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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION \*84 OCT -5 11:37  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Peter B. Bloch, Chairman  
Dr. Jerry R. Kline  
Mr. Glenn O. Bright

SERVED OCT 5 1984

In the Matter of  
CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, et al.  
(Perry Nuclear Power Plant,  
Units 1 & 2)

Docket Nos. 50-440-OL  
50-441-OL  
ASLBP No. 81-457-04 OL  
October 4, 1984

MEMORANDUM AND ORDER  
(Denying Motion for Summary Disposition on  
OCRE Issue No. 6 and Dismissing the Contention)

Intervenor Ohio Citizens for Responsible Energy submitted its motion for summary disposition to us on July 6, 1984.<sup>1</sup> The motion seeks disposition in OCRE's favor of issue No. 6 which states:

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

OCRE's motion is based on the new ATWS Rule entitled: Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants. 49 FR 26036. Part

<sup>1</sup> All parties have adequately briefed us on the rules governing motions for summary disposition and while affirming that we are aware of them we do not repeat them here. We turn immediately to the issues presented.

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(C)(4) of the newly published rule which was effective on July 26, 1984 states in pertinent part:

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.

Positions of the Parties

OCRE argues that the plain language of the new rule now requires that the Perry standby liquid control system (SLCS) be configured for automatic activation because the plant is being designed and built with the capability of automatic initiation and that automation can now be achieved at low cost (about \$100,000 of additional investment over a manually activated system according to OCRE).

Applicant replied in opposition to the motion on July 30, 1984. Their opposition is grounded on a close reading of the new rule which applies not only to plants granted a construction permit after July 26, 1984 but also to: "plants granted a construction permit prior to July 26, 1984 that have already been designed and built to include this feature (emphasis in applicant's reply). Thus in applicant's view if Perry has not already been designed and built to include an automatic SLCS the motion for summary disposition must fail and issue No. 6 should be dismissed.

In support of its position the applicant states two facts as to which there exists a genuine issue to be heard: 1) Perry has not already been designed to include automatic initiation of its SLCS and

2) Perry SLCS has not already been built to include automatic initiation. The Staff SER and its own FSAR are referenced to establish that Perry is designed for manual initiation of the SLCS. OCRE's own words are used against them on the question of whether the plant is built for automatic initiation. In the applicant's view OCRE's assertion that automatic initiation can be had at low cost (of construction) leads inevitably to the conclusion that it has not now been built for automatic initiation.

The Staff also replied in opposition to OCRE's motion on July 30, 1984. The Staff in essence agreed that resolution of the motion depended on interpretation of the "designed and built" language of the new rule but opposed summary disposition because in their view OCRE had not demonstrated affirmatively that Perry was designed and built for automatic activation of the SLCS. Thus, in the Staff's view material issues of fact remained in controversy. Beyond this, however, the Staff had little assistance to offer since it could not itself attest to whether the Perry SLCS has been designed and built with an automatic initiation feature.

The Board concluded at this point that it needed further interpretation of the meaning of the "designed and built" language of the new ATWS rule and of how that language applies to Perry. It therefore requested orally that all parties submit additional information on these questions. OCRE, the Applicant and the NRC Staff responded on September 7, 1984.

OCRE replied with a lengthy recount of the history of the ATWS issue dating back over a decade. (OCRE attachment 2). That history shows that the concept of automatic initiation of BWR SLCS dates back to a proposal by GE in 1974. It also shows that the Staff was actively considering automated activation in NUREG-0460 Vol. 3 (1978) and later in NUREG-0460 Vol. 4 (1980) wherein it considered a range of alternatives for the ATWS problem, two of which (3A and 4A) would have required an automatic SLCS. The Staff published for comment on November 24, 1981 three proposed ATWS rules two of which would have required automatic SLCS.

