CEI and Ohio Edison filed an amended application before the Ohio Power Siting Board for the Perry-Hanna transmission line. In the amended application, as in their original 1978 application, the applicants stated they would use a number of herbicides and described the methods of application and chemical components of those to be used.

ANALYSIS

The issue is whether the applicant's statement in its response to Question 290.08 concerning the use of herbicides or its failure to correct the staff's conclusions in the FES on maintenance procedures is a "material false statement," and, if so, what enforcement action, if any, is appropriate.

The Commission's authority to take enforcement action for material false statements derives from section 186 of the Atomic Energy Act of 1954, as amended:

"Any license may be revoked for any material false statement in the application or any statement of fact required under section 182, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application...."
42 U.S.C. 2236(a).

The Commission addressed the meaning of the term "material false statement" in its decision in Virginia Electric & Power Co., (North Anna Power Station, Units 1 & 2), CLI-76-22, 4 NRC 480 (1976), aff'd, 571 F.2d 1289 (4th Cir. 1978) (hereinafter VEPCO). In VEPCO, the Commission determined that material false statements encompass material omissions. 4 NRC at 489-91. Knowledge of falsity is not necessary for liability for a material false statement. 4 NRC at 486. With respect to the materiality of an omission, the Commission stated:

By reading material false statements to encompass omissions of material data, we do not suggest that unless all information, however trivial, is forwarded to the agency the applicant will be subject to civil penalties. An omission must be material to the licensing process to bring Section 186 into play....[D]eterminations of materiality require careful, common-sense judgments of the context in which information appears and the stage of the licensing process involved. Materiality depends upon whether information has a natural tendency or capability to influence a reasonable agency expert. 4 NRC at 491.

The first question to be addressed is whether the applicant's response to Question 290.08 was false or whether pertinent information was omitted. The staff asked the applicant to assess the effects of transmission line maintenance procedures on the spotted turtle and to state whether herbicides would be used along any portion of the Perry transmission lines. CEI, the entity responsible for submittals to the NRC and for construction and operation of the PNPP, replied with regard to its own practices but did not address the practices of its co-applicants. CEI's response that CEI's policy was not to use herbicides along the Perry transmission lines was true as far as it went. However, CEI omitted the fact that the other owners of the plant planned to use herbicides to maintain portions of the transmission line corridors passing through their service areas. Under

the criteria established by the Commission, both the applicant's initial incomplete statement in response to the staff's question and the failure to correct the staff's use of the statement in the FES are "false statements" by omission.

The second question is whether these omissions are "material," in the sense of having the capability to influence a reasonable agency expert or cause him or her to inquire further. With respect to the general issue of the use of herbicides for transmission line maintenance, the staff had previously evaluated the practice in its FES-CP and concluded that the environmental impact would not be significant. This conclusion was based upon information supplied by the applicant in the ER-OL. The applicant had correctly stated in the ER-OL that transmission line maintenance would be as stated in the ER-CP, i.e., by use of herbicides. This statement was correct because some co-owners intended to use herbicides. The staff apparently did not notice the discrepancy between the ER-OL and the response to Question 290.08. It relied on the response to Question 290.08 and included that information in its discussion in the FES.

If the applicant had told the staff reviewer in response to Question 290.08 that it intended to use herbicides along some transmission line right-of-ways, the reviewer would then have tried to determine whether the use of specific herbicides to be applied would be detrimental to the spotted turtle or its habitat. If no specific information was available, or the information indicated a detrimental impact, the staff would have consulted with the State specialist on the spotted turtle for specific recommendations. Thus, the omissions were material because, had accurate information been provided, the staff would have taken additional actions.

After determining that the licensee made a material false statement, the Director examined what enforcement action would be appropriate under the Commission's Enforcement Policy, 10 CFR Part 2, Appendix C. The Enforcement Policy provides for categorization of violations under one of five Severity Levels depending upon the safety and regulatory significance of the violation.

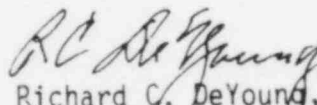
The applicant's initial incomplete statement and its failure to correct the staff's use of the statement in the FES have not had any significant regulatory impact. The staff's review of the transmission lines for the PNPP is not yet complete. The Perry-Hanna line (the only line where herbicides may be used) has not yet been approved and, therefore, any impact of the use of herbicides on the spotted turtle or its habitat offsite is speculative. Moreover, the State reviewers who have the expertise in this area (since it is a State-listed endangered species) have had accurate information on the use of herbicides. When a utility applies for a permit from the Ohio Power Siting Board, the Department of Natural Resources, Division of Wildlife, reviews the request to determine its environmental consequences. Once the Ohio Power Siting Board approves a transmission line route, the NRC will rely on its conclusions regarding the environmental consequences of the route for the State's endangered species such as the spotted turtle. Thus, the environmental consequences of herbicide usage at Perry are being adequately considered and the applicant's false statement has not impeded that consideration.

There is no indication that this was other than an isolated occurrence or that there was any intent on the part of the applicant to mislead the Commission or gain any economic advantage. Counsel for the

applicant has indicated that apparently when CEI reviewed the DES, it did not notice that the staff had broadened CEI's response to include all the transmission lines rather than just CEI's portion alone. 3/ Thus, the Director has concluded that this violation should be categorized as a Severity Level IV violation.

A Notice of Violation will be issued to the applicant following the Commission's review in accordance with 10 CFR 2.206(c). The Notice of Violation will require the applicant to respond and describe its corrective actions to prevent similar occurrences in the future. OCRE's request for other enforcement actions is denied.

FOR THE NUCLEAR REGULATORY COMMISSION


Richard C. DeYoung, Director
Office of Inspection and Enforcement

Dated at Bethesda, Maryland
this 15 day of November 1983

3/ Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), Dockets No. 50-440 and 50-441, transcript of Telephone Conference, May 9, 1983, Tr. 845-847.

DENIED
4/28/83

April 28, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBefore 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 Nos. 50-440
- 50-441
(Operating License)

I
Catalina/John
Woodward/Gary
FF...
Reply due
5/23/

MOTION FOR SUMMARY DISPOSITION OF THE OPERATING LICENSE APPLICATION

Intervenor Ohio Citizens for Responsible Energy ("OCRE") hereby moves for summary disposition of the operating license application for the Perry Nuclear Power Plant, Units 1 and 2, on the grounds that Applicants have made a material false statement in their application, specifically, in an amendment to their Environmental Report.

