

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

July 6, 1984

Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

In the Matter of)
)
CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, Et Al.)
)
(Perry Nuclear Power Plant,)
Units 1 and 2))

'84 JUL -9 P12:37
Docket Nos. 50-440
50-441
(Operating License)

OCRE MOTION FOR SUMMARY DISPOSITION OF ISSUE NO. 6

Intervenor Ohio Citizens for Responsible Energy ("OCRE") hereby files its motion for summary disposition, pursuant to 10 CFR 2.749, of Issue No. 6 in this proceeding, which states:

Applicant should install an automated standby liquid control system to mitigate the consequences of an anticipated transient without scram.

Since the Commission has completed the ATWS rulemaking, which in this case mandates the relief requested by Issue #6, OCRE is seeking summary disposition of the issue in its favor as there exists no issue of material fact which would require a hearing on the matter.

The use of summary disposition to resolve issues on which there exists no genuine issue of fact is encouraged in NRC proceedings. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI-73-12, 6 AEC 241 (1973). The opponent of a summary disposition motion cannot simply rely on allegations and denials; rather, the answer must set forth specific facts showing there is a genuine issue of fact to be heard. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451 (1980); see also 10 CFR 2.749(b).

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As discussed below (and summarized in the attached Statement of Material Facts as to Which There Exists No Genuine Issue To Be Heard), Applicants' own admissions form the basis of OCRE's motion.

On June 26, 1984, the Commission published in the Federal Register the final ATWS rule (49 FR 26036). See Attachment 1. This rule requires that boiling water reactors granted a construction permit before July 26, 1984 that have been designed and built to include automatic SLCS initiation implement the automatic initiation feature before the issuance of an operating license above 5% of full power. New 10 CFR 50.62 (c)(4) and (d).

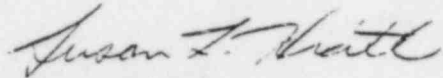
The Perry facility falls into this category. By letter of August 13, 1982, Applicants informed the NRC that the Perry SLCS is capable of being automated. See Attachment 2. In their updated answer to interrogatories on this issue, Applicants stated that the cost for converting the SLCS initiation (which was to be manual even though automation is possible) to automatic is \$100,000.^{1/} This price includes revisions to design drawings and changes to control switches, indicating lights, and control logic circuits. See "Applicants' Supplemental Answers to Interrogatories on Issue Nos. 6, 8, and 15", dated February 29, 1984, updated response to Sunflower Alliance Interrogatory #22, Second Set of Interrogatories to Applicants. It should be noted that this sum represents less than 0.002% of the total cost of Perry, estimated at \$5.9 billion.

It is thus abundantly clear that there is no genuine issue of material fact to be heard on this issue, as Applicants will have to install an automated SLCS in order to comply with the Commission's

^{1/} Applicants' original response to the interrogatory stated that the cost would be \$10,000; no explanation of the ten-fold increase was given. (See "Applicants' Answers to Sunflower Alliance Second Set of Interrogatories to Applicants" dated August 20, 1982.)

regulations. OCRE therefore moves that the Licensing Board summarily dispose of Issue #6 by ordering Applicants to automate the SLCS prior to exceeding 5% of full power.

Respectfully submitted,



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Dated: July 6, 1984