

August 11, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

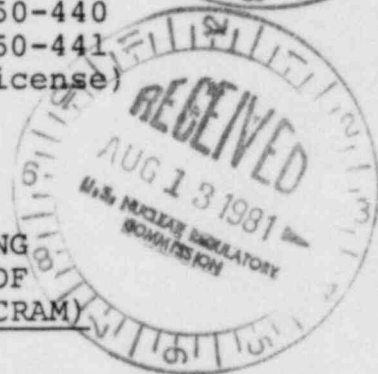
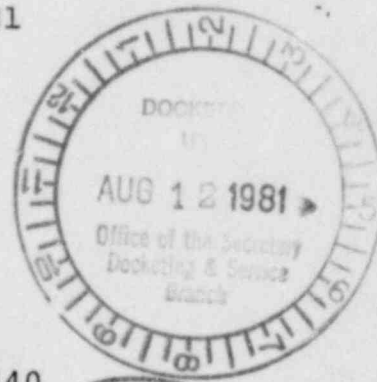
Docket Nos. 50-440  
50-441  
(Operating License)

APPLICANTS' BRIEF ON THE EFFECT OF PENDING  
COMMISSION RULEMAKING ON ADMISSIBILITY OF  
ISSUE #6 (ANTICIPATED TRANSIENTS WITHOUT SCRAM)

In its Special Prehearing Conference Memorandum and  
Order dated July 28, 1981, ("Order"), the Licensing Board admitted  
the following as an issue in the above-captioned proceeding:

Issue #6: Applicant should install an automated  
standby liquid control system to miti-  
gate the consequences of an anticipated  
transient without scram.

This issue was derived from Contention 15, proposed by Intervenor  
Sunflower Alliance, Inc., et al. ("Sunflower"). Applicants had  
argued against the admissibility of Contention 15 on several  
grounds, including the fact that the Commission's proposed re-  
quirements for preventing or mitigating the consequences of an  
anticipated transient without scram ("ATWS") were about to become  
the subject of a general rulemaking proceeding by the Commission.  
In admitting Issue #6 for consideration in the instant licensing  
proceeding, the Licensing Board did not discuss Applicants'  
argument that the issue was to become the subject of a general



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rulemaking proceeding. Order, pp. 74-76. However, the Licensing Board invited the parties to file briefs by August 12, 1981, on the effect of the proposed ATWS rulemaking on the admissibility of Issue #6. Order, p. 98. <sup>1/</sup> It is Applicants' position that consideration of Issue #6 in this proceeding is precluded by Commission precedent with respect to the pendency of generic rulemaking proceedings.

At a public meeting on June 16, 1981, the Commission voted to initiate a general rulemaking proceeding by publishing two alternative ATWS proposals for rulemaking in the Federal Register. <sup>2/</sup> When that publication occurs, the Commission will have out for public comment two alternative proposals for defining and codifying the Commission's requirements for the prevention and mitigation of ATWS events, including requirements relevant to acceptable standby liquid control systems. Thus, the consideration of Issue #6 in this proceeding would be a duplication of the very issue to be considered by the Commission in its rulemaking proceeding. This the Commission has prohibited.

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<sup>1/</sup> See also Tr. 611-612 in which the Licensing Board Chairman indicated that the parties would have opportunity to brief the question of the effect of Commission rulemaking proceedings on the admissibility of contentions.

<sup>2/</sup> SECY 80-409, and an alternative proposal by Chairman Hendrie. At the time of the Special Prehearing Conference on June 2-3, 1981, the Commission had announced its intent to initiate rulemaking proceedings on its ATWS requirements, but had not yet done so.

As Applicants stated in their May 22, 1981, brief on Sunflower's contentions, pp. 10-13, 24-25, the rule is 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). That precedent is especially germane here, where consideration of the same issue in this proceeding that is being considered in a general rulemaking proceeding would be administratively inefficient and counterproductive. No purpose would be served in having this Licensing Board determine whether or not Applicants should install an automated standby liquid control system when that very question will be determined generically by the Commission in a rulemaking proceeding. Further, the logic of the Commission's prohibition is vividly demonstrated where, as in this proceeding, there is virtually no indication that the intervenors raising the issue can contribute meaningfully to its resolution in this licensing hearing.<sup>3/</sup>

The Licensing Board Chairman raised the question of whether the Douglas Point doctrine should apply if the licensing proceeding might be concluded prior to the conclusion of the

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<sup>3/</sup> The dialogue between Sunflower and the Licensing Board during the Special Prehearing Conference, Tr. 414-18, suggests that Sunflower knows nothing at all about ATWS. Indeed, Issue #6 arises solely from a question raised by Administrative Judge Shon.

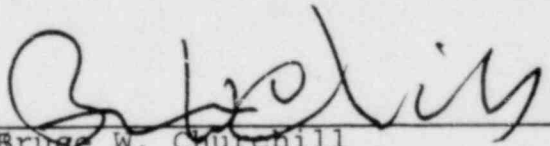
rulemaking proceeding. The answer must obviously be yes, or the Douglas Point rule could never be implemented; there is no way to predict with any degree of certainty when either type of proceeding will end. This is not an illogical result. If the Commission determines, as it has in the ATWS rulemaking, that currently operating plants need not cease operation pending the outcome of the rulemaking, it is because the Commission has satisfied itself that such actions are not necessary to protect the public health and safety. Such a determination would be even more valid in the case of a facility such as the Perry facility, which has not yet begun operation.

Applicants respectfully submit that the Licensing Board is bound by the precedent in ALAB-218, and Issue #6 should not be admitted for consideration in this licensing proceeding.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: August 11, 1981


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(Perry Nuclear Power Plant,	)	
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing  
"Applicants' Brief on the Effect of Pending Commission Rulemaking  
on Issue #6 (Anticipated Transients Without Scram)" were served,  
by deposit in the U.S. Mail, first class, postage prepaid, this  
11th day of August, 1981, to all those on the attached Service  
List.

  
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Bruce W. Churchill

Dated: August 11, 1981



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