OCRE's history of the ATWS issue skillfully outlines the developing consensus over a long period of time in favor of automated SLCS for newly constructed plants. The history also reflects a developing consensus that some form of exemption from backfitting of automated systems would be needed. At various stages proposals were made to include automated initiation only for those existing BWRs that already have the capability to automate this system or plants that already have been designed to include this feature. It further reflects the fact that the motivation for exemption from the automation rule is traceable to an unfavorable generic value/impact analysis for conversion of existing plants that did not already have this feature. In short, the value/impact analysis shows that the value of the risk reduction in existing plants was less than the cost of conversion of manual systems

to automatic<sup>2</sup> in existing plants. The costs of installation, however, were dominated by cost of downtime for installation and costs of spurious trip, factors which might not apply fully at Perry.

OCRE presented this history for the purpose of aiding the board in interpreting the new ATWS rule and not to induce us to recast the generic value impact analysis which stands behind the rule. Thus, we do not interpret OCRE's argument to be on its face a challenge to the new rule or the foundation on which it rests.

OCRE argues instead that the history of the ATWS rule demonstrates that the phrase "designed and built" should be interpreted flexibly and not literally. Only the added incremental investment of \$100,000 at Perry need be made to capture the incremental safety improvements expected for other reactors when the rule was adopted. This is less than the generically determined sum that was used in the value/impact analysis which undergirds the rule. OCRE does not dispute that a literal evaluation of Perry's present state would lead to the conclusion that the plant now stands with a manually activated system designed and built. Instead it says that with opportunities for automation so close at hand a flexible interpretation of the ATWS rule would lead to a conclusion that we should require the system to be automated under the

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<sup>2</sup> The supplementary information that was published with the ATWS rule states that risk reduction attributable to automation amounts to a factor of about 7 but that the cost of conversion for existing plants is about \$24 million and that the value/impact analysis does not favor conversion in existing plants. 49 FR 26036.

intent of the rule which is to capture the additional increment of safety attributable to automation.

OCRE also argues that a literal interpretation of the rule could lead to an opportunity for its evasion on the part of utility CP holders simply by not building their facility with an automatic SLCS. We see no merit in this argument. It is clear from the rule itself that one instance where exemptions to CP holders will be granted will be for reactors that are in an advanced stage of construction. That is all that concerns us here. For other CP holders having reactors not so advanced in construction there will be ample opportunity for the Staff to scrutinize designs and construction and to properly enforce the rule.

The Applicant also responded fully to the Board's request for additional information. Its submittal included the affidavits of Gary R. Leidich on As-Built Status of SLCS Initiation; Frank R. Stead On the Design of the Initiation Function of the Standby Liquid Control System; and Dalwyn R. Davidson on SLCS Initiation. All are qualified engineers employed by or consultant to CEI.

The Applicant argues that the ATWS rule should be interpreted narrowly and literally. For automatic initiation of the SLCS to be required the system must be both designed and built for automatic initiation. Otherwise an automatic system is not required by the rule.

Applicant then goes on to demonstrate through the affidavits of its employees or consultant that the Perry SLCS is not designed and built for automatic initiation but in fact is designed and built (or virtually complete) for manual initiation.



The affidavit of Frank Stead details the design history of the Perry SLCS. We need not duplicate that entire history here. Suffice to say that the design for manual initiation dates back to the CP stage for Perry and was discussed in both vendors designs and the PSAR. The manual system was again discussed in the FSAR and in subsequent revisions including the current version. We conclude that there is no doubt whatever that CEI intended to design and did design a manually activated SLCS system for Perry.

During the design process the applicant and its vendor were aware that the NRC staff was considering an ATWS rule that might require an automatic SLCS. CEI therefore undertook several design studies which resulted in identification of design modifications that could be made to the Perry system in the event that automatic systems were ultimately required by the Staff. None of this design work altered CEI's own view that the manually activated system was their technically preferred system, however. Rather, the design modification work was undertaken simply so that CEI could be prepared to convert to automatic initiation if necessary without serious schedule delays. Throughout the design process extending to the present time, however, the applicant continued to present its design for a manually activated system to the Staff and the ACRS. We conclude that the design efforts undertaken by CEI to design an automatic SLCS initiation were done on a contingent basis because of uncertainty as to what a final ATWS rule might require.

