

April 7, 1982

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

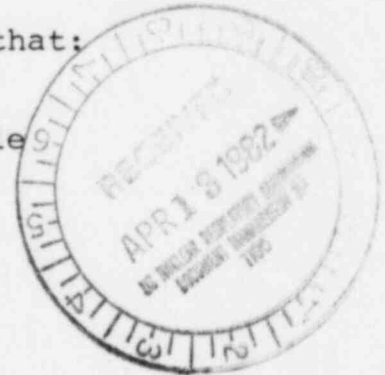
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In the Matter of)
)
THE CLEVELAND ELECTRIC) Docket Nos. 50-440
ILLUMINATING COMPANY, et al.) 50-441
)
(Perry Nuclear Power Plant,)
Units 1 and 2))

MOTION TO DISMISS FINANCIAL
QUALIFICATIONS CONTENTION

Contention 2 in this proceeding asserts that:

Applicant has not demonstrated that it possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated costs of operation, including the costs of reasonably foreseeable contingencies, for Perry Nuclear Power Plant, Units 1 and 2.



Special Prehearing Conference Memorandum and Order, LBP-81-24, 14 NRC 175, 195 (1981). Applicants move to dismiss this contention in view of the final rule on financial qualifications adopted by the Commission on March 31, 1982 (47 Fed. Reg. 13750).

The final rule published on March 31, 1982, eliminates all aspects of financial qualifications from NRC review at the operating license stage (as well as at the construction permit stage). As stated in revised 10 CFR § 2.104(c)(4),

[T]he issue of financial qualifications shall not be considered by the presiding officer in an operating license hearing

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if the applicant is an electric utility seeking a license to operate a production or utilization facility of the type described in § 50.21(b) or § 50.22.

47 Fed. Reg. at 13753. See also 10 CFR Part 2, App. A, § VII. (b)(4), 47 Fed. Reg. 13754; and 10 CFR § 50.33(f)(1), at id. Since Applicants are "electric utilities",* and since they are seeking a license to operate a utilization facility** of the type described in 10 CFR § 50.22, the new regulation excludes all financial qualifications issues from this proceeding.

The exclusion extends to the financial qualification issues associated with decommissioning, as well as other financial qualifications issues. See 47 Fed. Reg. at 13751. The Commission thus rejected the alternative considered in the

*The new regulations define "electric utility" as

any entity that generates or distributes electricity and which recovers the costs of this electricity, either directly or indirectly through rates established by the entity itself or by a separate regulatory authority.

10 CFR § 2.4(s), 47 Fed. Reg. at 13753; see also § 50.4(x), 47 Fed. Reg. at 13754. Applicants are entities that generate and distribute electricity, and which recover the cost of this electricity through rates established by separate regulatory authorities (i.e. the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, and the Federal Energy Regulatory Commission.) See Applicants' Application for Operating Licenses, General Information Section.

**10 CFR § 50.2(b) defines "utilization facility" as "any reactor other than one designed or used primarily for the formation of plutonium or U-233".

proposal rule of retaining financial qualifications associated with decommissioning while eliminating all other financial qualifications issues. See 46 Fed. Reg. 41786 (August 18, 1981). For those utilities (such as Applicants) coming within the scope of the rule, the rule thus completely eliminates financial qualification issues from licensing proceedings.

The rule is also immediately effective and applies to those proceedings already in progress and to issues and contentions in those hearings.

[T]he rule will be applied to ongoing licensing proceedings now pending and to issues or contentions therein, Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974)....

47 Fed. Reg. at 13753. Thus, the rule excludes Contention 2 from this proceeding, even though it had previously been admitted as a litigable issue.

As a result of the Commission's action, the financial qualifications contention in this proceeding is no longer appropriate and must be dismissed.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By



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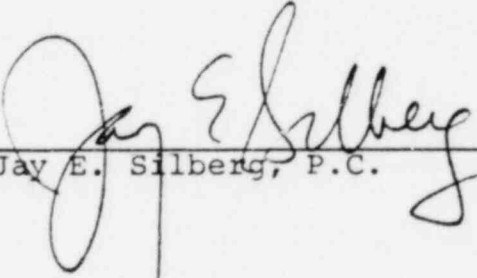
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing
"Motion To Dismiss Financial Qualifications Contention",
were served by deposit in the U. S. Mail, First Class, postage
prepaid, this 7th day of April 1982, to all those on the
attached Service List.



Jay E. Silberg, P.C.

Dated: April 7, 1982

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