

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-440-OL
50-441-OL

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, et al.

(Perry Nuclear Power Plants,
Units 1 and 2)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :
THE CLEVELAND ELECTRIC ILLUMINATING : Docket Nos. 50-440-OL
COMPANY, et al. : 50-441-OL
(Perry Nuclear Power Plants, :
Units 1 and 2) :
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Ace-Federal Reporters, Inc.
Suite 402
444 North Capitol Street
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Friday, February 1, 1985

The telephone conference call in the above-entitled matter
commenced at 10:05 a.m.

BEFORE:

JUDGE JAMES P. GLEASON, Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C

JUDGE GLENN O. BRIGHT, Member
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C.

JUDGE JERRY R. KLINE, Member
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C.

1 APPEARANCES:

2 On behalf of the Applicant:

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4 Shaw, Pittman, Fotts & Trowbridge
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Washington, D. C. 200366 On behalf of the Nuclear Regulatory
7 Commission Staff:8 COLLEEN WOODHEAD, ESQ.
U. S. Nuclear Regulatory Commission
9 Washington, D. C.10 On behalf of Intervenor, Ohio Citizens
11 for Responsible Energy:

12 SUSAN HYATT, ESQ.

13 On behalf of Sunflower Fuel Alliance:

14 STEVE SASS
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P R O C E E D I N G S

2 JUDGE GLEASON: Let's begin.

3 This is Judge James P. Gleason. I'm here with
4 Judges Glenn R. Bright and Jay R. Kline in our recorded
5 telephone conference in the matter of the Cleveland Electric
6 Illuminating Company et al, involving Perry Units 1 and 2.

7 We appreciate very much the availability of the
8 parties to meet again today so that we can discuss some
9 schedule problems and perhaps some other matter as well.

10 I would like to have the other parties on the
11 line identify themselves for the record, please, starting
12 with the Applicant and the Staff and anyone else on the
13 line.

14 MR. SILBERG: This is Jay Silberg, Shaw, Pitman,
15 Potts and Trowbridge, Washington, D. C., representing the
16 Applicant.

17 MS. WOODHEAD: This is Coleen Woodhead, NRC
18 Counsel.

19 MS. HYATT: Susan Hyatt, representing Ohio
20 Citizens for Responsible Energy.

21 MR. SASS: Steve Sass, representing the
22 Sunflower Alliance.

23 JUDGE GLEASON: We have currently before us a
24 motion by OCRE to reword Contention 8. We have currently
25 before us a summary disposition by the Staff to dispose of

1 issue 8, and we have the motion for summary disposition of
2 issue number 14.

3 I gather, Mr. Silberg, that you intend to file
4 motions 115 and 16 before February 5th; is that accurate?

5 MR. SILBERG: That's correct. I have already
6 filed two days ago, summary disposition motions on six
7 subparts of issue 1. We intended to file summary
8 disposition motions on several other subparts of issue 1
9 today which we will serve on the Intervenor by express mail
10 under the rules. Express mail reduces from five days to two
11 days the service period.

12 By Tuesday we will file by hand delivery
13 summary disposition motions on the remaining portions of
14 issue 1 as well as on issues 15 and 16.

15 JUDGE GLEASON: All right.

16 Could I ask at this point from Ms. Woodhead if
17 she knows what the status is of what, I guess, would be SBR
18 number 5?

19 MS. WOODHEAD: The department manager has to get
20 it out the first week in February. It's being typed and
21 that's the only hold-up. It's in typing and I believe we
22 can have it the first week in February; if not, the second
23 week.

24 JUDGE GLEASON: All right.

25 The Applicant has submitted to us as requested

1 a schedule involving the filing of summary dispositions which
2 we've already discussed, February 5th being the suggested
3 last day and also the suggested dates of March 18th of
4 filing of testimony with April 2nd the start of the
5 evidentiary hearing, if necessary.