Because of these design efforts the Perry SLCS has at present the capability to convert from manual to automatic initiation. The

affidavit of Daiwyn R. Davidson, a consultant to CEI and formerly a Senior Vice President employed by CEI confirms that he stated in a letter to the NRC staff on August 13, 1982 that "although the design includes both manual and automatic initiation capability, only manual initiation will be functional." It was conveyed to NRC in this letter that CEI stood ready to convert its system to automatic initiation if the then forthcoming ATWS rule should require it but it was the intent of CEI to make its manual systems functional (operational).

The affidavit of Gary Leidich, a General Supervising Engineer employed by CEI, establishes the present state of construction of the SLCS system. The SLCS system at Perry is virtually complete. The system itself consisting of tanks, valves and pumps would not change whether the method of activation is ultimately manual or automatic. The electrical control system is the only feature that distinguishes one mode of activation from the other.

As of July 26, 1984, the SLCS system was essentially complete and the manual initiation feature was at least 90% complete. Various subsystems were turned over by Construction to Nuclear Testing in July and August of this year and manual testing of the SLCS is now possible from motor control centers.

If automatic initiation of the SLCS were now to be required many items of equipment over and above that required for manual initiation would have to be installed. This would be needed to bring plant status indications from the plant to the control system logic and then to send activating signals to the SLCS pumps and valves. A few cables which



could serve an automatic system have been installed but not connected. The Redundant Reactivity Control System (RRCS) panels having capability for conversion to automatic initiation have also been installed. Otherwise a substantial list of needed circuits and relays have not been installed and at present the system does not stand in a configuration for automatic initiation.

The Staff submitted a complete response to the Board's request for further information which was accompanied by the affidavit of George Thomas who is a Nuclear Engineer employed by NRC and of John R. Grobe who is a Senior Resident Inspector for operations at the Perry Plant. Reporting on the views of the Reactor System Branch of the Office of Nuclear Reactor Regulation, Mr. Thomas states that "designed and built" means a) necessary documentation exists to enable construction of a complete SLCS with a clear indication of the type of initiation and b) physical installation of hardware has occurred, such as piping, valves, electrical cables, and panels in the plant, to the extent that construction is substantially complete.

Mr. Thomas goes on to state that he has reviewed the documentation of the SLCS system at Perry and that the most recent submissions establish that CEI has elected to follow the design for manual initiation. Moreover, although Perry was designed to have an automatic initiation option, it was not built with that option.

Mr. Grobe states that he personally inspected the Perry SLCS system on August 27-30, 1984 and has also personally examined SLCS documents at the plant. The documents which cover the period of June 30, 1977 to

February 1984 represent the major milestones in the development and implementation of the current SLCS design which uses only manual initiation. His inspection of the SLCS system confirms that it is virtually complete with only a few items outstanding and that two subsystems of the SLCS were turned over to Nuclear Testing this past summer. The SLCS is scheduled for preoperational testing in November/December 1984 and turnover to the operations department in January/February 1985.

Mr. Grobe's inspection reveals that the system as built would not support automatic initiation. To convert to automatic initiation would require the additional installation, modification or deletion of approximately 40 cables, 10 relays and numerous wires, switches, indicating lights and annunciators. Thus, he concludes that the SLCS at Perry Unit 1 has been designed and built to function as a manually initiated system.

#### Board Analysis

The Board concludes at the outset that there is no remaining material issue of fact to be heard on issue no. 6. The applicant's and Staff's filings establish without contradiction that the Perry Unit 1 SLCS is now designed and built for manual initiation and that it is not designed and built for automatic initiation. Under the new ATWS rule which took effect July 26, 1984, those facts alone are sufficient to compel us to deny OCRE's motion for summary disposition and to dismiss issue No. 6 from the proceeding.

