

May 22, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
 )  
THE CLEVELAND ELECTRIC ) Docket Nos. 50-440  
ILLUMINATING COMPANY, ) 50-441  
DUQUESNE LIGHT COMPANY, )  
OHIO EDISON COMPANY, ) (Operating License)  
PENNSYLVANIA POWER COMPANY, and )  
THE TOLEDO EDISON COMPANY )  
 )  
(Perry Nuclear Power Plant )  
Units 1 and 2) )

APPLICANTS' BRIEF ON CONTENTIONS OF  
OHIO CITIZENS FOR RESPONSIBLE ENERGY

In its April 9, 1981 Memorandum and Order Scheduling Prehearing Conference Regarding Petitions for Intervention, the Licensing Board directed that each party shall submit a brief on why issues included in petitions should be considered relevant to the proceedings in whole or in part or should be considered irrelevant to the proceedings. Applicants herein present their analysis of the contentions proposed by Ohio Citizens for Responsible Energy ("OCRE"). Those contentions are set forth in OCRE's Supplement to its Petition for Leave to Intervene, dated April 30, 1981.

Contention 1 (Clam Biofouling)

This proposed contention asserts that Applicants have not properly accounted for the possibility that certain Asiatic

clams (corbicula fluminea) would cause biofouling of the Perry Nuclear Power Plant's source of process water. The contention further asserts that control of the Asiatic clam could cause unacceptable environmental impacts, that massive detachment of clams could cause partial blockage of "intake vessels and condensers", and that the financial aspects of necessary maintenance must be assessed.

Applicants oppose admission of the contention on the grounds that no basis is provided for the proposition that Asiatic clams are likely to be found in the vicinity of the Perry facility. Pursuant to 10 CFR §2.714(b), a contention to be acceptable must be accompanied by its "bases . . . set forth with reasonable specificity." The contention does include a basis for the proposition that Asiatic clams can cause a biofouling in steam generating plants, by referencing a study, L. B. Goss, et al., "Control Studies on Corbicula for Steam Generating Plants," First International Corbicula Symposium, Texas Christian University, at 139 (1977). However, the key question is whether Corbicula are likely to be found at the Perry site. The Goss study only speaks to the presence of Asiatic clams in the Tennessee Valley region. It neither mentions Lake Erie nor predicts where they might occur. The contention alleges that "[t]here is at least a fifty percent chance that Lake Erie is suitable for corbicula", but provides no basis for this assertion. Thus, OCRE has not provided a basis for the relevance of the Asiatic clam issue to the Perry facility.

## Contention 2 (Diesel Generator Reliability)

This proposed contention argues that the Perry facility's "diesel generators for on-site electricity generation are not highly reliable." OCRE states that "[t]he St. Lucie difficulties with this system would mandate the Applicant include not two, but three (3) diesel generating systems (independent) with at least two different suppliers/manufacturers for those three units. Florida Power & Light Co. (St. Lucie Plant, Unit 1), ALAB-603 (1980)." Applicants object to the admission of this contention on the grounds of lack of relevance to Perry.

The "St. Lucie difficulties" and the reference to ALAB-603, 12 NRC 30 (1980) would clearly indicate that the basis for this contention is the St. Lucie situation. That situation bears little relevance to Perry. As ALAB-603 makes clear, the genesis of the St. Lucie proceeding was the peculiar geographic situation at St. Lucie.

Briefly, because of Florida's peninsular shape the applicant's electrical distribution system (grid) can be connected to the grids of other utilities only to the north. This suggested -- and applicant's operating history tended to confirm -- that FP&L's grid might be less reliable than ones interconnected with multiple grids. There was no indication, however, that the on-site emergency power system at St. Lucie had been designed to compensate for a lesser degree of grid stability and the Licensing Board had no occasion to explore that matter.

12 NRC at 31. Since Ohio does not share Florida's peninsular shape, the relevance of "the St. Lucie difficulties" is at best questionable. The Perry facility is interconnected through



five transmission circuits, going off to the east, west and south. Perry Final Safety Analysis Report ("FSAR"), § 8.2.1.1.

