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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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: BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET AL.)
(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket No. 50-440 OL
~~50-441-0L~~

NRC STAFF RESPONSE TO APPLICANTS'
MOTION FOR SUMMARY DISPOSITION OF ISSUE #15

I. INTRODUCTION

By motion dated February 5, 1985 the Cleveland Electric Illuminating Company et al. (CEI or Applicants) requested the Atomic Safety and Licensing Board (the Board) to grant summary disposition of Issue #15 pursuant to 10 CFR § 2.749 based on two affidavits and a Statement of Material Facts as to Which There Is No Genuine Issue to be Heard attached to the motion. NRC Staff hereby responds in support of Applicants' motion.

II. DISCUSSION

A. Legal Standards for Summary Disposition

The Commission's Rules of Practice provide for summary disposition of certain issues on the pleadings where the filings in the proceeding

show that there is no genuine issue as to any material fact and that the movant is entitled to a decision as a matter of law. 10 CFR § 2.749(d).

Use of summary disposition has been encouraged by the Commission and the Appeal Board to resolve contentions where the intervenor has failed to establish that a genuine issue exists. ^{1/} Under the Commission's rule authorizing summary disposition, as in Rule 56 of the Federal Rules of Civil Procedure, the issue may be summarily dismissed only where no genuine issue remains for trial when the record is viewed in the light most favorable to the party opposing the motion. ^{2/} Consequently, the burden of proof lies upon the movant for summary disposition who must demonstrate the absence of any genuine issue of material fact. ^{3/} A material fact is one that may affect the outcome of the litigation. ^{4/}

However, where no evidence exists to support a claim asserted, the Commission has made clear that intervenors must show that a genuine issue exists prior to hearing, and if none is shown to exist, the Board may

^{1/} Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-73-12, 6 AEC 241 (1973), aff'd sub nom, BPI v. Atomic Energy Commission, 502 F.2d 424 (D.C. Cir. 1974); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 91980). See also, Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

^{2/} Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 753-54 (1977); Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 467 (1962).

^{3/} Adickes v. Kress and Co., 398 U.S. 144, 157 (1980); Perry, ALAB-443, supra, at 753; 10 CFR § 2.732.

^{4/} Mutual Fund Investors Inc. v. Putnam Management Co., 553 F.2d 620, 624 (9th Cir. 1977).

summarily dispose of the contentions on the basis of the pleadings. ^{5/}
This obligation of intervenors is reflected in 10 CFR § 2.749(b) which
states that:

[w]hen a motion for summary disposition is made and supported
as provided in this section, a party opposing the motion may
not rest upon the mere allegations or denials of his answer;
his answer by affidavits or as otherwise provided in this
section must set forth specific facts showing that there is a
genuine issue of fact. If no such answer is filed, the
decision sought, if appropriate, shall be rendered.

The Staff submits that the documents of record, the affidavits and
statement of material facts submitted in support of Applicants' motions,
along with the affidavit by members of NRC's Auxiliary Systems Branch
and Radiological Assessment Branch provided with Staff's response, demon-
strate there is no genuine issue of material fact raised by Issue #15.
Accordingly, no issue exists for litigation on this subject, as discussed
below.

B. Issue #15

Issue #15, sponsored by Ohio Citizens for Responsible Energy (OCRE),
was admitted by the Board in 1982. ^{6/} The issue states:

Applicant has not demonstrated that it is prepared to prevent,
discover, assess and mitigate the effects of steam erosion on
components of the Perry Nuclear Power Plant that will be
subjected to steam flow.

The bases provided for this issue were two I&E "information notices"
concerning possible steam erosion in two non-safety related plant

^{5/} Prairie Island, CLI-73-12, supra at 242.

