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THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

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MURRAY R. EDELMAN
VICE PRESIDENT
NUCLEAR

April 25, 1984

Mr. R. F. Warnick, Chief
Projects Branch 1
Division of Project and Resident Programs
U. S. Nuclear Regulatory Commission, Region III
799 Roosevelt Road
Glen Ellyn, IL 60137

Perry Nuclear Power Plant
Docket Nos. 50-440; 50-441
Response to Notice of Violation

Dear Mr. Warnick:

This letter is to acknowledge receipt of your letter dated March 28, 1984, transmitting the Notice of Violation, which resulted from the motion, dated April 28, 1983, filed before the Atomic Safety and Licensing Board by Ms. Susan L. Hiatt on behalf of the Ohio Citizens for Responsible Energy.

Attached to this letter is our response to the Severity Level IV Violation described in the Notice of Violation dated March 28, 1984. This response is in accordance with the provisions of Section 2.201 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations.

Our response has been submitted to you within the required thirty days of the date of the Notice of Violation. If there are additional questions, please call.

Sincerely,

Murray R. Edelman
Vice President
Nuclear Group

MRE:dgt

Attachment

cc: J. Stefano
Max Gildner
J. E. Silberg, Esq.

U. S. Nuclear Regulatory Commission
c/o Document Management Branch
Washington, DC 20555

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RESPONSE TO ENFORCEMENT ITEM

Below is our response to the Notice of Violation appended to United States Nuclear Regulatory Commission, Region III letter dated March 28, 1984.

I. Noncompliance Docket Numbers 50-440/40-441

A. Severity Level IV Violation

As a results of the applicant's November 20, 1981, response to NRC and in accordance with the NRC Enforcement Policy, 47 FR 9987 (March 9, 1982), the following violation was identified:

On July 31, 1981, as part of it environmental analysis for the cperating license review, the NRC staff asked the applicant to provide an assessment of the effects of transmission line maintenance procedures on the spotted turtle (Clemmys guttata) and to indicate whether herbicides will be used along any portions of the Perry transmission lines.

On November 20, 1981, the applicant responded, "It is not the policy of CEI to use herbicides for vegetation control along the Perry transmission lines."

In the Final Environmental Statement, NUREG-0884, issued in August 1982, the staff stated, "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 from the maintenance activities will be minimal." (NUREG-0884, p. 5-8)

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, the applicant stated they would use a number of herbicides and described the methods of application and chemical components of those to be used. The licensee did not change the information previously provided to the NRC.

Section 186 of the Atomic Energy Act of 1954, as amended, states in part, that 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.

Contrary to Section 186 of the Atomic Energy Act of 1954, as amended, and under criteria established by the Commission, both the applicant's November 20, 1981, incomplete response to the staff's question and the failure to correct the staff's use of the statement in the Final Environmental Statement are false statements. They are material in that, had accurate information been provided, the NRC reviewer would have tried to determine whether the use of specific herbicides to be applied would be detrimental to the spotted turtle or its habitat.

B. Response

1. Admission or Denial of Alleged Violation

The Cleveland Electric Illuminating Company (CEI) respectfully submits that no material false statement was made. CEI subscribes to the views of Commissioner Bernthal on urging that Director's Decision DD-83-17 be reviewed. Although the entire matter might simply be accepted as a case of miscommunication, the fact that CEI has been cited for a material false statement compels us to set forth our analysis of the facts in order to clarify the situation.

2. Reason

CEI has reviewed the written documentation involved and found that the factual information communicated to the NRC staff by CEI does not support the conclusions reached in the Director's decision.

In its Environmental Report - Construction Permit Stage, CEI described the planned transmission facilities for the Perry Nuclear Power Plant (PNPP). The Environmental Report described the techniques to be used for clearing and maintaining the transmission line right-of-ways, separately describing the CEI and Ohio Edison maintenance procedures along with the planned use of herbicides (ER-CP Section 4.2.3.4). At that time, the staff did not find any significant environmental impacts associated with the proposed herbicide use (Final Environmental Statement - Construction Permit Stage, Sections 3.8 and 5.5.1.2). The staff was fully aware of a difference in the practices of the two utilities and of Ohio Edison's intent to use herbicides on their portions of the transmission lines.