Furthermore, the contention's lack of basis is indicated by its urging that "Applicant include not two, but three (3) diesel generating systems." In fact, as the FSAR clearly indicates, the Perry facility has six diesel generators, three for each unit. FSAR §8.3.1.1.3. In addition, the contention argues that the diesels should be supplied by "at least two different suppliers/manufacturers for those three units". In fact, the Perry diesels are supplied by two different manufacturers; two diesels on each unit are manufactured by DeLaval and one by General Motors. This is further evidence of the contention's total lack of basis and relevance to Perry.

The FSAR describes the qualification program for the Perry diesels, including compliance with the applicable IEEE Standard, Regulatory Guide and Branch Technical Position. FSAR §8.3.1.1.3.2.b.11. OCRE has provided no basis for calling this program into question.

#### Contention 3 (Radiation Blocking Agent)

This contention claims that "Applicant should include a program to distribute potassium iodide, a radiation blocking agent, to every household within ten miles of the plant in its operation plans." Applicants do not object to the admission of this contention.

#### Contention 4 (Steam Injury)

This contention asserts that Applicants must demonstrate that the maintenance program for steam valves is safely conducted so that workers necessary for the safe operation of the plant are not injured by escaping steam. Applicants oppose this contention as being irrelevant to the Perry facility and as lacking basis.

The lack of relevance is clear from OCRE's use of a non-nuclear accident at Sequoyah Unit 2, a Westinghouse-designed, pressurized water reactor, to support an argument that such an accident has some bearing on the Perry facility, a General Electric-designed boiling water reactor. Furthermore, OCRE has provided no basis for the assertion that the cited accident at Sequoyah (much less a similar postulated accident at Perry) had any impact on safe operation of the plant. According to the contention, the injured personnel were "technicians and maintenance workers", not the reactor operators. At the time of the injuries, Sequoyah Unit 2 had not even loaded fuel. Thus, there is no basis presented for any safety significance of the Sequoyah injuries or their applicability to Perry.

#### Contention 5 (Hydrogen Bubbles)

This contention claims that the Perry containment "could not sustain a hydrogen burn similar to the one which occurred at TMI Unit 2." Applicants oppose the admission of this contention on the grounds that it is the subject matter of a pending rulemaking proceeding.

On October 2, 1980, the Commission published in the Federal Register a notice of proposed rulemaking entitled "Interim Requirements Related to Hydrogen Control and Certain Degraded Core Considerations". 45 Fed. Reg. 65466 (1980). The proposed rulemaking recognizes the magnitude of hydrogen generated during the course of the Three Mile Island accident and proposes a series of measures involving hydrogen management, hydrogen control penetrations, hydrogen recombiner capacity, and reactor coolant system venting. At the same time, the Commission published an Advance Notice of Proposed Rulemaking entitled "Consideration of Degraded or Melted Cores in Safety Regulation", 45 Fed. Reg. 65474 (1980). At least one of the issues to be considered in this latter proceeding focussed on the issue of hydrogen generation:

7. Should the NRC require incorporation into containment design, systems for controlling combustion of hydrogen? Do you favor methods of control that suppress combustion or do you favor controlled burning? If you favor suppression of combustion, what techniques would you recommend and should they vary as a function of the design capability of current containments? If you favor controlled burning, do you recommend open flames, spark plugs, catalytic combustors, or some other means? What percent of zirconium oxidation in the core and at what rate would you design for? Would you respond differently for different reactor or containment types? If so, what differences would you recommend?

45 Fed. Reg. at 65476.

Commission precedent establishes that "licensing boards should not accept in individual licensing proceedings contentions which are (or are about to become) the subject of general



rulemaking by the Commission." Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974). From the standpoint of consistency and administrative economy, generic consideration of such generic issues is clearly the sensible approach. Ecology Action v. U. S. Atomic Energy Commission, 492 F.2d 990, 1002 (D. C. Cir. 1974); Union of Concerned Scientists v. Atomic Energy Commission, 499 F.2d 1069, 1081-82 (D. C. Cir. 1974).