However, the fact that a conversion of the system could now apparently be made at a cost of about \$100,000, which is low relative to the cost of the SLCS system or to the plant as a whole, is also uncontradicted on our record. Thus, while a literal interpretation of the ATWS rule compels denial of the motion, the special circumstances of the Perry case may present us with an opportunity to capture the marginal increment of safety attributable to automatic SLCS initiation at what appears to be a bargain price. We therefore turn to a consideration of whether the flexible interpretation of the ATWS rule urged by OCRE is permissible in this case.

Our own analysis of the ATWS rule starts with the assumption that all of the provisions of the SLCS rule apply with equal force and weight. In promulgating this rule the Commission has affirmatively decided that some reactors are included within its reach and that others shall be exempt, and that no greater weight attaches to one side of that equation than to the other. We conclude therefore that the issue before us does not involve an important unconsidered or unresolved issue of reactor safety. In determining that any reactors at all could be exempt from the rule it is clear that one inevitable consequence of an exemption would be to forgo the increment of safety attributable to automation. This is an acceptable outcome under the rule.

Second we examine the likely effect of the rule. Reactors that will surely qualify for exemption under the ATWS rule fall into two classes: a) Those which are already operating and that have manually initiated systems and b) reactors in an advanced stage of construction

for which an automated SLCS has not been designed and built. (We leave it to future cases to determine whether reactors which are not in an advanced stage of construction and which do not have either automatic or manual initiation designed and built would be compelled to install an automated SLCS). The facts we have reviewed show that there is absolutely nothing unique about the circumstances surrounding Perry Unit 1. It now stands in an advanced stage of construction with a manually activated SLCS designed and built. Thus it stands in a class of reactors for which an exemption from automation was affirmatively intended.

A corollary to our conclusion that the issue before us is not a substantive one of unreviewed reactor safety is that the provision governing exemption in the ATWS rule is effectively procedural in nature. The provision for exemption is simply a non-backfitting provision; in short, a deliberately chosen grandfather clause. As such it reflects a considered instruction from the Commission to its Staff and licensing boards not to backfit automatic systems on certain classes of reactors. Given that instruction there appears to be little or no latitude or flexibility remaining once it is determined that a reactor falls into an exempt class. As we have already concluded Perry falls foursquare into such an exempt class.

We see nothing inherently contradictory or inconsistent in any of this. It is well known in technology that improvements of any kind including safety improvements may come in small steps as well as large ones. It would be exceedingly difficult to adopt and incorporate the

small increments of reactor safety as they get developed if each time it was done a wholesale backfit of the entire industry was also required. Thus a requirement to exempt plants from backfitting is as much in the interest of safety as one compelling it. It is therefore perfectly consistent with the public interest in safety to incorporate marginal improvements into new construction while exempting previously constructed plants. No inference is warranted that plants having automatic initiation are safe while those having manual initiation of SLCS are not. We infer from the SLCS rule that both modes of activation are adequate to meet safety standards but that automation simply adds incrementally to that safety.

Were we inclined to grant OCRE's motion based on the analysis thus far we would be unable to do so based on an uncritical acceptance of their estimate of \$100,000 for conversion of the SLCS. A full rigorous site specific value impact analysis would be required before we could take such a step. We entertain considerable doubt whether a site specific value impact analysis should even be undertaken at this late stage on the construction of Perry. Our doubts are based not only on our consideration of the meaning of the ATWS rule but also on the fact that the low costs of conversion in this case may be deceptive not only for Perry but for any plant similarly situated. When the Commission Staff concluded that the generic value impact assessment did not favor backfitting of automated systems for certain classes of reactors the costs it considered were at that time necessarily forward costs. Contributing to those costs were design costs, downtime costs to permit conversion and costs of spurious trip of the SLCS. In Perry's case



design costs for an automated system exist because of the uncertain regulatory situation previously existing but they would now appear on the ledger necessarily as sunk costs. The costs of delay are also partly sunk and the cost of spurious trip likely would remain unchanged.

