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

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Before Administrative Judges:

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Morton B. Margulies, Chairman
James H. Carpenter
Gustave H. Linenberger, Jr.

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In the Matter of

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, ET AL.

(Perry Nuclear Power Plant,
Units 1 and 2)

Docket No. 50-440-OLA

(ASLBP No. 88-562-02-LA)

March 1, 1988

MEMORANDUM AND ORDER
(Scheduling of a Prehearing Conference)

Introduction

By Federal Register notice of December 11, 1987, the Commission advised the public that it is considering an application for the issuance of an amendment to the license for the Perry Nuclear Power Plant, Unit 1, filed by The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (CEI or Licensees). 52 Fed. Reg. 47064. The amendment would (1) delete Technical Specifications relating to the Main Steam Isolation Valve Leakage Control System (MSIVLCS) and (2) revise the leakage criteria for primary containment allowable leakage through the main steam lines. The public was apprised that any person whose interest may be affected by the proposed amendment and who wished to

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participate as a party could file a petition by January 11, 1988 for leave to intervene and for a hearing.

On January 7, 1988, Susan L. Hiatt on behalf of Ohio Citizens for Responsible Energy (OCRE) filed a petition for leave to intervene and requested a formal adjudicatory hearing in the matter. NRC Staff on January 20, 1988 filed a response concluding that OCRE has demonstrated the necessary interest or standing to intervene, but that it must comply with the requirement to submit at least one litigable contention prior to admission as a party and having a hearing. Licensees in an answer of January 22, 1988 submitted that OCRE has failed to meet the obligations which the Federal Register notice and NRC regulations place upon it. They requested that an Atomic Safety and Licensing Board be appointed to rule on OCRE's petition.

This Board was appointed on January 28, 1988 to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered. In this Memorandum and Order, we find that Petitioner has met the pleading requirements of 10 C.F.R. 2.714, the applicable regulation, except to the extent that it must plead at least one admissible contention, to be afforded party intervenor status and be granted a hearing. We further order the time by which proposed contentions and responses be filed and the date for holding a prehearing conference.

Positions of the Participants

OCRE is a private, nonprofit corporation specializing in issues of nuclear reactor safety. Members live and own property within 15 miles of the facility. Susan Hiatt is a member of OCRE and is authorized to petition to intervene on their behalf. OCRE's interest in the proceeding is the preservation of members' lives, physical health, livelihood, property values, a safe and healthy natural environment, and the cultural, historical and economic resources of northeast Ohio.

OCRE opposes only the part of the proposed amendment which would delete the Technical Specifications pertaining to the MSIVLCS. It believes that, should the requested amendment be granted, OCRE members face a increased risk to their lives and property. Citing NUREG-0933, Prioritization of Generic Safety Issues, November 30, 1983, OCRE asserts that Licensees' proposed action under the amendment, to rely on non-safety related, non-seismic category 1 components to retain fission products, demonstrates a threat to the lives, health, property and other interests of OCRE members. The aspects of the subject matter which OCRE plans to challenge are said to include the validity of the analytical assumptions and methodologies upon which CEI relies for the proposed action. OCRE would file specific contentions not later than 15 days prior to the first prehearing conference in the proceeding.

Licensees do not take issue with OCRE's establishing its interest. However, CEI submits that OCRE has not adequately shown how that interest might be affected by the results of the proceeding or the specific aspects of the subject matter of the proceeding.

CEI asserts OCRE's reference to NUREG-0933, involving an analysis of a core-melt accident with large Main Steam Isolation Valve leakage, incorrectly implies that the values given apply to the Perry facility. Further, OCRE's reliance on the postulated accident is stated to be inconsistent with the Technical Specification change which OCRE chose not to challenge. Licensees' claim that OCRE's reliance on the NUREG-0933 calculation cannot support a showing that OCRE's interest would be affected by the outcome of this proceeding. As to OCRE showing specific aspects, Licensees assert the petition fails to show anything specific. CEI alleges that OCRE has not met its burden.