I. The Material False Statement

Section 5.5.1.4 of NUREG-0884, the NRC's Final Environmental Statement for PNPP (Exhibit A), which describes the environmental impacts of transmission lines, contains the statement that it is not the policy of Applicants to use herbicides for vegetation control along transmission line corridors. The Staff apparently used Applicants' response to Staff Question 290.08 on the ER-OL (Exhibit B) to reach this conclusion. However, Applicants, in their Amended Application to the Ohio Power Siting Board for the Perry-Hanna 345 kV Transmission Line (Exhibit C) state that they will indeed use herbicides to control vegetation along transmission lines. (It should be noted that Applicants stated their intent to use herbicides in an earlier application to the OPSB as well.) It is thus obvious that Applicants made a material false statement to the NRC in response to Staff Question 290.08.

834544523

Applicants might perhaps argue that they understood the Staff's question to pertain only to transmission lines on the Perry site; but, this interpretation is not substantiated by the evidence of the matter. Staff Question 290.08 was apparently generated as a result of information concerning an endangered species, the spotted turtle, Clemmys guttata, appearing on p. 2.2-9 of the ER-OL (Exhibit D). The Staff asked Applicants to assess the effects of transmission line maintenance on that species and to indicate whether herbicides will be used on any portions of the Perry transmission lines (emphasis added). Applicants knew that the spotted turtle is not confined to the PNPP site, but is also found along the proposed Perry-Hanna transmission line routes. See Exhibit E, from Applicants' Site Report on the Perry-Hanna 345 kV Transmission Line. Furthermore, Applicants knew or should have known that the environmental effects of offsite transmission lines are within the NRC's jurisdiction. See Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC -36, 939 (1974) and Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 83 (1977).

Moreover, Section 5.5.1.4 of the DES, issued March 1982, contains identical language pertaining to herbicide use as in the FES. It should be observed that Applicants submitted detailed comments (including the correction of minor omissions and typographical errors) on the DES. See FES pp. A-27 to A-32. At no point in those comments did Applicants attempt to correct the Staff's statement in the DES, even when it was obvious that the Staff interpreted Applicants' response to Question 290.08 as pertaining to all (offsite as well as onsite) transmission lines.

II. The Penalty for a Material False Statement

Under § 186 of the Atomic Energy Act (42 USC § 2236) a license may

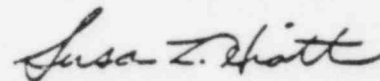
be revoked if an applicant has made a material false statement in an application. See also 10 CFR 50.100. The Appeal Board in Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-324, 3 NRC 347 (1976) held that: (1) scienter is not necessary to show that a statement is false; and (2) such a statement is material if a Staff member might consider it in reaching a conclusion. The Commission (CLI-76-22, 4 NRC 480) affirmed ALAB-324 and added that silence (i.e., omission) as to material facts is the same as making a material false statement.

In applying these standards to the situation at hand, there can be no doubt that Applicants made a material false statement and that the penalty of 42 USC § 2236 should be applied. Applicants submitted a false and/or incomplete statement in response to a Staff Question on the ER-OL. This statement, as part of an amendment to the ER-OL, became part of the OL application. See 10 CFR 50.30(f). The NRC Staff used this statement in preparing the DES and FES, thus demonstrating its materiality. Applicants, though aware that the Staff used their false statement verbatim in the DES, made no effort to correct it. OCRE thus requests that Applicants' OL application be dismissed and this proceeding terminated.

42 USC § 2236 and 10 CFR 50.100 state that a license or construction permit may be revoked for material false statements in the application. Applicants, of course, hold only a CP and not an OL. The material false statement, however, was made in the OL application. Since the Licensing Board has no jurisdiction over the terms of the CP (Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-674, 15 NRC 1101 (1982)), and since the offense was committed at the OL stage application, OCRE is moving for summary disposition of the OL application pursuant to 10 CFR 2.749. 10 CFR 2.749(d) prohibits the use of summary disposition for determining whether

such use of summary disposition at the OL stage. And, although 10 CFR 50.100 only specifically addresses revocation of a license already held, further language ^{1/} in that section implies that refusing to grant a license is an appropriate sanction in the situation at hand. OCRE therefore concludes that this matter is within the jurisdiction of the Licensing Board and that summary disposition is an appropriate vehicle by which to seek the requested relief, i.e., denial and dismissal of the OL application for PNPP. The short statement of material facts required by 10 CFR 2.749(a) is appended hereto.

Respectfully submitted,



Susan L. Hiatt
OCRE Representative
8275 Munson Rd.
Mentor, OH 44060
(216) 255-3158

^{1/} 10 CFR 50.100 reads in part: "A license or construction permit may be revoked . . . for any material false statement in the application for the license . . . or because of conditions . . . which would warrant the Commission to refuse to grant the license on an original application . . ."

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

1. Applicants in their response to Staff Question 290.08 on the ER-OL stated that it is not their policy to use herbicides for vegetation control along transmission line corridors. See Exhibit B.
2. The NRC Staff used Applicants' response verbatim in preparing § 5.5.1.4 of the DES and FES, NUREG-0884. See Exhibit A.
3. Applicants, in their application to the Ohio Power Siting Board for Perry-Hanna 345 kV Transmission Line, state that they will use herbicides to control vegetation. See Exhibit C.
4. Applicants, in their detailed comments on the DES (see FES at pp. A-27 to A-32) made no attempt to correct or even address this discrepancy.
5. According to the standards of ALAB-324 and CLI-76-22, Applicants have made a material false statement in their OL application.
6. 10 CFR 50.100 and § 186 of the Atomic Energy Act (42 USC §2236) provide as a penalty for a material false statement the revocation of a license, and, by implication, refusal to grant a license in the first instance.
7. If the request for relief (dismissal and denial of the OL application and terminating this proceeding) is granted, there are no other issues to be heard in this proceeding as all other issues would be rendered moot.