While sunk costs are irretrievably expended it remains a fact that had Perry not voluntarily expended them the present forward cost of conversion would appear larger than it now does. At the very least design costs would now have to be expended had that not been done earlier. Costs of delay which are now partly sunk costs would also enter the ledger as forward costs had they not already been expended. It is therefore not self-evident that a rigorous analysis would confirm OCRE's position in this matter.

We conclude from these brief considerations that we should not now recast a site specific value impact analysis under conditions different from those under which the Commission has already done generically. It is clear that such an analysis would founder in tangled controversy over the proper consideration of sunk costs and forward costs under circumstances where no important unresolved safety questions hung in the balance. The controversy would thus be empty and sterile. We believe that that would frustrate an important purpose of the rule which is in fact to resolve important issues generically rather than by adjudication on a case by case basis.

We learn one more lesson from our analysis of the Perry situation and that is that regulatory uncertainty itself has costs. The cost of regulatory uncertainty is justified so long as experts still grapple

with issues and a fair solution still eludes them. When the problems are solved, however, as they now are for the issues before us, there is no further justification for regulatory uncertainty.

Moreover, the mandates now provided in the ATWS rule were not arrived at easily. OCRE's own history reveals that they are a result of over a decade of arduous technical and legal effort. That is not a situation where a board should lightly exercise flexibility based on its impressions from one case. Given the mature state of analysis of this problem and the clear language of the SLCS rule we believe that it would serve no one's interest to engender further controversy and regulatory uncertainty by rendering an ad hoc judgment in this case. Clearly we serve no one's interest by telling applicants in clear language what is required of them and then clouding those instructions with yet another value/impact analysis struck at the 11th hour.

We see nothing in the Perry case that creates any unique problems that were not considered in the ATWS rule. Perry's dilemma arises from nothing more principled than a roll of the dice. It is merely coincidental that Perry stood with a virtually complete SLCS at the same time the new rule was adopted and that most of its costs were sunk and its forward costs of conversion necessarily smaller. Any plant similarly situated would give the deceptive impression of low forward cost for conversion of the SLCS system at that point. To conclude that the system should be converted would be to frustrate the clear intent of the rule and we shall not do it.

Based on our analysis of the issues we conclude that a fair interpretation of the ATWS rule does not permit the flexibility urged by OCRE and that OCRE's motion for summary disposition of issue no. 6 in this case should be denied. We also find that no further disputed issues of material fact exist that must be resolved in a hearing. Accordingly, we conclude that OCRE's issue no. 6 should be dismissed from this proceeding. We are aware in so finding that we forgo whatever marginal increment of safety is attributable to automatic initiation of the SLCS. That is an acceptable result under the ATWS rule which is necessitated by a balancing of all relevant factors.

ORDER

For all of the foregoing reasons and based on a full review of the record it is ORDERED<sup>3</sup>

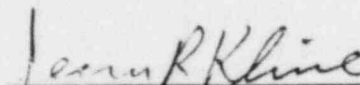
- 1) OCRE's motion for summary disposition of issue no. 6 is denied.

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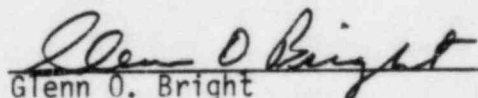
<sup>3</sup> The dissenting opinion of Judge Bloch is attached to this Decision.

