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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

'86 APR -9 11:39

Alan S. Rosenthal, Chairman  
Dr. W. Reed Johnson  
Howard A. Wilber

OFFICE April 8, 1986  
DOCKETING & SERVICE  
BRANCH

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

SERVED APR 9 1986

Docket Nos. 50-440 OL  
50-441 OL

MEMORANDUM AND ORDER

Before this Board is the February 3, 1986 motion of intervenor Ohio Citizens for Responsible Energy (OCRE) seeking a reopening of the record in this operating license proceeding to allow OCRE to litigate the adequacy of the Perry facility's seismic design.<sup>1</sup> On April 3, we conducted a telephone conference with the parties in preparation for the forthcoming exploratory hearing to be held in aid of our determination respecting whether the new issue raised by the OCRE motion has true safety significance.<sup>2</sup> On the basis of

<sup>1</sup> The motion was prompted by a January 31, 1986 earthquake in the vicinity of the facility.

<sup>2</sup> See our March 20, 1986 order (unpublished), as modified in our March 27 order. In addition to OCRE's representative, counsel for the applicants and the NRC staff participate in the conference. For reasons set forth in an  
(Footnote Continued)

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the discussion during the conference, we have made these determinations:

1. The applicants' request that the hearing be conducted in the Washington, D.C., area is denied. It is the general policy of this agency to hold its evidentiary hearings in licensing proceedings at a location in the vicinity of the facility involved. Appeal boards customarily observe that policy in the absence of the agreement of all participating parties that there is good reason to hold the hearing in a different location (e.g., the NRC Public Hearing Room in Bethesda, Maryland). In this instance, OCRE objected to the applicants' request and, thus, such agreement was not obtained.

2. It now appears that the hearing will commence on Monday, May 12, 1986, in the Council Chambers of the Mentor Municipal Center, 8500 Civic Center Boulevard, Mentor, Ohio. The specific hour will be announced at a later time and may

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(Footnote Continued)

April 3 letter to its counsel, intervenor Sunflower Alliance was not permitted to take part in the conference. That letter went on to indicate, however, that Sunflower is free to move for leave to participate in the exploratory hearing. Any such motion must, however, be accompanied by a specific concrete showing of an ability to contribute to the development of a record on the question to be considered at that hearing.

hinge upon whether the Board undertakes a site visit that morning.<sup>3</sup>

3. With the exception of that of Drs. Hinze and Alexander, all prepared testimony of the witnesses for the applicants and the NRC staff shall be received by us and the counsel or representative for the other party participants by 5:00 p.m. on April 28. If Drs. Hinze and Alexander are available to serve as witnesses for the applicants, their testimony must be received by all concerned no later than 5:00 p.m. on May 5.

4. OCRE does not intend to offer any witnesses of its own but, instead, will present its case at the exploratory hearing through the cross-examination of the witnesses for other parties. In that circumstance, the applicants' witnesses will be examined first, followed by the staff's witnesses.

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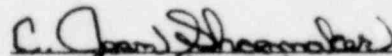
<sup>3</sup> During the telephone conversation, the Board noted that it wished, if possible, to examine the seismic instrumentation on the facility site (as well as, in connection with one of the issues raised on the pending appeals from the Licensing Board's September 3, 1985 initial decision, elements of the facility's hydrogen control system). The applicants' counsel noted that the facility may have achieved criticality by then and, if so, it was possible that a site visit would not serve our objective. If the site visit is feasible, it will likely be held on the morning of May 12, with the evidentiary hearing commencing early in the afternoon. Otherwise, the hearing will likely start in the morning.

5. Although the Council Chambers will be available for our use through Friday, May 16, it is our current expectation that, given its limited purpose and scope, the exploratory hearing will be completed within two to three days, i.e., by Wednesday, May 14.

6. The remaining details respecting the exploratory hearing (such as its starting time on May 12) and the site visit (if one is to be scheduled) will be covered in a subsequent order, to be issued as soon as practicable.

It is so ORDERED.

FOR THE APPEAL BOARD

  
C. Jean Shoemaker  
Secretary to the  
Appeal Board