

Aug. 8, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

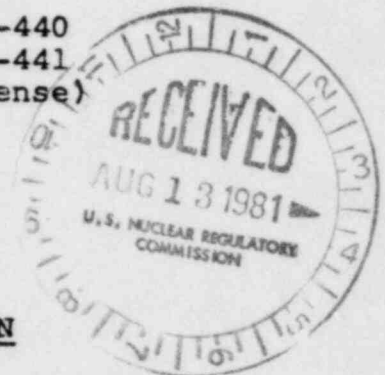
CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, Et al.)

(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-440

50-441

(Operating License)



OHIO CITIZENS FOR RESPONSIBLE ENERGY
BRIEF ON ADMISSIBILITY OF ATWS CONTENTION

Sunflower Alliance et al. included in its Petition to Intervene a contention dealing with ATWS. The Applicant has argued that a proposed rulemaking on this subject precludes its admission as a litigable contention in the above-captioned proceeding. In its Memorandum and Order of July 28, 1981, the Licensing Board requested briefs from the several parties by Aug. 12 to help it with its decision on this matter. The following is the Ohio Citizens for Responsible Energy ("OCRE") response.

I. Discretion of the Licensing Board

"The choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily within the informed discretion of the administrative agency." N.L.R.B. v. Bell Aerospace Co., 416 U.S. 267, 40 L.Ed.2d 134, 139 (1974) quoting S.E.C. v. Chenery Corp., 332 U.S. 194, 202-203 (1947). Absent any statutory inhibition, this Board may choose to litigate

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the ATWS contention and is not so barred as Applicant contends. This Intervenor has reviewed the notices of the proposed rulemaking and has found no explicit prohibition against this Licensing Board's considering the ATWS matter. 46 F.R. 10501 (1981), 45 F.R. 73080 (1980).

II. The Nature of the ATWS Contention

As the NUREG-0460 series point out, the ATWS matter is on its face a broad one which is connected with all commercial reactors, not only the Perry facility. However, the issue is quickly broken down and found to be both NSSS-specific, eg. GE reactors are treated differently than Westinghouse reactors, and phase-specific, eg. the recommendations vary widely for reactors under construction to those already operating. These differentials cause the ATWS matter to be less generic in nature and more appropriate for a case-by-case litigation. The recommendations pertinent to ATWS mitigation at the Perry facility will not be readily transferable to other nuclear facilities. This Intervenor reviewed the list of plants currently operating, under construction, and those in planning stages and ascertained via rough calculation that only one other facility (Grand Gulf) might form a class with PNPP to which generic resolution would be feasible. While OCRE has not had the opportunity to review PSAR/FSARs of those other plants, the charts in Appendix A of NUREG-0460, vol. 4, alone are sufficient to show how dissimilar even GE's own reactors are. Table A.2.

In addition, that volume's discussion of various plants makes

no attempt to classify them other than to split off the eleven earliest facilities. NUREG-0460, vol. 4 at 53. Surely that lends credence to the non-categorical nature of this issue. That nature requires that the issue be dealt with in this proceeding.

An issue such as the uranium fuel cycle is an archtypically suitable one for a generic rulemaking. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2) ALAB-218, 8 AEC 79, 84-5 (1974). All nuclear plants relate to the cycle in identical fashion and, obviously, administrative economy and consistency would dictate that generic resolution is the sensible approach. But as mentioned, the ATWS issue is both manufacturer and phase specific and must be resolved on an individual basis.

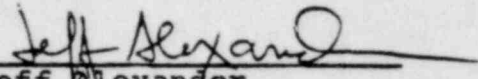
III. Intervenor Rights and Resources

OCRE fears that this PNPP issue will not be properly and fully ventilated outside of the above-captioned proceeding. The only way OCRE can have a genuine opportunity to participate in a meaningful way on this issue is to exercise the privileges, or more forcefully, the rights to discovery and cross-examination on this issue. Anything short of that ostensibly breached the guarantees of due process. See National Resources Defense Council v. U.S.N.R.C., Nuclear Regulation Reporter (CCH) at Para. 20,036 (D.C.Cir., July 21, 1976).

The Licensing Board already acknowledged the "scarce resources available to intervenors" and should realize they could in no way contribute meaningfully to a generic rulemaking on the ATWS issue in Washington, D.C. Thus, for that reason and those outlined in

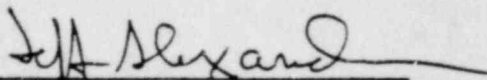
the foregoing, the Board should admit the Sunflower Alliance contention on ATWS.

Respectfully submitted,


Jeff Alexander,
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CERTIFICATE OF SERVICE

This is to certify that copies of "Ohio Citizens for Responsible Energy Brief on Admissibility of ATSW Contention", dated Aug 8, 1981, were served upon those persons on the service list below by deposit in the United States mail, postage prepaid, this 9th day of August, 1981.


Jeff Alexander

Peter B. Bloch, Chairman, ASLB
Dr. Jerry R. Kline, ASLB
Mr. Frederick J. Shon, ASLB
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