

II. Standards for Replies to Summary Disposition Motions

It first must be recalled that summary disposition is encouraged to resolve issues in the Commission's licensing proceedings. Northern States Power Co. (Prairie Island Nuclear Generating Plant Units 1 & 2), CLI-73-12, 6 AEC 241 (1973). See also the Commission's Statement of Policy on the Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981), where, in subpart III. G, the use of summary disposition is encouraged "on issues where there is no genuine issue of material fact so that evidentiary hearing time is not unnecessarily devoted to such issues" (13 NRC 457).

The opponent of a summary disposition motion cannot simply rely on allegation and denials; rather, the answer must set forth specific facts showing there is a genuine issue of fact. Virginia Electric and Power Co. (North Anna Power Station Units 1 & 2), ALAB-584, 11 NRC 451, 453 (1980). Also, an opponent to a summary disposition motion must file a separate, short and concise statement of material facts in response to the motion, as required by 10 CFR 2.749(a) and by the Board's January 28, 1983 Memorandum and Order (Reconsideration: Quality Assurance) slip op. at 3.

On the latter point the Staff Response utterly fails and should therefore be rejected. And, although Applicants have included the required statement of material facts, there is no means by which to show that they are indeed factual. Applicants' bald assertions are not buttressed by affidavit, exhibit or any other basis whatsoever. Thus, their answer falls into the category of mere allegations and denials, which must be rejected.

Nor is there a genuine issue of fact here, even if the Board were to consider the deficient replies of Applicants and Staff. The Licensing Board has ruled that a "genuine issue of material fact" must be one in which there is enough doubt to warrant holding a hearing to resolve the issue. Memorandum and

Order of August 9, 1983 (Summary Disposition of Turbine Missile Issue), slip op. at 8.

There can be no doubt what the ATWS rule states. 10 CFR 50.62(c)(4) requires automation of the SLCS if a BWR facility has been designed and built to include this feature. However, this is a matter within the control of Applicants. Indeed, a CP holder could easily evade this requirement by simply not building the plant with an automated SLCS, even if the design called for automation. As is shown below, this is precisely what has happened here.

Applicants claim that Perry has not already been designed and built to include an automated SLCS. Of course it has not. PNPP Unit 1 is far from finished; Applicants' latest estimate for the completion of Unit 1 is late 1985. Applicants have conceded that Unit 2 may never be finished. See the news article "CEI Seeks \$1 Billion 'Cushion' for Perry", provided to the Board and parties by OCRE in its July 7, 1984 letter. Even the SLCS is not completed. In their supplemental Answers to Interrogatories on Issues 6, 8, and 15, dated February 29, 1984, Applicants state in reply to Interrogatory 6-13 (p. 5) that SLCS installation in Unit 1 is 80% complete, and 10% complete in Unit 2. Whether or not the Perry SLCS is automated is within Applicants' control. It is also within the control of the Licensing Board.

III. Applicants' Disregard for the Public Interest

The Licensing Board has stated that the hearing process is a way of protecting the public health and safety and not just a sterile adversary process (July 26, 1984 Memorandum and Order (Particularization of Emergency Planning Contention), p. 2). Nowhere is the public safety more important than in the consideration of the risks of ATWS. The Board is certainly aware of the significant risks of ATWS in BWRs. From NUREG-0460 to the final ATWS rule automation of the SLCS is seen as reducing this risk substantially. Unfortunately,

Applicants have continually resisted this safety improvement. They have opposed admission of the contention, resisted discovery, sought dismissal of the issue pending issuance of the final ATWS rule, and, finally, they seek to evade the mandate of the rule by building the Perry facility, in such a manner as to escape its requirements. Certainly the Commission would not want its regulations so easily circumvented.

Indeed, to continue the Board's "jungle metaphor" (July 26, 1984 Memorandum and Order at 4), it is fair to say that Applicants have been stalking the ATWS rule like prey in the jungle. Documents obtained by OCRE through discovery, and attached hereto, demonstrate that Applicants have actually sought to avoid reducing the risk to the public from ATWS.