5.1.1 Cooling-Tower Emissions

terrestrial impacts resulting from the form of condenser cooling were reexamined by the staff in the light of the changes in cooling system design made by the applicant from once-through to closed-cycle natural-draft cooling towers. New information concerning the effects of operation of the PNPP natural-draft cooling towers is discussed below.

5.1.2 Drift Fallout

The applicant has provided calculations of the predicted distribution of drift for two units using onsite meteorological data (ER-OL Section 5.1.4). The staff has reviewed the applicant's calculations and concludes that they are within a range of model-predicted values for fresh-water natural-draft cooling towers. The estimated maximum offsite drift deposition rate of 89.6 g/ha/yr (0.08 lb/acre/yr) is expected at approximate distances of 1.6 and 3.6 km (1.0 and 2.25 mi) to the east-northeast of the towers. The composition of the drift will be as described in Section 4.2.6.3. Natural rainfall will prevent a buildup of chemical-drift deposits in the soil. A review of experience with fresh-water cooling towers, both in this country and abroad, has failed to provide any findings of an environmental effect beyond the immediate vicinity of the cooling towers (Carson). Therefore, the staff concludes that terrestrial impacts resulting from cooling-tower drift from the operation of PNPP will be small.

5.5.1.3 Bird Impaction

Bird kills by collision with cooling towers and other manmade structures have been studied and reviewed (Avery et al.). Based upon the results of monitoring programs at other facilities with similar types of cooling towers (Jackson and Temme), the staff expects that the number of birds killed will be small relative to their populations.

5.5.1.4 Transmission Lines

Construction of the Perry-Macedonia-Inland transmission line is nearing completion. The originally proposed Perry-Hanna line was recently refused certification by the Ohio Power Siting Commission, and an alternate line or an alternate segment to the proposed line has not been chosen by the applicant.

The staff has reviewed the environmental impacts which could be associated with the operation of the PNPP transmission system. The potential sources of impacts are (1) ozone production, (2) induced electrical currents, (3) electric fields, and (4) corridor maintenance.

Impacts associated with ozone are not expected to change significantly from those discussed at the CP stage of review (FES-CP Section 5.5.1.2).

Potential biological effects from electrical fields associated with transmission lines have been reviewed by the U.S. Department of Energy (DOE). While experimental work is still under way on the biological effects of electric fields along transmission lines, the staff has found no evidence at this time that the operation of 345-kV lines similar to the PNPP system will have a significant effect on the health of humans or that it will affect plant or animal

The applicant has designed the transmission system in accordance with clearance requirements of the National Electric Safety Code to ensure the safeguard of persons from shock hazards arising from induced electrical currents emanating from transmission lines. In addition, the applicant undertakes an extensive grounding program within the right-of-way to further reduce shock potentials. Complaints regarding annoyances from induced voltages outside the right-of-way are responded to by the applicant by additional grounding procedures (ER-OL Q&R, 5.5.1).

Maintenance procedures for vegetative control along the PNPP transmission lines will consist of periodical mechanical cutting employing a bush hog. The applicant indicates that it is not his policy to use herbicides for vegetation control along the PNPP transmission lines. Thus, it is the staff's evaluation that adverse impacts from maintenance activities will be minimal.

5.5.1.5 Monitoring

The staff has concluded (Section 5.5.1.2) that the potential for damage to the surrounding ecosystem caused by the water and chemicals in drift from the PNPP cooling towers will be small. Nevertheless, the staff believes it is prudent to undertake a limited-term inspection program because a margin of uncertainty still exists in the foregoing conclusion. An acceptable monitoring program could rely on infrared aerial photography with accompanying ground verification. A program to accomplish this will be specified in an environmental protection plan that will be included as Appendix B of the operating license. This plan also will include requirements for prompt reporting by the licensee of any occurrence of important events that potentially could result in significant environmental impact causally related to plant operation. Examples of such events are excessive bird destruction due to collision with plant facilities, onsite plant or animal disease outbreaks, and mortality of any species protected by the Endangered Species Act of 1973 as amended.

5.5.2 Aquatic

The impacts of PNPP operation on aquatic biota of Lake Erie were considered in the FES-CP (Sections 5.5.2, 11.1.1, and 11.1.2) for the once-through cooling design proposed at that time. The denial of certification of that system by the State of Ohio in 1974 (see Section 4.2.4 above) required the installation of the closed-cycle cooling system now proposed and under construction. The Partial Initial Decision (LBP-74-69, 8 AEC 538) of the AEC Atomic Safety and Licensing Board (ASLB) on September 18, 1974 reviewed the applicant's closed-cycle design and found the impact potential to be greatly reduced in comparison with the previous once-through proposal.

This analysis does not reiterate the detailed findings of the AEC ASLB, but it focuses rather on identification of any new concerns and a general confirmation of previous findings based on information available since 1974 including: studies at the Perry site (see Section 4.3.4); data collected at other operating power plants on Lake Erie in the Perry vicinity; NRC confirmatory assessment of the impacts of operation of closed-cycle cooling at the Davis-Besse Nuclear Plant. The potential impact of PNPP on fish spawning and nursery activities is addressed.

290.08 Provide an assessment of the effects of transmission
(5.5) line maintenance procedures on the spotted turtle
(Clemmys guttata). Indicate whether herbicides will
be used along any portions of the Perry transmission
lines.

Response

It is not the policy of CEI to use herbicides for vegetation control along the Perry transmission lines. CEI cuts the vegetation periodically with a bush hog. To date, there have not been apparent effects on the spotted turtle.

Exhibit B

From Amended Application to the Ohio Power

Siting Board: Perry Hanna 345 KV
Transmission Line: 1982

4906-15-05

Page 31-A

C 2.

than grubbing methods, and allow the soil cover to remain.

(This method may be changed if requested by a landowner during the process of obtaining an easement).

Vegetation control with herbicides during transmission line operation is described in the following section.

3. Herbicides

To control the many plant species found on the various sites along the right-of-way, a number of herbicides and application methods will be used. In selecting a herbicide and its application methods, consideration is given to the species to be controlled, its size, density, reproductive habits, time of application, and the susceptibility to the herbicide, the site and sensitive crops in the area. In addition, the herbicide is also considered for its selectivity, persistence, toxicity, and its Federal EPA Registered Label Instruction and uses.