6 Ms. Hyatt, you have sent in an objection to that
7 date and I guess I don't really understand the objection and
8 what I would like to do is to come to some kind of a general
9 agreement and, if not, of course, the Board I think is
10 prepared to make a motion today with respect to it. You
11 realize, of course, that one of the reasons for a longer
12 period in which to respond to motions for summary judgment
13 is for you to be able to get information together and I'm
14 sure it's a very simple issue that the motion addresses,
15 that is, whether there is a material fact that's available
16 to be litigated.

17 So I guess I'm not understanding very clearly as
18 to why you think it's necessary to delay this hearing to the
19 point I think you suggested in your motion or in your
20 letter to some time in June.

21 What I would like to propose -- I just throw this
22 out for any discussion that we'd want to come up with at
23 this point -- is that we do stay with February 5th as the
24 final date for motions for summary judgment. You have
25 already indicated that you had no objection to the

1 Applicant's motion and summary judgment for issue 14,
2 Ms. Hyatt.

3 I assume, because it's not their issue, that no
4 other party is going to respond to that motion, but I would
5 like to hear some comment on that right now or some sense to
6 that statement or some disagreement with that.

7 Ms. Hyatt?

8 MS. HYATT: As I indicated in the letter, I am
9 not opposing Applicant's motion for a summary judgment on
10 issue 14. Other parties -- Staff or Sunflower will.

11 JUDGE GLEASON: That's what I'm asking right now,
12 for those parties on that. Could I hear a comment from the
13 Sunflower representative?

14 Mr. Sass?

15 MR. SASS: No, I don't think we'd oppose that.

16 JUDGE GLEASON: Staff?

17 MS. WOODHEAD: We are not opposing that. We have
18 a response in support ready to go out.

19 MR. SILBERG: Mr. Chairman, this is Mr. Silberg.

20 I'm just wondering -- Ms. Hyatt, who is the
21 proponent of this contention, is not opposing it and why she
22 doesn't simply withdraw it and save the Board the effort of
23 having to go through writing a decision on an unopposed
24 contention and essentially unsupported contention?

25 MS. HYATT: Since I'm not opposing your motion

1 for summary disposition I don't think the Board's work will
2 be very hard.

3 (Laughter.)

4 JUDGE GLEASON: Well, you asked for a comment.

5 MR. SILBERG: We always try to save whatever
6 effort we can by the Board even if it's not a lot. They're
7 very busy people.

8 JUDGE GLEASON: I gather Ms. Hyatt is saying that
9 she is not going to go through the effort of withdrawing the
10 contention; is that right?

11 MS. HYATT: That's right.

12 JUDGE GLEASON: Now, with respect -- let's hold
13 just a minute while I get some notes.

14 (Pause.)

15 I'm going to go off the wire for a minute. I'll
16 be right back.

17 (Pause.)

18 JUDGE GLEASON: Okay. We're back with you. Are
19 we coming through all right?

20 MR. SILBERG: Yes, sir.

21 JUDGE GLEASON: The Board would like to suggest,
22 first of all, we think that the responses ought to be put in
23 by express mail as well as the motions themselves because it
24 just saves us three or four days at this point. I think
25 three or four days is important for our ability to put

1 forward a reasonable schedule on having a hearing.

2 MR. SILBERG: These are the responses to the
3 summary disposition motions as well as to Ms. Hyatt?

4 JUDGE GLEASON: That's right.

5 MR. SILBERG: Okay.

6 JUDGE GLEASON: So, what we'd like to do is to
7 target the hearing, if it's necessary, for the week of April
8 the 9th. That's a week later than to justify the
9 Applicant.

10 MR. SASS: That's for which issue?

11 JUDGE GLEASON: For all issues.

12 MR. SASS: That's going to be a little tight for
13 us.

14 JUDGE GLEASON: In what way?

15 MR. SASS: Well, the appeal that Terry sent in on
16 issue 1 has not been answered yet.

17 JUDGE GLEASON: I know, but you people must
18 realize that that's an interlocutory motion and the Appeal
19 Board is just not going to handle it at this point, an
20 interlocutory motion. I'm surprised you people even filed
21 them.