Staff is in agreement with the Licensees that OCRE has adequately established its interest. It asserts Ms. Hiatt has set forth the effect of any order in the proceeding, i.e., a risk to members' lives and property, and that OCRE has identified the specific aspect of the subject matter of the proceeding as to which OCRE wishes to intervene.

Staff further asserts that the only thing lacking in the petition to meet all requirements of 10 C.F.R. 2.714 is the failure to set out a specific issue for litigation, a step that can be taken up to 15 days prior to holding of the prehearing conference.

Discussion

For one to successfully intervene under 10 C.F.R. 2.714, a petitioner is required to show the particular interest of the petitioner in the matter, the manner in which that interest may be adversely affected, and the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene. In

addition, prior to the first prehearing conference, the petitioner must file a supplement to the petition to intervene which sets forth a proposed contention or contentions the petitioner seeks to have litigated with the basis for each contention set forth with reasonable specificity. At least one contention must be found litigable.

OCRE's petition to intervene is legally sufficient to satisfy the requirements of 10 C.F.R. 2.714 except to the extent it has not filed a litigable contention.

It is without dispute OCRE has fulfilled the requirements of the regulation as to establishing its interest in the matter.

Petitioner has specified the aspect of the subject matter of the proceeding as to which the petitioner wishes to intervene. An aspect is broader than a contention but narrower than a general reference to the NRC's operating statutes and regulations. Petitioner has satisfied this requirement by identifying its concern as the deletion of the Technical Specifications involving the MSIVLCS and the consequences OCRE expects could flow from it, premised on NUREG-0933. OCRE has further advised that it plans to challenge the validity of the analytical assumptions and methodologies upon which Licensees rely. Admittedly, this last matter is not very informative, but taken together with the other information satisfies the regulatory requirement. The aspect of the proposed intervention is within the scope of the proceeding. OCRE has also identified how its interest may be adversely affected. Licensees would hold Petitioner to an excessive standard for satisfying the requirements of 10 C.F.R. 2.714. The admission of OCRE as a party

intervenor is conditioned upon submitting a litigable contention within the appropriate time limit.

Prehearing Conference

A prehearing conference will be held to consider the contentions OCRE shall file. In addition, it will serve to permit identification of the key issues in the proceeding, to take any steps necessary for further identification of the issues, and to establish a schedule for further actions in the proceeding. The conference will be recorded verbatim. CEI, OCRE, Staff or their counsel are directed to appear at the prehearing conference.

In order that there be adequate time allowed for Petitioner to file a supplement to its petition, to include its proposed contentions, for Licensees and Staff to respond, and for the Licensing Board to review the filings before the holding of the special prehearing, we set the following schedule, as authorized by 10 C.F.R. 2.711. This supersedes the time limits contained in 10 C.F.R. 2.714(a)(3) and 2.714(b).

OCRE shall file the supplement to its petition containing its proposed contentions, so that it is received in hand by the CEI, Staff and the Licensing Board by March 28, 1988. Licensees shall file their response with other participants and the Licensing Board by April 8, 1988, and Staff shall make its respective filing by April 15, 1988.

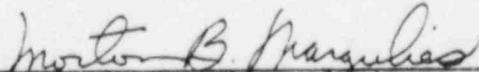
The above schedule will permit participants to meet and confer in an attempt to settle disputed issues, to frame agreed contentions, and

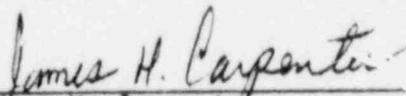
to narrow issues involving proposed contentions. All participants are called upon to take advantage of the opportunity.

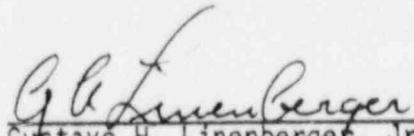
The prehearing conference will take place on April 21, 1988 and on the following day, if necessary, at Cleveland, Ohio. The precise time and place will be by further notice.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD


Morton B. Margulies, Chairman
ADMINISTRATIVE LAW JUDGE


James H. Carpenter
ADMINISTRATIVE JUDGE


Gustave H. Linenberger, Jr.
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 1st day of March, 1988.