P. 05-73

Several methods of application are normally used along the right-of-way. The five major brush treatments are: the application of foliage sprays for treating dense or low growing stands of brush; basal sprays for treating less dense stands of tall trees where aerial application should be avoided; cut surface treatment; stump application where

Exhibit C

C 3.

species need to be cut; and soil applications for herbicides that are taken up through root absorption.

Brief Description of Application Methods

a. Foliage Application Method

The wetting of the leaves and stems with a herbicide by spraying.

b. Basal Application Method

The wetting of the lower 12" to 24" of the plant stem, including the root collar, with a herbicide to the point of runoff.

c. Cut Surface Application Method

The cutting of the stem's bark to the sapwood and applying the herbicide to the cut surface.

d. Stump Application Method

The wetting of the stump surface with the herbicide, making sure the herbicide reaches the cambium and runs down to the root collar.

e. Soil Application Method

Applying the herbicide to the soil which is then taken up through the plant's root system. When this method is employed, the herbicide will be applied to the soil around the base of the plant.

Ex. C

C 3.e.

P. 05-74

Herbicides to be used will be of the low or nonvolatile formulation. The risks and hazards of drift will be reduced by the use of ground crews, for no aerial application will be made. In addition, the following guides are used for ground application methods:

- (1) Use as low a pressure as possible.
- (2) Spray down the right-of-way, not across, when foliage spraying.
- (3) Use a spray thickener when conditions warrant it.
- (4) In sensitive crop areas, change chemicals, application methods, or delay operation until dormant season.

The herbicides to be used to control plant growth are phenoxy herbicides; Dicamba; Picloram; ammonium sulfamate; Bromicil; Krenite; Triclopyr; and other herbicides registered for brush control.

The phenoxy herbicides will not be used in the northern portion of the routes, and no herbicides will be used in the Burton wetlands. All the herbicides listed to be used presently have a registered label with the U.S. EPA. A herbicide that is registered by EPA must also be classified by

Ex. C

C 3.e.(4)

EPA as a herbicide for general or restricted use. General use herbicides under the law are those that will damage the environment very little or not at all when applied as the label directs, and can be purchased by anyone for use on his property. All the herbicides listed by the Applicant for use on the right-of-way can be obtained with a general use label. The Applicant will notify the OPSB staff at least 15 days before applying herbicides and will submit a map of the area along the right-of-way which may be chemically treated, the labels of the herbicides that may be used, and written permission for the OPSB staff to inspect the site during the application of herbicides pursuant to OAC 4906-1-17.

*** Page 05-74

The application of the herbicides will be done by pesticide applicators licensed by the Ohio Department of Agriculture and in compliance with federal and state laws.

Herbicide Description

2,4-dichlorophenoxyacetic acid is a selective herbicide, is nonpersistent and with a soil persistence half-life of 4 days, has a toxicity rating of 4 (slightly toxic), and more specifically has an LD₅₀ of 500 mg/kg. Its mode of action is systemic and is effective on many plants.

C 3.e.(4)

P. 05-75

Dicamba is a selective herbicide, is nonpersistent with a soil persistence half-life of 25 days, has a toxicity rating of 4 (slightly toxic), and more specifically has an LD₅₀ of 1,000 mg/kg. Its mode of action is systemic, and can be taken up by the plant roots.

Picloram is a selective herbicide, is more persistent than 2,4-dichlorophenoxyacetic acid, or Dicamba and has a soil persistence half-life of 100+ days; has a toxicity rating of 5 (almost nontoxic), and more specifically has an LD₅₀ of 8,200 mg/kg. Its mode of action is systemic, and it can be taken up by the plant roots and is effective on root suckering species, but shows resistance by ash and oak.

Ammonium sulfamate is a nonselective herbicide, is non-persistent and disappears after 6 to 8 weeks. It has a toxicity rating of 5 (almost nontoxic), and more specifically has an LD₅₀ of 3,900 mg/kg. Its mode of action is by contact on weeds and grass, and certain formulations are registered for use around reservoirs.

Bromocil is a nonselective herbicide, is persistent with a soil persistence half-life of 150+ days, has a toxicity rating of 5 (almost nontoxic), and more specifically has an

Ex. C

C 3.e.(4)

LD₅₀ of 8,200 mg/kg. Its mode of action is through root uptake, and it is effective in controlling ash and other hard-to-kill plant species.

Krenite is a selective herbicide which contains 42 percent ammonium ethyl carbamolyphosphate. It has an LD₅₀ of 24,000 mg/kg. Its mode of action is by contact with foliage.

It has a toxicity rating of 5 (almost non-toxic) and breaks down in soil in 2 to 3 weeks. Krenite is applied as a late season foliage application for control of woody species in noncropland areas including land adjacent to and surrounding domestic water supply reservoirs, water supply streams, lakes and ponds.

Triclopyr is a selective herbicide, is nonpersistent with an average soil persistence half-life of 46 days, has a toxicity rating of 4 (slightly toxic), and more specifically has an LD₅₀ of 2,140-2,830 mg/kg. Its mode of action is similar to that of the phenoxy herbicides, i.e., systemic, and it provides better control of ash than other herbicides.

*** Page 05-76

Where a choice exists, the herbicides to be favored are those that are selective and nonpersistent.

Ex. C

C 3.e.(4)

The carriers for the herbicides to be used are water and/or oil. The rate of active ingredient per 100 gallons of mix will not exceed the Registered Label Instruction for the chemical and carrier to be used. The gallons of chemical applied per acre is dependent on the stand density, the method of application and the carriers used. The range for foliage application is one to four gallons per acre, with past averages being about two gallons per acre on established rights-of-ways.

4. Impact on Pest Species

The major, and most commonly encountered, group of pest species in the project area are the insects. Characteristic species associated with health hazards to both man and other animals include mosquitoes, fleas, mites, ticks, and flies. Another pest presenting potential health hazards is the Norway Rat. Not considered a pest species but of concern because of its susceptibility to rabies is the common striped skunk. Plant pests of economic importance include certain insect species such as grasshoppers, caterpillars, aphids, cutworms, beetles, and corn borers. Wildlife species such as rabbits and raccoons, if at sufficiently high population levels, could

EX.C

horned owls, one pair of barred owls, one pair of red-tailed hawks, and five to seven pairs of screech owls were believed to have bred on the PNPP site in 1978 (Figure 2.2-4). Changes in the raptors at the PNPP have corresponded to statewide variations from year to year.