2) Issue No. 6 is dismissed from this proceeding.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD



Jerry R. Kline  
ADMINISTRATIVE JUDGE



Glenn O. Bright  
ADMINISTRATIVE JUDGE

Bethesda, Maryland

BLOCH, chairman, DISSENTING

The question of whether or not Cleveland Electric Illuminating Company, et al. (Applicants) should be required to install an automatic standby liquid control system is a close question that turns on the interpretation of the Commission's final rule on anticipated transients without scram ("ATWS"). 49 FR 26036. Since there are no factual issues in dispute, the issue turns entirely on interpretation of legal materials and summary disposition for one side or the other is mandatory.<sup>4</sup>

My dissent stems from my belief that legal materials should be interpreted to effectuate the purpose of the framer rather than by mechanical rules of word interpretation. The applicable section of the final rule states:

The SLCS [standby liquid control system] 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.<sup>5</sup>

The facts about the ASLCS at Perry are not in dispute. Management has consistently characterized its system as manual, both in its FSAR and before the ACRS. However, Applicant applied prudent management

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<sup>4</sup> This issue was raised by Ohio Citizens for Responsible Energy's (OCRE's) July 6, 1984 motion for summary disposition of Issue No. 6: "Applicant should install an automated standby liquid control system to mitigate the consequences of an anticipated transient without scram."

<sup>5</sup> 49 FR at 26045 (emphasis added).



practices and took steps to assure that it would be able to comply with an ASLCS requirement, if necessary, without a delay in start-up. To do this, the design drawings for one four day period were changed to show an ASLCS, which is therefore completely "designed". Some features of automatic initiation, including certain printed circuit cards and memory chips, have been installed in the plant. However, necessary wiring has not been installed and key-lock switches in the control room would have to be replaced were ASLCS to be installed.<sup>6</sup> The total remaining cost of installation is about \$100,000.<sup>7</sup>

Although the total cost of automating the SLCS is not in our record, our best estimate from available data is that --excluding downtime for installation and for unnecessary activation-- it is about

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6 These facts are all set forth by Applicants in their Response to ASLB Request for Information on the ATWS Rule and the Perry SLCS. I would like to acknowledge Applicants for the straightforward and objective presentation of their position in this filing.

7 To confirm this fact, found on page 11 of OCRE Brief on the History and Intent of the ATWS Rule, September 7, 1984, I telephoned Applicants and OCRE on September 27, 1984 and ascertained that the estimate was contained in an interrogatory response filed by the Applicants. Applicants counsel pointed out during the call that estimates of building costs often are subject to inflation due to unanticipated difficulties. We accept that statement, but we also note that the original estimate was one made by Applicants and may have contained some costs in anticipation of difficulties. In any event, the estimate seems to be a rough cost figure on which Commission action may be based.

\$3.3 million.<sup>8</sup> Hence, our best estimate is that the automated system is about 97% designed and built.

The majority of the Board interprets the phrase "designed and built" to mean that the ASLCS must be completely finished. Although that is a permissible interpretation, based on a notion that the Commission was setting up a mechanical prohibition against all back-fitting, I would not interpret those words so inflexibly.

A similar issue of interpretation arose in an earlier phase of this proceeding. At that time, intervenors argued that Appendix B, Criterion XIII, required "prompt" resolution of all deficiencies. They argued that a one month delay is not "prompt." However, we decided that prompt should be interpreted in light of the entire program of closing deficiencies and that delays on some deficiencies did not negate promptness. In that instance, we applied a reasonableness test that was sensitive to the fact that people who write rules necessarily draft language that should be applied reasonably to particular facts.