This doctrine has been applied with respect to the same rulemaking proceedings cited above. In the TMI Restart proceeding, the licensee sought to exclude testimony on the subject of controlled filtered venting of the containment, pointing out that this was one of the issues in the Advance Notice of Proposed Rulemaking. The Licensing Board ruled that the venting system discussed in the rulemaking

is the very system proposed by [the witness'] testimony. Consistent with the Commission's order, we may not permit litigation of it in this proceeding. Rather it will be addressed in the rulemaking proceeding. In that forum, [the witness and the intervenor] may present their views. If the Commission finds, as [the witness], members of the ACRS and others have urged, that a controlled filtered containment venting system should be required, the results of the rulemaking will reflect this.

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), Memorandum and Order Denying Admission of Testimony of Beyea in Support of ANGRY Contention V(D)", slip op. at 6 (March 12, 1981). The TMI licensing board relied upon

the Douglas Point decision, ALAB-218 supra, as support for its action.

Contention 6 (Pressure Vessel Cracking)

This contention alleges that cracks in the reactor pressure vessel will be difficult to detect and repair before they led to catastrophic failure. As the basis for this contention, OCRE cites an article from the British publication, Nature, Vol. 283 at 84 (February 28, 1980). The Nature article deals with testimony to a House of Commons committee on the possibility of cracking in pressure vessels for a series of pressurized water reactors being considered in Great Britain.

Aside from the questionable relevance of information on PWR pressure vessels in a proceeding on a boiling water reactor, the contention must be rejected as a violation to the Commission's Indian Point rule.

The Commission has determined in several prior regulatory proceedings that, absent some special circumstances, pressure vessel integrity is not to be considered in licensing proceedings. For example, in Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), ALAB-137, 6 DEC 491, 503 (1973), the Appeal Board said:

The probability of a rupture of the pressure vessel is considered so low that it becomes an appropriate area of inquiry by a licensing board only upon a showing by a party of "special circumstances." Such a showing requires more than a mere allegation thereof; and a board is authorized to exclude contentions or challenges regarding pressure vessel integrity which have no substantial or prima facie basis. (footnotes omitted)



See also Consolidated Edison Co. of New York (Indian Point Unit No. 2), CLI-72-29, 5 AEC 20 (1972); and Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 336 (1973). OCRE's reference to the Nature article does not constitute "special circumstances". As the Commission stated in Indian Point, there must be "evidence...directed to the existence of special considerations involving a particular facility at issue." CLI-72-29, 5 AEC at 21 (emphasis added). OCRE's basis is clearly not directed at the "particular facility at issue", nor even at BWR's in general. Rather, it applies to PWR's in general. Since OCRE has not made the required showing of special circumstances here, this contention should not be admitted.

A further ground for the contention's inadequacy is its failure to indicate why the reactor pressure vessel in-service inspection program for the Perry facility, as described in the FSAR, is inadequate. It must first be noted that in-service inspection requirements are specified by regulation. 10 CFR §50.55a(g)(2). The program for Perry is set forth in FSAR §5.3.1.6 and complies with Commission regulations. OCRE has not alleged that Applicants' in-service inspection program fails to comply with the regulatory requirements. To the extent that OCRE's contention implies that the requirements in 10 CFR §50.55a(g)(2) are inadequate, such a contention must be rejected for failure to comply with the procedures of 10 CFR §2.758.

#### Contention 7 (Premature Decommissioning)

This contention asserts that Applicants do not have the funds needed to decommission the Perry plant prematurely in the event of a Three Mile Island type accident. Applicants oppose admission of this contention on the grounds that it is about to become the subject of rulemaking.

The NRC has undertaken a generic investigation of the questions associated with the financial implications of "premature decommissioning" and has stated that a rulemaking proceeding on this issue will be undertaken in the near future. See NUREG-0586, Draft Generic Environmental Impact Statement on Decommissioning Nuclear Facilities (January 1981).

For the reasons discussed above (see pp. 6-8 supra), litigation of matters which are, or about to become, the subject of rulemaking in individual licensing proceedings should not be allowed.