22 MR. SASS: Also, it's going to make it a little
23 tight for us getting prefiled testimony.

24 JUDGE GLEASON: Okay. But I was going to suggest
25 that the filing of testimony be in by March 22nd.

1 MR. SASS: We don't know which subparts are
2 accepted or not accepted so until we know that we can't
3 really start getting our testimony.

4 JUDGE GLEASON: I understand that. We would
5 expect to -- you know; you cannot prepare your case based on
6 decisions that may or may not be made in your favor. You
7 have to prepare your case on the basis of the issues that
8 go to trial and then, of course, if you're unable to
9 litigate that issue then it's a matter of deleting
10 witnesses. You can't just wait.

11 This case has gone on long enough and we've got
12 to get to a hearing date particularly in light of the fact
13 that there are processes that other people have to follow
14 and other hearing schedules that people have to accomodate.

15 MR. SASS: Right. I understand that.

16 JUDGE GLEASON: So, anyway --

17 MR. SASS: All our witnesses, you know, have
18 other jobs, okay?

19 JUDGE GLEASON: That is the case in practically
20 every hearing that comes before a licensing board. That is
21 your responsibility to produce your witnesses. That's not
22 the Board's. The Board can do nothing about that. All we
23 can do is set up what we believe to be a reasonable
24 schedule.

25 MR. SASS: There's one other factor also. We

1 have a lawsuit right now in Ashtabula County, challenging
2 Ashtabula County's legal basis for their whole evacuation
3 plan, all right? If that's decided in our favor that pretty
4 much wipes out the legal basis for the Ashtabula County part
5 of the plan or would have some effect on what happens from
6 there on.

7 JUDGE GLEASON: What court is that proceeding
8 brought in?

9 MR. SASS: The Ashtabula Common Pleas Court.

10 JUDGE GLEASON: I don't see how that would have
11 any effect on this proceeding.

12 MR. SASS: What it is -- it's a lawsuit which
13 alleges that the County Commissioners did not start the
14 planning proceedings according to state law, and if that's
15 decided in our favor their validation is vacated by that
16 court decision.

17 JUDGE GLEASON: Mr. Sass, the only thing I can
18 say at this time is that I don't want to get into a legal
19 discussion of the impact of a state court decision on a
20 federal proceeding.

21 The only thing I can say is that we are going to
22 establish the schedule and then, of course, if there are
23 things that you think should impact that schedule you have
24 to make the motions at the proper time, but we can't be
25 looking in a hypothetical sense at anything that may come

1 along.

2 MR. SASS: I mean, the trial finishes this
3 Wednesday, okay? So, now, the Judge is taking it under
4 advisement and I don't know how long that takes for him to
5 decide.

6 JUDGE GLEASON: The statement that I just made
7 still applies. You have to make your motions when you have
8 a legal basis for making them.

9 MR. SASS: Okay.

10 JUDGE GLEASON: What we would do then is try to
11 follow the following schedule: February 5 is the last day
12 for motions for summary judgment. We would have the
13 responses due on this motion within the prescribed period
14 with express mail which means no more than 22 days from the
15 date they were filed.

16 MR. SILBERG: Any motions filed after today would
17 be filed by hand delivery so that would be 20 day.

18 JUDGE GLEASON: 20 day, all right.

19 MS. WOODHEAD: That makes the response date the
20 25th of February if you file on the 5th, right?

21 JUDGE GLEASON: I figure it would be the 26th of
22 February. Either the 25th or 26th would be the last day for
23 those that are filed on the 5th -- an earlier date for
24 dealing with 14 and 8. Well, 14 we've already discussed but
25 there's an earlier date with respect to 8.