In the Environmental Report - Operating License Stage (ER-OL) the applicant indicated that the maintenance methods for the transmission system were unchanged from those described in the ER-CP. The NRC staff was on site on June 23 and 24, 1981 for an environmental review meeting and tour. The purpose of the meeting was to discuss and clarify the NRC's requests for acceptance review information. At this review meeting, site specific terrestrial and aquatic ecology was discussed, which included the spotted turtle. Transmission lines were also discussed. Based on those discussions, the staff revised its original request for information and asked additional questions, including Question 290.08.

(Q290.08):

> 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 referred to the use of herbicides on any portions of the transmission lines. It was logical to assume that the NRC inquiry was referring to on site practices, since the only transmission corridor on which the spotted turtle had been located was under CEI's responsibility and the question followed the on site NRC meeting.

CEI responded with the following statement:

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

The statement was then true and correct. It is still true and correct and thus there is no false statement. The response addressed the use of herbicides on any portion of the transmission lines on the Perry site where the spotted turtle habitat was identified. The response to Question 290.08 was appropriately written in terms of CEI's practices not Ohio Edison's maintenance practices, because the portion of the transmission corridor where the spotted turtles have been identified is solely under CEI's control. The answer was clear, straight forward, and thus there was no omission of pertinent information.

Based on our response to Question 290.08, the NRC staff stated in the Final Environmental Statement (FES) for the operating license stage (NUREG-0884, Section 5.5.1.4, p. 5-8):

> Maintenance procedures for vegetative control along the PNPP transmission lines will consist of periodical mechanical cutting employing a brush hog. The applicant indicates that it is not his policy to use herbicides for vegetation control along the PNPP transmission lines.

The reference to "the applicant" having a policy of not using herbicides, correctly refers only to CEI. As defined in the FES-OL Section 1.1, ["The proposed action is the issuance of operating licenses to The Cleveland Electric Illuminating Company (the applicant) acting also as agent for the other co-owners...," emphasis added.] Further, the staff's conclusions in the FES are correct as the applicant's, "Maintenance procedures for vegetative control along the PNPP

transmission lines will consist of periodical mechanical cutting employing a brush hog." The NRC reviewer interpreted CEI's response correctly, since he references Question 290.08 as one of the sources for the statement and conclusions, "The spotted turtle has been observed on site (ER-OL Section 2.2.3 and Q 290.08)...To date, spotted turtle habitat has not been affected by activities at PNPP." (FES Section 4.3.7.2, p. 4-25)

Our response, "It is not the policy of CEI to use herbicides for vegetation control along the Perry transmission lines," and the NRC's FES conclusions are, in context, true and complete statements. For reasons explained previously, it is, therefore, the position of CEI that no material false statement was made. CEI agrees with Commissioner Bernthal in that the Director's characterization of this miscommunication is inappropriate with the facts of this case.

For all these reasons, CEI believes that the Notice of Violation was not justified. CEI takes great care that every statement made to NRC is both true and complete. CEI also undertakes to thoroughly review all NRC documents relating to PNPP to make sure that they accurately reflect that information provided by CEI.

3. Corrective Action Taken and Results Achieved

CEI has evaluated the following and concluded that our response was appropriate.

The documents reviewed included the Draft and Final Environmental Statements at both the CP and OL stages, the ER-CP and ER-OL, and various correspondence between CEI and the NRC.

This evaluation and our position discussed in this response should form the basis for closure of this matter.

4. Corrective Steps Taken to Avoid Future Noncompliance

CEI is committed to ensure that the spotted turtle is not affected by the construction occurring at the Perry Nuclear Power Plant. The spotted turtle is a state of Ohio endangered species and is under the control of the Ohio Department of Natural Resources. CEI will continue on site monitoring of the spotted turtle as part of the Terrestrial Ecological Monitoring Program, and will notify the NRC in accordance with License Condition 6a of the FES-OL, should PNPP perform additional construction or operational activities that may result in a significant adverse environmental impact which were not evaluated or which are significantly greater than those evaluated in the OL-DES.

5. Date When Full Compliance Will Be Achieved

Fu'l compliance has already been achieved.

DW94/G/5/es