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September 18, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
THE CLEVELAND ELECTRIC)	Docket Nos. 50-4400c
ILLUMINATING COMPANY, <u>ET AL.</u>)	50-4410c
)	
(Perry Nuclear Power Plant,)	
Units 1 and 2))	

APPLICANTS' MOTION FOR SPECIFICATION OF A
CREDIBLE ACCIDENT SCENARIO UNDER ISSUE #8

One and one-half years ago, in two related decisions,^{1/}
the Licensing Board

ruled that further work on this issue
[Issue #8] would not be profitable
until after the NRC issues its rule on hy-
drogen control or until we are informed
that issuance of the rule has been deferred
and can no longer be expected to be immi-
nent. ^{2/}

We now know that the hydrogen rule was deferred. As far as Ap-
plicants can determine, it is not reasonable to assume that the

1/ Memorandum and Order (Staff's Motion to Establish a Dead-
line Concerning a Hydrogen Generation Scenario), dated
March 3, 1983; Memorandum and Order (Applicant's Answer to
Procedural Motion Concerning Hydrogen Control), dated
March 31, 1983.

2/ Memorandum and Order dated March 31, 1983, supra, slip op.
at 2-3.

publication of the rule is any more "imminent" today than it was in March 1983. Applicants therefore respectfully move the Licensing Board to require Ohio Citizens For Responsible Energy ("OCRE") to specify within a reasonable time a credible hydrogen generation accident scenario, so that Issue #8 can be fairly resolved on a reasonable schedule.

Applicants supported the NRC Staff's unsuccessful motion of February 8, 1983, asking the Board to set a reasonable deadline for OCRE to specify a credible TMI-2 type scenario.^{3/} As the Staff noted in its February 1983 motion, the Licensing Board ruled in 1982 that OCRE would need to specify a particular type of credible accident scenario in order to comply with the applicable case law in this area, including Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-16, 11 N.R.C. 674, 675-76 (1980), and Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-675, 15 N.R.C. 1105, 1114 (1982).^{4/} However, in

^{3/} See NPC Staff Motion for a Deadline by Which OCRE Must Specify the Scenario to be Litigated Under Issue #8, dated February 8, 1983; Applicants' Answer in Support of NRC Staff Motion for a Deadline by Which OCRE Must Specify the Scenario to be Litigated Under Issue #8, dated February 23, 1983.

^{4/} See Memorandum and Order (Concerning Reconsideration and Dismissal of Hydrogen Control Contention), dated December 13, 1982, slip op. at 2 ("the need to specify a particular type of credible accident scenario in order to litigate meaningfully the adequacy of a hydrogen control mechanism is obviously correct and will be followed by us"); Memorandum and Order (Concerning Discovery From Staff on

Continued next page)

response to "OCRE Reply to NRC Staff Motion for a Deadline for the Specification of a Scenario for Issue #8 and Motion for the Rewording of Issue #8 and Specification of Guidelines for Its Litigation," dated February 23, 1983, the Board agreed to postpone OCRE's obligation to specify a scenario until after the publication of the final hydrogen rule.^{5/}

In March 1983, when the Licensing Board ruled "that further work on this issue would not now be productive," the Board believed that "a relevant rule [was] . . . about to issue."^{6/} Also at that time, the parties were preparing for the hearing on the quality assurance issue. The Board believed that the parties could "use their time most productively in preparing

(Continued)

Hydrogen Issues), dated December 23, 1982, slip op. at 2 ("The Appeal Board has found that a given hydrogen generating mechanism . . . has relevance [sic] to the efficacy of a hydrogen control system."). See also "Notes of Telephone Conference of December 9, 1982" (attached to letter from Staff Counsel to Licensing Board dated December 13, 1982), at 3.

^{5/} Memorandum and Order dated March 31, 1983, supra, slip op. at 2. Applicants opposed OCRE's February 23, 1983 motion by Answer dated March 14, 1983. See Applicants' Answer to Ohio Citizens For Responsible Energy Motion For the Rewording of Issue #8 and Specification of Guidelines for its Litigation (March 14, 1983). In its Memorandum and Order of March 31, 1983, supra, the Licensing Board "conclude[d] that we need not rule on Applicants' Answer." Id., slip op. at 2. For the reasons set forth in Applicants' Answer, and in the instant motion, Applicants believe that a ruling on OCRE's previous motion is now required.

^{6/} Memorandum and Order dated March 31, 1983, supra, slip op. at 2.

for hearing."^{7/}

The case is now at a completely different, and more advanced, stage. The quality assurance hearings have long since ended. Also, given the continued deliberations and delays in the hydrogen rulemaking, there is no reasonable basis to continue to expect that a hydrogen rule "is about to issue." It is too late in the proceeding to delay further the litigation of any outstanding issue -- let alone an issue of the potential magnitude of Issue #8. Applicants currently plan to be ready to load fuel in Unit 1 by mid-1985. With other significant issues outstanding in this proceeding, it is essential for the Board to set a schedule for the consideration of Issue #8 without further delay. At this late stage in the proceeding, the possibility that the Commission might issue a final hydrogen control rule does not provide a reasonable basis for further suspending consideration of Issue #8.

For all of these reasons, Applicants respectfully request that the Licensing Board promptly establish a reasonable deadline (not more than 30 days) by which OCRE must specify the

^{7/} Memorandum and Order dated March 3, 1983, supra, slip op. at 2.

credible hydrogen generation accident scenario to be litigated
under OCRE's Issue #8.

Respectfully submitted,

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Dated: September 18, 1984

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In the Matter of)	
)	
THE CLEVELAND ELECTRIC)	Docket Nos. 50-440
ILLUMINATING COMPANY, <u>ET AL.</u>)	50-441
)	
(Perry Nuclear Power Plant,)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Motion For Specification Of a Credible Accident Scenario Under Issue #8" were served by deposit in the United States Mail, first class, postage prepaid, this 18th day of September, 1984, to all those on the attached Service List.


 HARRY H. GLASSPIEGEL

Dated: September 18, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)

(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-440
50-441

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