2.2.2.2.3 Reptiles and Amphibians

Six species of amphibians, two species of turtles, and two species of snakes have been reported from the PNPP site since 1972 (Table 2.2-9). These species are typical of the region.

The spotted turtle (Clemmys guttata) was observed at the site in 1972 and 1977. In 1977, two were found in the marshy pasture near the reinforcement bar storage area, and one was found in the transmission corridor in the southeastern part of the site. This species is listed as "endangered" in Ohio by the State.⁽¹¹⁾ The spotted turtle inhabits shallow, clear waters, such as roadside ditches, small ponds, and slow streams.⁽¹²⁾

Exhibit D

ER-OL

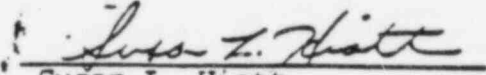
localities are being traversed or disturbed by the proposed Preferred or Alternate Routes. The species of general concern are:

Clemmys guttata, Spotted Turtle - is a small (5" max.), thoroughly aquatic turtle which prefers shallow water in marshes, bogs, small streams and even roadside ditches. It is considered primarily carnivorous but will take plant materials on occasion. It has been collected from the west end of Mentor Marsh in Lake County, from Solon Bog and Aurora Pond in Aurora Township in Portage County and from Burton Township in Geauga County. This species has also been found near where the Alternate Route crossed Highway 6 west of Montville in Montville Township, Geauga County (Figure 02-3d). The transmission line will not cross any known collection sites but, because of its widespread distribution throughout the project area, the turtle could possibly occur within the proposed right-of-way. However, impacts on aquatic habitat will be minimal as discussed earlier and any impact on this species is considered unlikely.

Emydoidea blandingi, Blanding's Turtle - is a relatively large (10" or more), essentially aquatic turtle which will eat both plant and animal material. It occasionally wanders onto land but seldom far from marshes, bogs, lakes, and small streams. It has been collected from two areas in western Lake County: Black Run Swamp west of Fairport and from the west end of Mentor Marsh in Mentor Township.

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing MOTION FOR SUMMARY DISPOSITION OF THE OPERATING LICENSE APPLICATION were served by deposit in the U.S. Mail, first class, postage prepaid, this 23rd day of April 1983 to those on the service list below.


Susan L. Hiatt

SERVICE LIST

Peter B. Bloch, Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Comm'n
Washington, D.C. 20555

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

Dr. Jerry R. Kline
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Comm'n
Washington, D.C. 20555

Mr. Glenn O. Bright
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Comm'n
Washington, D.C. 20555

Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Comm'n
Washington, D.C. 20555

James M. Cutchin, IV, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Comm'n

Jay Silberg, Esq.
1800 M Street, N.W.
Washington, D.C. 20036

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

1 explain in a little bit more detail what you mean by
2 possible problems? That went over my head.

3 JUDGE BLOCH: OCRE is saying that it has witnesses
4 who, for some reason not completely specified, cannot come
5 forward at this time. The problems could be problems in
6 terms of the efficient completion of this proceeding. We
7 would like to hear witnesses concerning quality assurance
8 as early as practicable.

9 MR. SILBERG: Okay, I understand, thank you.

10 (Discussion off the record.)

11 JUDGE BLOCH: Back on the record. The next
12 item on the agenda is the motion for a stay and for summary
13 disposition of the application. The motion for a stay must
14 be denied without inquiring into the merits of whether or
15 not a mis-statement has, in fact, been made. This is a
16 very complex proceeding, taking the facts that OCRE has given
17 on its face.

18 There was a statement about the use of herbicides
19 in materials filed by the applicant, and subsequently, we
20 have an inconsistent statement about that. And if we accept
21 OCRE's statement, there has been no rapid attempt to correct
22 the record.

23 Given the complexity of the record, that might
24 provide some reason to take an action in this proceeding,
25 although we will not rule on that now. However, it would

1 not be grounds to deny the license. Since the license would
2 not be denied for that reason, there's no reason to hold up
3 our proceedings, either. That's the sole ground for denying
4 the stay.

5 Are there any questions for clarification of
6 that?

7 MS. HIATT: Yes. Could you please explain your
8 reasoning in why the initial statement would not require a
9 denial of this license? Under Section 186 of the Atomic
10 Energy Act, Section 2 --

11 JUDGE BLOCH: Could you say the citation more
12 clearly?

13 MS. HIATT: Section 186 of the Atomic Energy
14 Act. These are the items which I cited in 42 USC 22.36, I
15 believe, at 10 CFR 50.100.

16 JUDGE BLOCH: I believe the section of the text
17 which you omitted by using an elipsis provides a variety
18 of remedies, and it is the Board's view that a single problem
19 of inconsistency of the nature that you have pointed out is
20 just not sufficient to deny the license entirely.

21 Am I correct that you omitted sections that
22 stated that there were other remedies also, for these
23 mis-statements?

24 MS. HIATT: Yes, there are other remedies, but
25 it also includes the revocation of a license or permit.

1 JUDGE BLOCH: It's our judgment, in denying the
2 stay, that the matter you have pointed out to us, while it
3 would be serious if you were to demonstrate it, would not
4 be sufficient for us to deny the license, and, therefore,
5 we deny the stay of the proceeding.

6 We would point out that the only harm to OCRE
7 is the harm of participating in a proceeding, which generally
8 is not in itself grounds for a stay anyway. It's not the
9 kind of irreparable injury that's required for the granting
10 of a stay.

11 Are there any other requests for clarifications
12 of this ruling?

13 (No response.)

14 There being none, I would like to hear a brief
15 oral argument on the status that ought to be accorded for
16 the motion for summary disposition. It's a bit unusual
17 because it's a motion for summary disposition of an issue
18 not yet admitted to the hearing via contention, and yet,
19 it seems to be based on new facts.

20 I would like to know the most efficient way for
21 us to treat this motion for purposes of disposition in the
22 proceeding.