1 MR. SASS: May I ask a question?

2 JUDGE GLEASON: Yes, Mr. Sass.

3 MR. SASS: Why are we in such a hurry to get this
4 done?

5 JUDGE GLEASON: I don't know what you define as a
6 hurry. It's our responsibility to manage the proceeding of
7 these hearings. That's what I'm attempting to do.

8 MR. SASS: But you know, if the fuel load date
9 isn't until the end of the year and they're probably not
10 going to meet that.

11 MR. SILBERG: The fuel load date is June 15 and
12 we're now only negative 30 days to that so on a realistic
13 schedule you're looking at July, Mr. Sass.

14 JUDGE GLEASON: We have some uncertainty as to
15 the fuel date. The Applicant has the fuel date being the
16 middle of the year, not the end of the year.

17 All right. Let's get back now. We would have
18 the filing of testimony on March 22nd; we would have the
19 final decision and there would probably be some earlier that
20 than -- well, there would be -- with respect to issue number
21 1 and issue number 8. Excuse me, issue number 8 and issue
22 number 14 on summary judgments, but March 12th would be the
23 final date for a decision on the other three. Then we will
24 have the hearing commence April 9th.

25 Does everybody have that down?

1 MS. HYATT: Yes, I do.

2 JUDGE GLEASON: I would like to have some
3 discussion with respect to number 8 because currently we do
4 have the motion for summary judgment and we have a motion to
5 reword the contention. The final response date, that's ten
6 days for responding to that, if I understand right. I
7 presume that the Applicant and Staff are going to respond to
8 that motion?

9 MR. SILBERG: Yes, sir. February 6th is what I
10 count to be the ten-day date.

11 MS. WOODHEAD: Correct. I'm preparing a
12 response.

13 JUDGE GLEASON: All right. February 6th.

14 MR. SILBERG: We will hand deliver that to you,
15 Mr. Chairman.

16 JUDGE GLEASON: Ms. Hyatt, if I can talk just a
17 minute with respect to that motion of yours, let me get the
18 papers here.

19 (Pause.)

20 It appears to me, just from a rather quick
21 reading, that your rewording of issue 8 really is keyed to
22 the new rule on hydrogen control that has just been put into
23 effect by the Commission. In order that we don't get into a
24 lot of words that may have some connotations that are
25 different than what we would anticipate and not have an

1 issue like that upset the schedule, I'm wondering if you
2 would be agreeable -- and this is on the assumption, now,
3 that your motion is granted by the Board -- to have that
4 section so that it is worded as follows: "The Perry
5 Hydrogen Control system is inadequate to assure that large
6 amounts of hydrogen can be safely accomodated without a
7 rupture of the containment and a release of substantial
8 quantities of radioactivity to the environment."

9 In other words, I've kept as much of the original
10 contention as possible. I've just eliminated the reference
11 to the recombiners and put in the reference to the hydrogen
12 control system.

13 It seems to me with that wording you can get in
14 -- as I said before, it's all on the assumption that the
15 Board will grant it and I don't want any party on the basis
16 of this discussion to make any reference because, of course,
17 we all read yours. We haven't discussed this as a board and
18 we're waiting for the motion to come back or the responses
19 from the Applicant and Staff. But would that rewording on
20 the assumption that the Board would grant that motion be
21 satisfactory to you?

22 MS. HYATT: I don't know. I'd have to think
23 about it. The criteria -- I'm a little concerned about the
24 specific wording about a rupture of the containment. I
25 think perhaps a better wording would be "loss of containment

1 DAVpp

1 integrity" and for the number of routes. I'm concerned that
2 the rules expressly state the criteria in which the hydrogen
3 control system in a degraded core accident must meet. That
4 also includes equipment survivability. That is part of what
5 counts. It's something the Applicant asked us about in the
6 interrogatory, but I think I would prefer the wording of the
7 issue which we have set forth in the motion.