#### Contention 8 (Computer Surveillance of Reactor Pressure Vessel)

This contention asserts that Applicants do not have "an appropriate material surveillance program for the reactor pressure vessel", as required by General Design Criterion 32, 10 CFR Part 50, App. B. OCRE alleges that "Applicants have not adequately considered all surveillance techniques, specifically the computer mentioned by Oak Ridge Laboratory.

ORNL/CSD/TM-135."

The contention should be rejected for several reasons. First, it assumes that on radiological health and safety

issues, alternatives must be considered. While alternatives analysis is required by the National Environmental Policy Act (see 42 U.S.C. §4332(2)(C)(iii) and 10 CFR §§51.20, 51.23), the appropriate test for radiological safety issues under the Atomic Energy Act is "reasonable assurance" that the public health and safety is protected. See Power Reactor Development Co. v. International Union, 367 U.S. 396 (1961).

A second reason for rejecting the contention is its lack of relevance to the Perry facility, or indeed to the operation of any nuclear facility. The sole basis supplied for the contention is the Oak Ridge National Laboratory report, ORNL/CSD/TM-135, which it cites. This report, entitled "The Light Water Reactor-Pressure Vessel Surveillance Project Computer System" (October 1980), deals with a test program for pressure vessel materials using a research reactor as the radiation source. The computer system is used to control electric heating devices which simulate power reactor conditions. The purpose of the computer is summarized in the report's abstract:

The computer system controls the pressure vessel specimen environment in the presence of gamma heating so that in-vessel conditions are simulated. Instrumented irradiation capsules, in which the specimens are housed, contain temperature sensors and electrical heaters. The computer system regulates the amount of power delivered to the electrical heaters based on the temperature distribution within the capsules. Time-temperature profiles are recorded along with reactor conditions for later correlation with specimen metallurgical changes.



ORNL/CSD/TM-135, p. xi. Thus, "the computer mentioned by Oak Ridge Laboratory" has nothing to do with a surveillance program for the Perry facility.

Finally, the contention appears to challenge NRC regulations. Materials surveillance requirements for reactor pressure vessels are specified in 10 CFR Part 50, App. H. The FSAR sets forth a material surveillance program for the Perry reactor pressure vessels complying with Appendix H. FSAR §5.3.1.6. OCRE has not claimed that Applicants' program fails to comply with Appendix H. Thus, to the extent that OCRE is suggesting something beyond the requirements of Appendix H, it is challenging NRC regulations. Such challenges are not permissible in individual license proceedings. 10 CFR §2.758.

Contention 9 (Machining Defects in Reactor Pressure Vessel)

This contention alleges that Applicants have "not met the reasonable assurance burden in regard to the [reactor pressure vessel] integrity and the defects which occurred during machining." The contention cites as a basis an interim report filed with the NRC by Applicants on November 5, 1975.

Applicants oppose admission of this contention for lack of basis. 10 CFR §2.714(b). The interim report cited in the contention states

A hole for an LPRM [local power range monitor] in-core housing (approximately 2 inch diameter) was drilled at incorrect coordinates in the bottom head of reactor pressure vessel 1 because of an error in transferring coordinates from a drawing to an operator work sheet. The CBI Nuclear Company system detected the deficiency

and notified General Electric Company who in turn notified the Cleveland Electric Illuminating Company. At present, the CBI Nuclear Company proposed fix is to install a plug in the same manner as the LPRM in-core housings are installed.

This repair method was in fact carried out, as documented in Applicants' final report on the matter to the NRC, dated August 31, 1977, and as reviewed by the NRC, Inspection Report No. 50-440/78-01 (February 15, 1978). That Inspection Report found no items of non-compliance with NRC regulations.

For OCRE to allege that reactor pressure vessel integrity has not been reasonably assured, OCRE must at least provide some basis that the pressure vessel defect (an extra hole, identical to others for LPRM in-core housings) and the repair (installing a plug in the same manner as the LPRM in-core housings are installed) have somehow compromised pressure vessel integrity. Particularly in view of the Applicants' final report and the NRC's Inspection Report, something more than OCRE's bare allegation is needed.

