

power plants.^{1/} Section (c)(4) of the new ATWS regulation states that:

(4) Each boiling water reactor must have standby liquid control system (SLCS) with a minimum flow capacity and boron content equivalent in control capacity to 86 gallons per minute of 13 weight percent sodium pentaborate solution. The SLCS and its injection location must be designed to perform its function in a reliable manner. The SLCS initiation must be automatic and must be designed to perform its function in a reliable manner for plants granted a construction permit after July 26, 1984, and for plants granted a construction permit prior to July 26, 1984, that have already been designed and built to include this feature.

As is clear from 10 CFR § 50.62(c)(4), an SLCS with automatic initiation capability (as called for in Issue #6) is now required by NRC regulation only for (1) those plants granted construction permits after July 26, 1984 and (2) those plants granted construction permits prior to July 26, 1984 that have "already been designed and built to include this feature." Clearly, the Perry construction permits were issued prior to July 26, 1984. The question, then, for resolution of Issue #6 for Perry is whether the SLCS at Perry has been designed and built with automatic initiation capability. If it has, then section 50.62(c)(4), by its terms, requires that system with automatic initiation capability to be utilized at Perry and Issue #6 should be resolved in OCRE's favor. If, however, the SLCS at Perry has not been designed and built with automatic initiation capability, section 50.62(c)(4) would not require such capability and Issue #6 could be viewed as calling for more than is required by the new regulation and, consequently, as a challenge to the regulation.^{2/}

^{1/} The rule was published in the Federal Register on June 26, 1984. 49 Fed. Reg. 26036-45.

^{2/} See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-728, 17 NRC 777, 810-812 (1983).

OCRE does not contend, and does not provide any evidence to support a contention, that the SLCS at Perry has "already been designed and built to include this" automatic initiation feature (10 CFR 50.62(c)(4)). Rather, OCRE states that "the Perry SLCS is capable of being automated" and that Perry SLCS initiation is "manual even though automation is possible." Motion, at 2. Thus, OCRE essentially asserts that the Perry SLCS has not already been designed and built to include the automatic initiation feature.^{3/} If this were true, then 10 CFR § 50.62(c)(4) would not require the automatic initiation feature for Perry, and Issue #6 would constitute a challenge to the new regulation warranting dismissal of the issue.


In any event, the Staff is unable, at this point, to verify whether or not the Perry SLCS has been designed and built with an automatic initiation feature. At the very least, at this time a genuine issue of material fact as to that point remains. The issue must be resolved in order to determine whether the regulations require the type of SLCS called for by Issue #6 and, in turn, to resolve Issue #6. OCRE's Motion for summary disposition of Issue #6 does not establish that the new regulations require the type of SLCS called for by Issue #6, does not establish the absence of any genuine issue of material fact as to Issue #6, and does not establish that OCRE is entitled to a summary judgment in its favor on Issue #6.

^{3/} The description of the SLCS at Perry can be found in SSER #3, § 9.3.4, p. 9-1. The Staff has not yet verified the actual construction of the SLCS at Perry and, consequently, cannot at this time represent whether or not the Perry SLCS has already been designed and built to include an automatic initiation feature.

III. CONCLUSION

For the reasons stated, OCRE's motion for summary disposition of Issue #6 should be denied.

Respectfully submitted,


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Dated at Bethesda, Maryland
this 30th day of July, 1984

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO OCRE'S MOTION FOR SUMMARY DISPOSITION OF ISSUE #6" 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 30th day of July, 1984:

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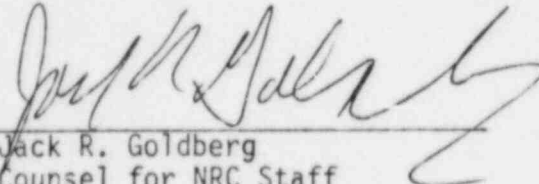
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