I believe that a reasonable interpretation of "designed and built" would require that the total project, including its design and

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<sup>8</sup> See SECY 83-293, "Amendments to 10 CFR 50 Related to Anticipated Transients Without Scram," William J. Dircks, Executive Director for Operations, July 19, 1983 at 5, which estimates costs of \$3.5 million to \$5.5 million per plant. This contrasts with the Final Rule, which contains Supplementary Information (slip op. at 12) that the cost is \$24 million per plant. The higher figure apparently includes costs related to unnecessary initiation of the ASLCS. (None of the estimates include cost savings from necessary initiation of the ASLCS.)

construction and possible costs for downtime during installation, be reasonably completed.<sup>9</sup>

The requirement for an automated standby liquid control system was included in a rule whose summary states, "This [(the various provisions of the rule)] will significantly reduce the risk of nuclear power plant operation." One of the provisions that would reduce risk for Boiling Water Reactors is the ASLCS, which was not required for existing plants because of the costs. The purpose of the ASLCS is to provide for automatic operation of the boron poisoning system as preferable to operator action. It is characteristic of operator experience that the need for emergency action is rare. Hence, operators may be inclined to interpret ambiguous signals as not requiring emergency action, particularly because unnecessary activation of the SLCS may result in substantial costs for the employer. By contrast, machines are not affected by these conflicting motivations and will make tough decisions in appropriate circumstances without fear of reprisal.

The language used by the Commission in the Supplementary Information to the ATWS rule, covering the grandfathering of existing plants, makes it clear that the grandfathering was based on a weighing

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<sup>9</sup> The majority opinion apparently would apply this requirement of 100% built even if everything was done but for the last few bolts. Possibly, in those circumstances they would apply a reasonableness test in order to avoid silliness. However, I would argue that if a reasonableness test is applicable then (as surely it is) then it also is applicable now.

of costs and benefits; the Commission decided that existing plants should not be required to incur the great costs for downtime for installation and for backfitting, in addition to the operating costs that may result from unnecessary activation.

The Supplementary Information accompanying the rule, slip op. at 12, considers "downtime for installation in existing plants" to be an important factor affecting the decision not to require backfits. Similarly, the Staff of the Commission, in Enclosure D to SECY-83-293, at 32, stated that the Utility Group's estimate for the cost of an ASLCS is "dominated by downtime for installation in existing plants." Hence, I conclude that the Commission did not consider a situation such as has occurred at Perry, and the first authority in a position to make an informed decision about whether Perry should be grandfathered is the Licensing Board. We should accept that responsibility, by making a reasonable interpretation of the existing regulation consistent with its history, rather than by pretending that the Commission already took responsibility because of a meaning the Commission never considered but that the Board chooses to attach to the Commission's words.

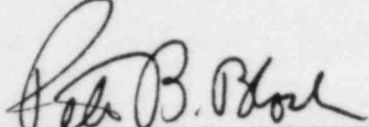
Someone should decide this issue on a reasoned basis. The Commission's expectation of high backfit costs for an ASLCS does not fit this case, where only \$100,000 of additional costs are left<sup>10</sup> to be

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<sup>10</sup> I do not accept the majority's discussion of sunk costs. Costs that are already incurred, regardless of the motivation, are  
(Footnote Continued)

incurred.<sup>11</sup> The phrase "designed and built" should not be interpreted to preclude the application of the ASLCS requirement in this instance.

A safety improvement applied to all future plants because of its importance should not be excluded from Perry because a small residue of work is yet undone. The community around the plant should not be deprived of this added protection by wooden application of language to a situation in which there is no sound reason to reach a different result than there is for plants required to have an ASLCS.

  
Peter B. Bloch, Chairman  
ADMINISTRATIVE JUDGE

Bethesda, Maryland

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(Footnote Continued)

indications of the extent to which a system has been designed and built. Sunk costs are irrelevant to a value/impact analysis of installation of the ASLCS in this plant at this time.

- <sup>11</sup> This issue has been raised at an early time so that Applicants may choose to install the ASLCS rather than to risk incurring downtime costs in the future. Consequently, should this issue be decided adversely to Applicants in the future, I do not think downtime (which could be avoided by making the change now) should be considered as a legitimate cost. It is based on this conclusion that a change in circumstances at the time of appeal would not affect the outcome of this issue, that Judge Bright and I decided that it is not appropriate to certify this issue to the Commission at this time.