Another reason for rejecting the contention is that the relief which it seeks, "further testing of the RPV prior to criticality stage", is already provided for. As shown in the Final Safety Analysis Report, hydrostatic tests will be carried out on the pressure vessels in accordance with the applicable ASME Code requirements. FSAR §§5.2.4.7, 5.2.4.8. Since the relief sought by OCRE is already provided for (and since OCRE has not alleged that Applicants' testing program is inadequate), the contention is at best moot.

#### Contention 10 (Demonstrable Need)

This contention asserts that Applicants "must show that there is a demonstrable need for the Perry plant" and asserts that Applicants have failed to account for

- (1) "all significant factors affecting demand";
- (2) "complete internalization of all significant external costs . . .";
- (3) "the impact of energy conservation measures";
- (4) "the effect of alternative price designs"; and
- (5) "the possibility of interconnection as a means of meeting peak demand."

Applicants believe that this contention must be denied.

The underlying premise of OCRE's contention is that Applicants must establish at the operating license stage, years after the plant's construction has been authorized and following the investment of literally billions of dollars in the project, that there is a need for the facility. In essence, OCRE wants to argue that the National Environmental Policy Act's directive to consider alternatives to major federal actions requires the NRC to consider abandoning a completed nuclear power plant. Such an alternative is on its face unreasonable, and under NEPA, need not be considered.

Applicants' opposition to the consideration of this contention is based on the principle, now well established both in the courts and before the Commission, that the National Environmental Policy Act is applied with a "rule of reason" for the range of alternatives that must be considered. This principle was established in Natural Resources Defense Council v. Morton, 458 F. 2d 827, 834-36 (D. C. Cir. 1972); and has



been consistently applied since then. See, e.g., Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978); Carolina Environmental Study Group v. U. S., 510 F.2d 796, 798 (D. C. Cir. 1975); Concerned About Trident v. Rumsfeld, 555 F.2d 817, 825 (D. C. Cir. 1977); Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-455, 7 NRC 41 (1978).

At the operating license stage, the rule of reason precludes consideration of an alternative that requires the abandonment of already constructed facilities. Applicants have already been authorized, under the construction permits, to complete the construction of the two nuclear power units. A shift at this time to the alternatives proposed by OCRE is unreasonable.

NEPA case law supports the proposition that alternatives to completed projects need not be considered under the rule of reason. In Badoni v. Higginson, 455 F. Supp. 641 (D. Utah 1977), one of the issues before the court was whether NEPA required an environmental impact statement to be prepared prior to the operation of a dam and reservoir. Holding that no EIS was required, the Court noted:

. . . [t]he courts have consistently interpreted NEPA to require a consideration of alternatives which are reasonable and do not demand what is not meaningfully possible.

455 F. Supp. at 649. Similarly, the Federal District Court for the Southern District of New York considered the application of NEPA to a substantially completed Federal housing project and stated:

In reviewing HUD's weighing of the advantages and disadvantages of the appropriate alternatives, we will not turn the clock back and compel the agency to disregard present realities or require HUD to pivot its decision on facts that no longer exist.

Trinity Episcopal School v. Harris, 445 F.Supp. 204, 220 (S.D.N.Y. 1978), rev'd 590 F.2d 39 (2d. Cir.), rev'd 444 U.S. 223 (1980).

As noted by the United States Court of Appeals for the District of Columbia Circuit in Maryland National Capital Park and Planning Commission v. U. S. Postal Service, 487 F.2d 1029 (D. C. Cir. 1973), in declining to reverse the denial of an injunction against construction of a substantially completed facility, notwithstanding the absence of any NEPA review;

. . .[w]e must face the reality that the building was substantially complete as of May 1973.  
487 F.2d at 1041

The appropriate time to raise the issue of whether the Perry plant, rather than some alternative, should have been built, was before construction was authorized. In fact, that issue was litigated and relitigated during the construction permit proceeding. Cleveland Electric Illuminating Co. (Perry