Exhibit 1 is a letter dated August 9, 1982 from H.L. Hrenda and H.A. Putre of CEI to R.C. Mitchell of General Electric. The letter states that the automatic SLCS designed for Perry should be replaced by manual initiation if allowed by the final ATWS rule. The uncertainty in the initiation mechanism prompted Applicants to request that their requested changes not be made prior to delivery. Rather, the changes were to be made on-site in the event that manual SLCS initiation is allowed by the Commission's ATWS regulation. Since no one could know for certain what form the ATWS rule would take until the Commissioners voted on it, it is reasonable to infer that no such modifications occurred until recently, if at all. Thus, if Applicants are modifying the SLCS for manual initiation, this action is clearly undertaken for the express purpose of evading the Commission's intent to reduce the risk of ATWS.

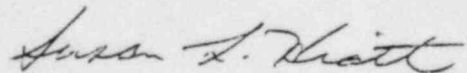
Exhibits 2 and 3, further correspondence between GE and Applicants, discuss the costs (in man-hours) of changing the GE-supplied automatic SLCS to manual. These man-hour estimates cast grave doubt on the truthfulness of Applicants' assertion that it would cost them money to automate the SLCS.

IV. Conclusions

Applicants' own correspondence with GE, their NSSS vendor, demonstrates that the true, GE-supplied design of the SLCS is automatic; however, Applicants desired the option (which requires modification of the as-shipped equipment) of manual initiation if allowed by the final ATWS rule. Thus, contrary to Applicants' assertions, the PNPP SLCS is designed to include automatic initiation. If it is not being built in accordance with this design, it is due to Applicants' deliberate actions to avoid compliance with the ATWS rule. The bottom line is that Applicants are willing to imperil the public to save the cost of a hypothetical event (inadvertant SLCS actuation, which has no adverse public health consequences). This reprehensible behavior should not be rewarded by the Licensing Board.

The compelling health and safety interests due to ATWS risks demand that Applicants be ordered to comply with the Commission's regulations. In addition, Applicant and Staff replies to OCRE's summary disposition motion are so procedurally deficient that granting OCRE's motion is required. Nor should Applicants be permitted to supplement what should have been an adequate response with their own summary disposition motion, as they have promised. The facts are sufficient to grant OCRE's motion; no doubt exists to justify a hearing on the matter, and the overriding public interest demands that OCRE's summary disposition motion be promptly granted.

Respectfully submitted,



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



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August 9, 1982

PY-CEI/GEN-598

Mr. R. C. Mitchell
Project Manager
General Electric Co.
175 Curtner Avenue
San Jose, CA 95125

EXHIBIT 1

Re: PNPP Units #1 and #2
Quotation No. 149A
Request for Modification

Dear Mr. Mitchell:

As previously discussed, to prevent inadvertent injections of boron into the reactor vessel, it has been determined that the automatic SLCS initiation and RWCU isolation provided by the subject quote should be replaced by a manual initiation system. Because of uncertainty concerning the final ATWS mitigation system requirements, this change should not be incorporated on the panels prior to delivery. The manual initiation system design should detail the changes required to the panels, so that these changes can be made at the site in the event manual initiation of the SLCS is allowed by the final ATWS rule, or if no rule is issued prior to startup of the Perry plant.

The manual initiation design should include annunciators to ensure the operator is informed of the event and is able to determine the necessity for SLCS initiation and RWCU isolation, within the 120-second period available. The operator will make this determination based on the APRM readings, after the 25-second delay associated with ARI operation. Since the SLCS initiation/RWCU isolation time has not been changed, no further plant analysis should be required.

To support licensing schedules, it is requested that this design be completed and issued by September 15, 1982. Additional manhours should be provided by T&M estimate by August 23, 1982. General Electric is authorized to proceed on this design subject to approval of the estimated manhours.