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1 JUDGE GLEASON: All right. I just wanted to ask
2 that. You may have opened up some other avenues which may
3 put you through a more rigid requirement. That's why I
4 wondered whether that's inadequate to your purposes. I
5 don't want to convince you one way or the other. I was just
6 trying to open it up and trying to maintain consistency with
7 respect to what I consider to be your original intention of
8 the contention.

9 I don't really have anything else to discuss.

10 MS. HYATT: Mr. Chairman, could I make a few
11 comments here concerning your requirement that responses be
12 by express mail?

13 JUDGE GLEASON: Excuse me a minute. Who is this
14 talking?

15 MS. HYATT: Ms. Hyatt.

16 JUDGE GLEASON: Go ahead, Ms. Hyatt.

17 MS. HYATT: Concerning your requirement that
18 responses be served by express mail, we find that to be
19 somewhat financially -- we might request if it would be an
20 acceptable alternative to mail the responses, say, five days
21 earlier.

22 JUDGE GLEASON: That would be fine.

23 MS. HYATT: All right.

24 As far as your schedule which you've set forth,
25 I'm afraid I must reiterate the discussion which I made in

1 my January 22nd letter that the safety evaluation report on
2 these issues has not been issued yet. The issue 16
3 Applicant owes us a tremendous amount of information and it
4 will be impossible to analyze it on the schedule which you
5 have provided.

6 JUDGE GLEASON: I understand. You know, there's
7 no sense your reiterating the point that you made in your
8 letter, but I think some of those misconstrue, you know, the
9 nature of some of these proceedings.

10 It's my responsibility and the Board's
11 responsibility to attempt to put out a reasonable schedule
12 and I think -- I'm assuming there's a good-faith effort on
13 the part of the Applicants to respond voluntarily to the
14 request for information.

15 I think I saw in the last week some supplementary
16 interrogatories on issue 16 as well as answering some new
17 interrogatories on 16. So I think that discovery is going
18 on and I don't think you can wait until everything is in as
19 you would like to see it in order for us to maintain the
20 schedule.

21 So what you can't get in the process of discovery
22 you can develop during the hearing and I think that the
23 discovery operation is going on to fulfill the purposes for
24 which it was intended.

25 Does anybody else have any comments, please?

1 MS. WOODHEAD: Yes, Judge Gleason. This is
2 Ms. Woodhead.

3 I have one comment, sort of in the same nature as
4 Ms. Hyatt's, on the diesel information.

5 JUDGE GLEASON: What information?

6 MS. WOODHEAD: The TDI diesel relevant to issue
7 16. We have just gotten a very voluminous report of
8 testing, et cetera, on the diesels. The Staff is of the
9 opinion that they will not be able to provide an evaluation
10 of that in the near future, meaning within the timeframe
11 that you are talking about. We don't have any problem with
12 our evaluation and responses on any other issue except this
13 one and that is simply because the materials the Applicant
14 has submitted are voluminous. They're required of the Staff
15 so the Staff must have sufficient time to review the
16 site-specific material for the diesels, and although we're
17 quite sympathetic to your schedule and we'll certainly try
18 to get it done as soon as possible, they presently think it
19 will be late March before they can complete their evaluation
20 which would prevent us from having proper testimony for
21 prefiling.

22 However, I will submit them your schedule and ask
23 if there's any way they can give this priority. There are
24 some other new term licenses with the same sort of
25 evaluation in progress, so it's sort of a matter of

1 the resources of Staff which is reviewing this particular
2 item having a priority with other new term licensees.

3 JUDGE GLEASON: Well, Ms. Woodhead, all I can say
4 is that we all do the best we can. I think you ought to put
5 a request in to see if you can't get that review
6 accelerated.

7 MS. WOODHEAD: I certainly shall.

8 JUDGE GLEASON: Does anybody have anything else,
9 please?

10 MS. HYATT: Mr. Chairman, this is Ms. Hyatt.

11 If it would speed things up any I am prepared to
12 respond quite a bit earlier -- to respond to the Staff's
13 motion for summary disposition on issue 8. I could file
14 that next week provided that Applicants can file their
15 response to the Staff motion simultaneously.