23 Ms. Hiatt, since it's your motion, I think it
24 would be appropriate that you go first on that question.

25 MS. HIATT: The motion is, as it says it is, a

1 motion for disposition under 10 CFR 2.749, and all the
2 provisions in that section should apply to it, and it should
3 be treated as a motion for summary disposition.

4 The staff and applicant and other parties have
5 an opportunity to reply to this within 20 days, the rule
6 says, and after that time the Board should issue its order
7 upon whatever sanction is appropriate.

8 JUDGE BLOCH: Thank you. Mr. Wilt, do you
9 want to comment on this?

10 MR. WILT: Yes, Your Honor. I would. I would
11 like to suggest to the Board -- I hope you can hear me. Let
12 me speak up.

13 I would like to suggest to the Board that a
14 possible alternative treatment to the issues raised by OCRE
15 in their motion is to exercise your authority under 10 CFR
16 2.718(m) and refer the matter to the Office of Inspection
17 and Enforcement in a show cause proceeding.

18 I think it has been demonstrated that there are
19 certain inconsistencies on the record as reported to the
20 Commission, and I think in light of the seriousness of
21 the allegations made by OCRE, that a possible alternative
22 procedure that is available to the Board is to refer the
23 matter to the Office of Inspection and Enforcement and let
24 them determine whether or not a show cause order proceeding
25 should be initiated.

1 JUDGE BLOCH: You would suggest we do that and under
2 2.718(a) you would just regulate the course of the
3 proceeding?

4 MR. WILT: I would suggest that as a possible
5 alternative.

6 JUDGE BLOCH: Which would you prefer we do?

7 MR. WILT: I would prefer you do it under (m).

8 JUDGE BLOCH: Okay, but you would prefer a
9 referral, or would you prefer us to take it up ourselves?

10 MR. WILT: I think I would urge a referral.

11 JUDGE BLOCH: Have you completed your remarks?

12 MR. WILT: Yes, Your Honor.

13 JUDGE BLOCH: I think for efficiency, I'd like
14 to hear Ms. Hiatt's comments on that question.

15 MR. HIATT: Well, I think the referral under
16 10 CFR 2.200 et seq. is an appropriate alternative. I
17 would prefer that the Board address this issue itself as
18 a licensing board when its jurisdiction is in question. And
19 I believe this is within the licensing board's jurisdiction
20 and it should be decided by the Board as a motion for
21 summary disposition.

22 JUDGE BLOCH: Thank you. Mr. Silberg?

23 MR. SILBERG: Just a minute, I want to make a
24 note of this. Okay.

25 The first thing I would note is that the summary

1 disposition motion is invalid on its face for a number of
2 reasons. First of all, it's asking for relief which I don't
3 believe the Board has.

4 Second of all, it's covering a matter which is
5 improper format for summary disposition. Let me talk about
6 the second matter first.

7 Section 2.759, which governs summary disposition
8 motions, describes what the scope of those motions may cover,
9 and it says that any party to a proceeding may move, with
10 or without supporting affidavits, for a decision by the
11 presiding officer in that party's favor, as to all or any
12 part of the matters involved in the proceeding.

13 Now, the question here is whether the matters
14 which Ms. Hiatt has raised are "matters involved in the
15 proceeding," and I think clearly, they are. The licensing
16 board's jurisdiction to resolve issues is governed by
17 2.760(a), which says that in an operating license hearing,
18 that hearing is limited to those matters which are put into
19 controversy by the parties, and matters determined to be
20 issued by the licensing board.

21 That which Ms. Hiatt wants to resolve, which
22 is the status-of the application, has not been put into
23 controversy by the parties, and it certainly has not been
24 admitted by the licensing board. So the motion on its face
25 is really dealing with something that is beyond the scope

1 of an appropriate motion for summary disposition. Motions
2 for summary disposition are supposed to take place after an
3 issue has been admitted, after there has been discovery on
4 that issue and basically, the case is ready for a decision.

5 Here we have an issue which has never before been
6 presented to the licensing board, and again, it's not clear
7 whether the issue is the question of the alleged inconsistent
8 statements or whether the application itself should be
9 dismissed. But in either event, it's not an issue which has
10 either been admitted by the Board or been subject to discovery.
11 So we should not be proceeding forward with summary disposi-
12 tion in any event.

13 It's just as if, when one of the parties sought
14 to raise a new contention, -- you can pick out any one of
15 the contentions that we've looked at -- shift rotation, for
16 example, and before the Board had admitted the contention
17 they filed a summary disposition motion. That would obviously
18 be an improper pleading at that point in time because there
19 is no issue pending before the Board on that matter.

20 The second point that I would like to make is
21 that questions of material, false statements or enforcement
22 matters, matters to be handled not by the licensing board but
23 by other branches of the Nuclear Regulatory Commission. This
24 is particularly the case where we're dealing with something
25 which is not otherwise before the licensing board -- alleged

1 inconsistencies between statements made in one proceeding
2 and statements made in some other proceeding.

1 Ms. Hiatt has heard this. And she can --

2 JUDGE BLOCH: Of cours, Mr. Silberg, if there are
3 responsible company officials who did what Ms. Hiatt stated
4 they may have done, I take it it would at least be admissible
5 with respect to their credibility on other issues.

6 MR. SILBERG: If those witnesses were to get on
7 the stand and testify?

8 JUDGE BLOCH: Well, I suppose a pattern of misstate-
9 ment certainly would be relevant even if you did not call the
10 witnesses, wouldn't they? I guess they would be relevant --
11 I guess you're correct. It would have to be an issue relat-
12 ing to management competence.

13 MR. SILBERG: And there is no such issue here.

14 JUDGE BLOCH: That's correct.

15 MR. SILBERG: So, the appropriate procedure is for
16 Ms. Hiatt to file a request for order to show cause and the
17 Staff will undertake, in its normal course, to evaluate that.
18 Indeed, the cases that she cites in her pleading, specifically
19 the North Anna case, involved exactly the type of procedure
20 -- the matter was referred or developed initially -- I can't
21 recall which in that cast -- to the NRC Staff. The Director
22 issued a decision. The Applicant asked for and received a
23 hearing before a separate licensing board, the licensing
24 board looking at a licensing application that a separate
25 atomic safety and licensing board. That licensing board

1 decision was appealed to the Appeal Board and ultimately to
2 the U.S. Court of Appeals for the D.C. Circuit. That is the
3 appropriate procedural route.