Nuclear Power Plant, Units 1 and 2), LBP-74-69, 8 AEC 538, 543-556 (1974); LBP-74-76, 8 AEC 701, 710-711 (1974); LBP-75-53, 2 NRC 478, 492-494 (1975); LBP-75-73, 2 NRC 946, 965-968 (1975); ALAB-443, 6 NRC 741, 748-751 (1977). If the facility has already been completed, NEPA does not require reassessment of the project. See, e.g., Save Our Wetlands v. U. S. Army Corps of Engineers, 549 F.2d 1021 (5th Cir.) cert. den. 434 U.S. 836 (1977); Ogunquit Village Corp. v. R. M. Davis, 553 F.2d 243 (1st Cir. 1977).

In this proceeding, environmental review of the plant itself was completed at the construction permit stage. Reopening that decision at this time would be, in Applicants' view, inappropriate. The National Environmental Policy Act "is . . . an authorization to undo what has already been done . . . ." Jones v. Lynn, 477 F.2d 885, 890 (1st Cir. 1973), quoted in National Wildlife Federation v. Appalachian Regional Commission, \_\_\_ F.2d \_\_\_, 15 ERC 1945 (D.C. Cir. 1981). The effort "would be a vain attempt to reform past decisionmaking", id. at 1952 (programmatic EIS not required where program substantially completed). Such "vain attempts" should not be entertained as contentions.

#### Contention 11 (Plant Site)

This contention alleges four reasons for considering the Perry plant site "not suitable for the safe operation of a nuclear plant pursuant to 10 CFR Part 100." None of the four



reasons constitutes a valid basis for a contention. The first two attempt to rehash issues already litigated at the construction permit stage. The second two are challenges to Commission regulations.

The first allegation is that the "seismology of the site, and specifically the underlying fault, are unfavorable and have not been adequately compensated for by increasing the number of engineered safeguards." As an introductory matter, it must be recognized that the question of site suitability is a matter to be decided at the construction permit stage. Congress long ago pointed out that "the critical point in reactor licensing [is] the construction permit stage -- where the suitability of the site is to be judged." S. Rep. No. 1677, 87th Cong., 2d Sess., 2-7 (1962), quoted in Union of Concerned Scientists v. Atomic Energy Commission, 499 F.2d 1069, 1076 (D. C. Cir. 1974). The "underlying fault" referred to in the contention was specifically examined during the construction permit proceeding. Both the licensing board and the appeal board examined the geologic anomalies at the site in great detail and resolved the issue. LBP-75-53, 2 NRC 478; ALAB-294, 2 NRC 663; ALAB-298, 2 NRC 730; LBP-75-73, 2 NRC 946; ALAB-443, 6 NRC 741; ALAB-449, 6 NRC 884. In ALAB-449, the Appeal Board found that:

1. The faults and other irregularities in the shale at the site (a) are nontectonic in origin, (b) are the result of glacial activity and (c) cannot be expected to cause earthquakes.
2. There is no reason to alter the seismic design of the plant.

3. As a result of applicants' removal of the degraded shale and replacement of it with suitable fill material, the foundation for the plant is adequate.
4. The anomalies in the shale at the site will not interfere with the proper functioning of the underdrain system.
5. The site is a suitable location for the Perry plant.

6 NRC at 885. With this background, something more than OCRE's naked allegation is required before a relitigation of the seismology of the site is allowed.

The second allegation is that Applicants' original site investigations are invalid because they "were tainted by Applicant's financial interest in the outcome of the investigation." This baseless claim has no foundation, either real or imagined, and must be rejected.