16 JUDGE GLEASON: Mr. Silberg?

17 MR. SILBERG: We'll do our best. I can't
18 promise. Ms. Hyatt is in the position that she doesn't have
19 to respond to her own filing, of course, which is due next
20 Wednesday and if we're to meet our summary disposition
21 deadline plus answer her motion the next day, I don't think
22 it would be very much longer before we would answer the
23 Staff's filing. I just couldn't promise exactly which day
24 we'd have that in. I think we'd certainly have it filed
25 before the 20-day period. Actually, it would be the 25-day

1 period.

2 JUDGE GLEASON: I don't think it really takes --

3 MR. SILBERG: I don't know why Ms. Hyatt can't
4 file hers as soon as possible and we'll file ours as soon as
5 possible.

6 MS. HYATT: The problem with that is once they
7 have my response in hand they will use their response to
8 Staff's motion to, in fact, reply to my response.

9 JUDGE GLEASON: I understand.

10 Mr. Silberg, I really don't think that's going to
11 require too much of an effort to respond to the Staff's
12 motion for summary disposition on 8. It's very simple but,
13 in any event, let me suggest a course of action. At the
14 time that you're ready to file, Ms. Hyatt, if you would call
15 Mr. Silberg collect --

16 (Laughter.)

17 MR. SILBERG: That's a new wrinkle,
18 Mr. Chairman.

19 JUDGE GLEASON: That's not a Board order. Ask
20 him if he's ready to file. See if you can't work it out
21 that way.

22 MR. SILBERG: I will shoot for a week from
23 today, Susan, if you want to plan on that and we'll chat
24 before then. Well, I'll shoot for next Friday.

25 JUDGE GLEASON: All right. We're going off the

1 record here just for a minute. We'll be back.

2 (Discussion off the record.)

3 JUDGE GLEASON: We're back with you again. The
4 Board really has nothing further to add. We're just
5 discussing the question of the schedule among us because
6 other Board members have other commitments, but it is clear
7 as far as the Board is concerned.

8 So we hope, Ms. Woodhead, that the Staff will
9 move ahead on 16 with a review of that study, and we will
10 issue an order with respect to this schedule, and we hope
11 everybody complies with the date requirement because we'd
12 like to get this hearing evaluated, the hearing underway,
13 and the decision of the Board out and to take what other
14 steps you'll have to take.

15 MR. SILBERG: Mr. Chairman, just one question.

16 I don't anticipate that we would need it but if
17 there are any issues left for hearing and if we do need more
18 -- well, how many weeks does the Board have available or has
19 that not been thought about?

20 JUDGE GLEASON: I don't think we've thought about
21 that. That depends, of course, very much on you people.

22 MR. SILBERG: I realize that. I don't anticipate
23 that we would need that much.

24 JUDGE GLEASON: If things are not available to us,
25 why, we would have to get an extension from whoever is

1 involved, delay it, and then go back and do it again but
2 we'd like to get this hearing started on the 9th and we'd
3 like to complete it as rapidly as we can.

4 MR. SILBERG: Okay.

5 JUDGE GLEASON: All right.

6 Anybody else?

7 MS. WOODHEAD: I believe not.

8 JUDGE GLEASON: We thank you for joining us again
9 and please move ahead with the schedule.

10 Thank you.

11 (Whereupon, at 10:35 a.m., the telephone
12 conference was adjourned.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.

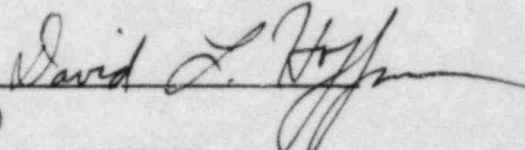
(Perry Nuclear Power Plants,
Units 1 and 2)

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50-441-OL

PLACE: WASHINGTON, D. C.

DATE: FRIDAY, FEBRUARY 1, 1985

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