4 JUDGE BLOCH: Mr. Silberg, have you any problem
5 with our suggesting that this be considered by the Office
6 of Inspection and Inforcement?

7 MR. SILBERG: I would think the most appropriate
8 procedure would be for Ms. Hiatt to file with the Office of
9 Inspection and Enforcement. I think if the Board sends it
10 there, it may give some credence to the allegations that are
11 contained in that document.

12 JUDGE BLOCH: Well, since we haven't heard anything
13 on the merits, our sending it there would merely be a routing
14 action. It would have nothing to do with our decision that it
15 was meritorious.

16 MR. SILBERG: In that case, I wouldn't have any
17 strong objections to their procedure.

18 By the way, if the Board is interested, I'll be
19 happy to shed some light on the alleged misstatements.

20 JUDGE BLOCH: At this point, it would probably
21 cause more heat than light at this point.

22 MR. SILBERG: It's a fairly simple explanation, but
23 it's really not relevant.

24 JUDGE BLOCH: I'm sure we'll see it sooner or later.

25 Mr. Cutchin.

1 MR. CUTCHIN: I would only add a couple of things,
2 Mr. Chairman. I agree that the appropriate course for
3 Ms. Hiatt is to, herself, seek action by the Office of
4 Inspection and Enforcement under 2.206, and I think the
5 appropriate course for the Board --

6 (Discussion off the record.)

7 MR. CUTCHIN: I said, and I will repeat, that I
8 think the appropriate action is for Ms. Hiatt to request an
9 action under 2.206, citing the facts as she believes them to
10 be and to seek an investigation of the matter from the Office
11 of Inspection and Enforcement. I think the appropriate action
12 for the Board -- and it's under paragraph 2.749, at the bottom
13 of that first paragraph, (a), since we are close upon the
14 start of the hearing and I think, clearly, to deal with this
15 matter the Board would have to divert substantial attention
16 as with the parties -- I think the Board should summarily
17 dismiss this Motion for Summary Disposition, and I tend to
18 agree with Mr. Silberg, that I think because Ms. Hiatt does
19 have another forum, the Board, referring the matter may indeed
20 place it in a different light than is warranted.

21 And since Ms. Hiatt is not without other remedies,
22 the motion should just be dismissed and she should be advised
23 to stick to remedies in the appropriate matter.

24 JUDGE BLOCH: Ms. Hiatt, just in case we should
25 decide to dismiss the Motion for Summary Disposition, could

1 you tell me if there is any portion of this that you think is
2 really necessary as a part of this proceeding that's not
3 related to enforcement questions?

4 MS. HIATT: Well, I really think the question bears
5 on what is the Licensing Board jurisdiction in this matter,
6 and I think the Licensing Board has jurisdiction to decide
7 this operating license case and issue or deny a license. And
8 with that jurisdiction, I think it is entirely appropriate
9 that the Board consider this Motion for summary Disposition.

10 JUDGE BLOCH: Okay. But, for example, are you
11 seriously interested in the question of the particular
12 species of turtle that might be imperiled by this herbicide?

13 MS. HIATT: It's concerned with the material false
14 statements that occurred, and that is essentially the basis
15 for the motion, the fact that the Applicant submitted a
16 material false statement.

17 JUDGE BLOCH: Really, the information I was seeking
18 is that you would like us to consider the motion that --
19 that there is nothing within it that you particularly want to
20 advance as a contention because of the information you have
21 obtained?

22 MS. HIATT: Not really, but I would note that this
23 basically refers to environmental impact statements required
24 under the National Environmental Policy Act. And I believe
25 it is the Licensing Board's obligation to review that

1 material, as it did the Safety Analysis Report filed by the
2 Staff. And this inconsistency is of interest to the Board,
3 so I think it is within the Board's jurisdiction and interest
4 to look at this issue.

5 JUDGE BLOCH: The Board will now take a five-minute
6 break for the purpose on considering this issue. I have
7 11:15. We'll be back at 11:20.

8 (Recess.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 JUDGE BLOCH: The Board is prepared to rule.

2 Considering the entire scope of the Commission's procedural
3 rules, we're convinced that motions for summary disposition
4 are intended to be directed at pending issues in cases.

5 In this case, a summary disposition motion has been filed
6 about an issue that has not been formally admitted. In a
7 sense, whether or not to issue a license is implicit in
8 each contention in an NRC proceeding. Nevertheless, it is
9 the grant of one of the grounds that are advanced by a party
10 which could result in a decision not to issue a license.

11 - That is not an independent issue for the Board
12 to decide. Consequently, this motion for summary disposition
13 must be denied because it is not addressed to a pending
14 issue, and it is denied.

15 On the other hand, we are not believers in the
16 bureaucratic paper-shuffling, and we, therefore, would like
17 Enforcement to consider Ms. Hiatt's motion. We, of course,
18 have not considered the merits of that motion and have
19 absolutely no opinion as to whether the suggestion that OCRE
20 has made should be granted by the staff.

21 Nevertheless, we would like the staff to take
22 that up and, Mr. Cutchin, we request that you just transmit
23 this for us and ask that it be considered as a petition for
24 an enforcement action.

25 MR. CUTCHIN: I will do so. I will take the

1 appropriate pages from the transcript of this conference,
2 together with the incoming papers from Ms. Hiatt, and we'll
3 provide them to the appropriate person on the staff.

4 JUDGE BLOCH: We appreciate that, Mr. Cutchin.

5 Additionally, because there have been matters
6 raised which cast some aspersion's on applicant's reputation,
7 we would encourage applicant to make an appropriate filing
8 that would help to address the issues that Ms. Hiatt has
9 raised. Otherwise, there would be no opportunity, in the
10 context of this proceeding, to attempt to set the record
11 straight.

12 Are there any requests for clarification of
13 this ruling that the Board has now made?

14 MR. SILBERG: Yes. I'm not sure I understand
15 the directions to the applicant, "The appropriate filing is
16 to be made."

17 JUDGE BLOCH: That's not a direction at all.
18 It's just an opportunity. There's no motion for summary
19 disposition pending anymore. But if you wanted to clarify
20 the record for us, you could file something. You are not
21 required to.