The third allegation is that the "population center distance is too short in light of the accident at TMI and the recommendations in the Rogovin report." This allegation is a challenge to NRC regulations in 10 CFR Part 100 and is inappropriate in this proceeding. 10 CFR §2.758. Population center distance is defined in 10 CFR §100.3(c) as the distance from the reactor to the nearest boundary of a densely populated center containing more than about 25,000 residents. The procedures for determining an acceptable population center distance are specified in 10 CFR §§100.11(a)(3) and 100.11(b). Those regulations and the Commission's interpretation of them

have been judicially scrutinized and approved. Northern Indiana Public Service Co. v. Porter County Chapter of Izaak Walton League, 423 U.S. 12 (1975); Porter County Chapter of Izaak Walton League v. Atomic Energy Commission, 533 F.2d 1101 (7th Cir. 1976). OCRE does not even allege that the population center distance for the Perry facility fails to comply with Part 100. Furthermore, the population center distance was explicitly considered in the construction permit phase. LBP-74-69, 8 AEC at 571-575; LBP-74-76, 8 AEC at 705-710; LBP-77-29, 5 NRC 1121, 1124-1129.

OCRE's reference to the Rogovin report does not help its case. That report does not change existing Commission regulations. Nor does it recommend a change in Part 100 for projects such as Perry. For existing reactors, the thrust of the Rogovin Commission's report was the establishment of emergency planning zones. See Nuclear Regulatory Commission Special Inquiry Group, Three Mile Island, A Report to the Commissioners and to the Public, vol. II, Pt. 3, at 1047 (1980). Subsequent to the Rogovin report, the Commission did implement the emergency planning zone concept. 10 CFR §50.47 and Appendix E to Part 50. The Rogovin report did suggest more remote siting for "future siting" of "future reactors", id. vol. I at 130, and the NRC has undertaken a rulemaking proceeding to examine its siting rules. See Advance Notice of Rulemaking: Revision of Reactor Siting Criteria, 45 Fed. Reg. 50350 (July 29, 1980); Notice of Intent to Prepare Environment Impact Statement for



Revision of Regulations Governing the Siting of Nuclear Power Plants, 45 Fed. Reg. 79820 (December 2, 1980). Under the Douglas Point doctrine, see pp. 6-8 supra, this matter would not be appropriate for litigation in this proceeding, even if it applied to existing projects. (The Advance Notice of Rulemaking states that it is intended for application to facilities for which a construction permit application is filed after October 1, 1979.)

The contention's fourth allegation is that "the hypothetical fission product release assumed by Applicant in determining an exclusion zone, low population zone and a population center distance is underestimated in light of TMI occurrence." In fact, NRC regulations contemplate that the fission product release used in determining the exclusion area, low population zone, and population center distance will be based on a "substantial melt-down of the core with subsequent release of appreciable quantities of fission products." 10 CFR §100.11(a) fn. 1. The fission product release assumptions are further spelled out in Technical Information Document 14844 which is referenced in 10 CFR §100.11. The issue of fission product release was also explicitly considered at the construction permit hearings in response to an intervenor's contention. The licensing board found that for Part 100 purposes,

The source term used is a postulated, non-mechanistic-caused release of 100% of the fission product noble gases available in the core inventory, and 25% of the radioiodine in the fuel inventory (i.e. TID-14844 assumptions).

LBP-77-29, 5 NRC at 1127. The board concluded that

The exclusion area, low population zone, and population center distances determined for the Perry facility meet the Commission's site criteria and have been determined appropriately, using the methodology of TID 14844 as guidance, with each unit operating at design power.

Id. at 1129.

Since the maximum offsite individual dose from TMI according to the Rogovin report was less than 100 millirem and the maximum thyroid dose less than 7 millirem, vol. II, Pt. 2 at 400, and the Part 100 limits are 300 rem (whole body) and 25 rem (thyroid), 10 CFR §100.11(a), using the TMI fission product release would obviously be less conservative than the analyses already performed for the Perry facility.

#### Contention 12 (CANDU Alternative)

This contention asserts that Applicants should be required to operate a CANDU nuclear steam system which allegedly has lower occupational and environmental radiation doses. OCRE's basis for this is a 1975 report. OCRE argues that this alternative is to be considered because "NEPA directives require Applicant to consider those alternatives to its facility which are available and reduce or avoid adverse environmental or other effects." Applicants object to the admission of this contention.