Very truly yours,

H. L. Hrenda
Responsible Engineer

H. A. Putre
Senior Engineer

HLH/iw

cc: ~~E. M. Buzzelli - R230~~
D.R. Green - W225
E. C. Willman - W250

2281-263-96

GENERAL ELECTRIC



NUCLEAR POWER
SYSTEMS DIVISION

GENERAL ELECTRIC COMPANY, 175 CURTNER AVE., SAN JOSE, CALIFORNIA 95125
MC 392, (408) 925-2755

August 31, 1982
PY-GEN/CEI-1722

Responds to: PY-CEI/GEN-598
INFORMATION

EXHIBIT 2

RECEIVED
SEP - 2 1982

PNPP
DOCUMENT CONTROL

Mr. H. A. Putre
Cleveland Electric Illuminating Co.
P.O. Box 84-10 Center Road
Perry, OH 44081

Dear Mr. Putre:

SUBJECT: MANHOUR ESTIMATE FOR SLCS INITIATION MODIFICATION.

The reference letter requested GEN to proceed on design of the change in the ATWS package to replace automatic by manual initiation of SLCS. As requested therein, our estimate for the effort involved is five-hundred twelve (512) manhours.

We are proceeding to prepare a modification kit which includes specification of all the document revisions that will be needed. No document revisions will be made; however, and design of ATWS including automatic initiation will continue.

As indicated when this information was given by telecon to Mr. Hrenda on August 30, 1982, we expect to complete issuance of mod kit documentation by October 1, 1982 and to deliver advance copies of it shortly thereafter.

Very truly yours,

S. C. Wood

R. C. Mitchell
Project Manager
Perry Nuclear Power Plant

RCM: hmm/D08316

cc: P. B. Gudikunst
J. J. Larsen
W. F. Miotti

FROM: DOC. CONTROL	DATE: 9/9/82
COPIES TO: <i>Putre</i>	
<i>NDS</i>	
<i>H. Putre</i>	<i>F. Beck</i>
<i>H. Hrenda</i>	
<i>M. E. ...</i>	
<i>R. Wood</i>	
<i>R. M. ...</i>	



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September 16, 1982

PY-CEI/GEN-617

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PNPP
DOCUMENT CONTROL

EXHIBIT 3

Mr. R. C. Mitchell
General Electric Company
175 Curtner Avenue
San Jose, CA 95125

Re: Perry Nuclear Power Plant Units 1 and 2
Manhour Estimate for SLCS Initiation Modification

Dear Mr. Mitchell:

The manhour estimate and completion date provided by your letter GEN/CEI-1722, for modifications to the ATWS package to allow the incorporation of manual initiation of SLCS injection, are considered acceptable. Based on conversations with Mr. E. C. Wood, it is understood that this estimate includes the modification kit documents necessary to incorporate the changes after equipment delivery, but does not include revisions to the Perry ATWS analysis report, NEDE-25518.

Revisions to the analysis report has been estimated to require 120 manhours. An additional estimate of 100 manhours and 70 NBU of computer time has been provided for the performance of a sensitivity study to investigate the effects of different SLCS injection times.

The estimate for revisions to the analysis report is acceptable and this work should be performed. Performance of the sensitivity study is not required at this time.

Very truly yours,

H. L. Hrenda
Responsible Engineer

H. A. Putre
Senior Engineer

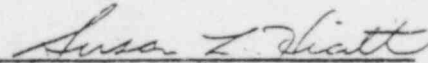
D. R. Green
Senior Project Engineer

HLH/iw

cc: J. E. Barron - S120
E. M. Buzzelli - R230
E. C. Willman - TW2
NDS File - C22/41.2/SP-M

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing were served by deposit in the U.S. Mail, first class, postage prepaid, this 4th day of August, 1984 to those on the service list below.


Susan L. Hiatt

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