22 MR. SILBERG: I think rather than do that, with
23 the Board's forbearance I could take two minutes and just
24 indicate the nature of the problems.

25 JUDGE BLOCH: If you would.

1 MR. SILBERG: The alleged mis-statements involved
2 two separate proceedings. Cleveland Electric is the lead
3 applicant in the NRC licensing proceeding. It has also filed
4 jointly with Ohio Edison Company an application before the Ohio
5 Power Siting Board for permission to build a transmission line,
6 the Perry-Hanna line, which will serve Unit 2 and Unit 2 only..

7 In the construction permit stage, the applicant's
8 environmental report stated that herbicides might be used
9 for maintenance of transmission line right-of-way.

10 That statement appeared in a draft, in the
11 Final Environmental Statement, in connection with the con-
12 struction permit at page 4-2 and 5-23. In the operating
13 license Environmental Report, a statement was made in
14 Section 5.5 that the method of maintaining transmission lines
15 were unchanged from those described in the construction permit
16 stage.

17 In connection with a specific question addressed
18 to spotted turtle, the applicants were asked whether
19 herbicides would be used in connection with various portions
20 of maintenance of the right-of-way. If I can just find that
21 page in a minute, I can more accurately describe that. This
22 was December 1981, as I recall, a question and answer dealing
23 with the effects of transmission line maintenance on the
24 spotted turtle. And then our answer, "It is not the policy
25 of CEI to use herbicides for vegetation control along the

1 Perry transmission lines," and that statement was picked
2 up in the Final Environmental Statement by the NRC Staff --
3 in the draft and final statements -- but was not written in
4 a way that the question has been answered. It was written
5 more generally that the maintenance procedures for the
6 Perry transmission lines would use mechanical cutting rather
7 than herbicides.

8 As I mentioned, the answer to the staff's question
9 was specifically in terms of what CEI would use. The problem
10 arises because the Perry-Hanna line is not only a CEI trans-
11 mission line. The application that is filed before the Ohio
12 Power Siting Board is a joint application between CEI and
13 Ohio Edison. In fact, that application, when it is cited in
14 the Hiatt document, is an amended application. The original
15 application goes back, I believe, to 1978. I'm in the process
16 of trying to get a copy.

17 And in that original 1978 application, basically
18 the same description of the use of herbicides appears, and
19 there are certain caveats in that application, but it is a
20 joint application.

21 At a hearing before the Ohio Power Siting Board
22 in February of 1980, the specific question was asked whether
23 CEI uses herbicides for line maintenance, and the specific
24 answer was that CEI does not use herbicides for line mainten-
25 ance, but Ohio Edison does. And that's where the confusion

1 has arisen.

2 I believe the order that was issued in that
3 proceeding by the hearing examiner -- I don't have a copy of
4 that yet either but I'm getting it -- reflected the fact
5 that herbicides were used by Ohio Edison but not CEI, and
6 there was a dispute over how those herbicides were to be used,
7 and that dispute was resolved by the hearing examiner.

8 I think the problem arose because in reviewing
9 the draft environmental statement -- and I don't know
10 precisely what happened, but it is perhaps the fact that
11 the transmission line people at CEI did not look at this
12 or did not look at it carefully, and didn't notice that the
13 answer had been written in terms of all the transmission
14 lines rather than CEI's portion alone.

15 But the whole thing appears to be kind of a
16 tempest in a teapot, particularly where the construction
17 permit stage was looked at and it approved the use of
18 herbicides for maintenance of rights-of-way. I think that's
19 a basic picture of the facts as I know them today.

20 JUDGE BLOCH: Thank you, Mr. Silberg. The
21 record now stands with the charge that was made by OCRE;
22 the response that was made by the applicant. The Board has
23 no jurisdiction over this controversy. It has taken steps
24 to see that the appropriate people will consider it. No
25 further statements on this controversy are appropriate at

1 this time.

2 Are there any other further requests for clarifi-
3 cation concerning our decision on summary disposition?

4 MS. HIATT: Yes. Mr. Cutchin mentioned that he
5 would refer to the Director of Nuclear Regulaion, I believe.

6 MR. CUTCHIN: I said to the appropriate persons
7 on the staff.

8 MS. HIATT: Okay. And you said, along with my
9 incoming papers?

10 MR. CUTCHIN: Yes. Your motion for summary
11 disposition with its attachments.

12 MS. HIATT: All right. You're not expecting me
13 to file further motions or requests pertaining to this.

14 MR. CUTCHIN: I had understood the Chairman to
15 say that they would not stand on bureaucratic formality,
16 and that your original filing should be referred to the
17 appropriate persons on the staff for treatment as a 2.206
18 request.

19 MS. HIATT: I would like to receive copies of
20 what you send the appropriate persons.

21 MR. CUTCHIN: Well, all I plan to send to the
22 appropriate persons is your incoming motion with its attach-
23 ments and the pages of the transcript that address any
24 discussion of this matter.

25 JUDGE BLOCH: Perhaps you could communicate to

1 Ms. Hiatt the page numbers so she will know precisely what
2 you have said.

3 MR. CATCHIN: Certainly, I'll be happy to.

4 MS. HIATT: Yes, I presume you would have a
5 cover letter with that. I would like to receive a copy of
6 the cover letter, at least, and the transcript pages.

7 MR. CATCHIN: Mr. Chairman, I think if we're going
8 to get very formal about this thing, I have made a representa-
9 tion of counsel that I will carry out a request of the
10 Board. Now, if we want to get much more formal than that,
11 I will step back a moment. I had not planned to make any
12 formal transmittal of anything.

13 I will, as counsel for one portion of the staff,
14 carry the appropriate pages to another portion of the staff
15 and ask that that individual put Ms. Hiatt on distribution
16 for any documents that are generated in this matter.

17 JUDGE BLOCH: She just wants to know what the
18 record is going to be in this enforcement request. One way
19 or another, I'm sure you'll see that she --

20 MR. CATCHIN: I certainly will.

21 JUDGE BLOCH: Ms. Hiatt, any further clarification?

22 MS. HIATT: No.

23 JUDGE BLOCH: There being none, the next
24 question is Sunflower's request for a stipulation. Mr.
25 Wilt, I just say that this motion surpasses even my