^{6/} Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power
Plant, Units 1 and 2), LBP-82-98, 16 NRC 1459 (1982).

components, and lack of an inservice inspection program. ^{7/} OCRE's February 11, 1985 Response to Applicants' motion for summary disposition of this issue alleges the steam extraction piping in Unit 1 must be replaced during the life of the plant. OCRE bases this assertion on a mischaracterization of Applicants' interrogatory response 9-46, attached. OCRE asserts the replacement of the steam extraction piping would result in high radiation doses for workers and violation of ALARA principles since Applicants could replace the piping now. OCRE Response, pp. 2-4.

The Staff evaluation of possible adverse effects from steam flow on all plant components is contained in the Perry Nuclear Power Plant (PNPP) Safety Evaluation Report Supplement (SSER) #5, issued February 1985 in Sections 3.6.1 pp. 3-1 to 3-3 and 10.3.4, p. 10-1. There, the Staff explains that only low moisture, high temperature steam will flow around safety-related components at PNPP and this type of steam will not adversely affect the integrity of plant components important to safety. SSER #5 p. 3-3. Further, there is no evidence that MSIVs are affected by steam exposure, but, in any event, those at PNPP are coated with a durable material. SSER § 10.3.4. Finally, although the turbine steam extraction piping is exposed to high moisture steam, this piping at Perry

^{7/} The original contention submitted by OCRE stated: "Applicants are not prepared to prevent, discover, assess and mitigate the effects of steam erosion on components of PNPP which will be subjected to steam flow. Steam erosion has been identified as the cause of recent failures of valves and piping (MSIVs and turbine exhaust lines: see NRC [Inspection & Enforcement] Information Notices 82-22 and 82-23). The staff has identified Applicants' lack of an inservice testing program for pumps and valves and leak testing of valves as an open item in Section 3.9.6 in the SER."

well exceeds the minimum wall allowance for erosion. SSER #5, p. 3-2, Sec.(1).

The Staff concludes, based on the Applicants' piping inspection program, the extra margin in the steam piping wall thickness at PNPP, the Applicants' piping failure analysis and the durable coating on MSIV seats, that there is assurance of continuing integrity of the PNPP components exposed to steam. SSER #5, pp. 3-2, 3-3, p. 10-1. In addition, the SER shows the Applicants submitted an inservice inspection program for pumps and valves in June, 1983. SSER #5, § 3.9.6, p. 3-10.

The attached affidavit of the Staff reviewer and author of Sections 3.6.1 and 10.3.4 of SSER #5 attests to the accuracy of the contents of these evaluations. The Staff affiant also states that the steam lines, including the extraction steam piping at both units of the Perry plant, are unlikely to need replacement for the life of the plant. Hearn Affidavit, ¶ 5. Further the Staff has considered the possibility of replacement of the extraction steam piping at PNPP and concluded the replacement could be performed in accord with ALARA principles. Lamastra Affidavit, ¶¶ 7-8.

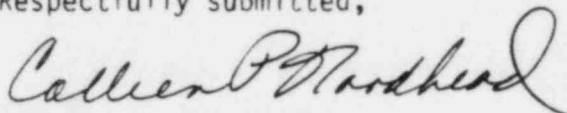
In summary, the following facts demonstrate there is no genuine issue of material fact concerning Issue #15: (1) the Applicants' have performed a thorough analysis of possible failure of piping subject to steam erosion; (2) a conservative margin of steam piping wall thickness exists at PNPP; (3) a comprehensive inservice inspection program will be performed at PNPP for piping likely to be affected by steam erosion; (4) MSIVs are unlikely to be affected by steam erosion, but if they are, the erosion would not affect safety; (5) safety-related systems and com-

ponents of the plant are exposed only to high temperature, low moisture steam which does not cause erosion; and (6) steam extraction piping poses no concerns for safe plant operation or workers' doses during maintenance or replacement. Since no genuine issue of material fact underlies Issue #15, it should be summarily disposed.

III. CONCLUSION

For the reasons stated, the Board should grant the Applicants' motion for summary disposition of Issue #15.

Respectfully submitted,



Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 25th day of February, 1985