The contention is inadmissible since it seeks to raise as a NEPA issue at the operating license stage a contention which

cannot possibly be considered new information. The alternative of a CANDU reactor to the Perry BWR is hardly a new possibility. The report which OCRE itself cites is dated 1975, two years before the Perry construction permits were issued. Under 10 CFR Part 51, the operating license NEPA review need only consider new information. See 10 CFR §§51.21, 51.23, 51.26.

The contention is also inadmissible since the alternative that it raises, abandoning the Perry BWR and building a CANDU reactor in its place, is patently an unreasonable alternative. Contrary to OCRE's statement that NEPA requires consideration of "alternatives to [Applicants'] facility which are available", NRC and the courts have long held that NEPA requires a consideration only of reasonable alternatives. See pp. 14-17 supra. Abandoning an already constructed facility in which billions of dollars are invested cannot conceivably be a reasonable alternative. Id.

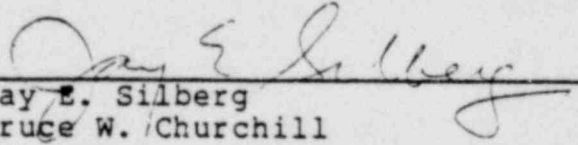
Contention 13 (Pipe Break-Scram Discharge Volume)

Applicants do not object to the admission of this contention.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By

  
Jay E. Silberg  
Bruce W. Churchill

Counsel for Applicants

1800 M Street, N. W.  
Washington, D. C. 20036  
(202) 822-1000

Dated: May 22, 1981



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
THE CLEVELAND ELECTRIC	)	Docket Nos. 50-440
ILLUMINATING COMPANY,	)	50-441
DUQUESNE LIGHT COMPANY,	)	(Operating License)
PENNSYLVANIA POWER COMPANY,	)	
and THE TOLEDO EDISON COMPANY	)	
	)	
(Perry Nuclear Power Plant,	)	
Units 1 and 2)	)	



CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Special Prehearing Conference Brief," "Applicants' Brief on Contentions of Sunflower Alliance, Inc. et al." and "Applicants' Brief on Contentions of Ohio Citizens for Responsible Energy," dated May 22, 1981, were served upon those persons on the attached service list, by United States Express Mail, postage prepaid, except for first class mail to those individuals indicated by an asterisk on the service list, on this 22nd day of May, 1981.

  
\_\_\_\_\_  
Bruce W. Churchill

Dated: May 22, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
CLEVELAND ELECTRIC ILLUMINATING	)	Docket Nos. 50-440
COMPANY, <u>et al.</u>	)	50-441
	)	
(Perry Nuclear Power Plant,	)	
Units 1 and 2)	)	

SERVICE LIST

* Peter B. Bloch, Chairman Atomic Safety and Licensing Board U. S. Nuclear Regulatory Commission Washington, D. C. 20555	Mr. Jeff Alexander OCRE Representative 929 Wilmington Avenue, #H Dayton, Ohio 45420
* Dr. Jerry R. Kline Atomic Safety and Licensing Board U. S. Nuclear Regulatory Commission Washington, D. C. 20555	Daniel D. Wilt, Esquire Wegman, Hessler & Vanderburg Suite 102 7301 Chippewa Road Brecksville, Ohio 44141
* Mr. Frederick J. Shon Atomic Safety and Licensing Board U. S. Nuclear Regulatory Commission Washington, D. C. 20555	Terry Lodge, Esquire 915 Spitzer Building Toledo, Ohio 43604
* Atomic Safety and Licensing Board Panel U. S. Nuclear Regulatory Commission Washington, D. C. 20555	Mr. Tod J. Kenney 31880 Creekside Drive Pepper Pike, Ohio 44124
* Atomic Safety and Licensing Appeal Board Panel U. S. Nuclear Regulatory Commission Washington, D. C. 20555	Donald T. Ezzone, Esquire Assistant Prosecuting Attorney Lake County Administration Center 105 Center Street Painesville, Ohio 44077
* Docketing and Service Section Office of the Secretary U. S. Nuclear Regulatory Commission Washington, D. C. 20555	
* Charles A. Barth, Esquire Office of the Executive Legal Director U. S. Nuclear Regulatory Commission Washington, D. C. 20555	