

June 1, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of '82

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
MOTION TO RESUBMIT CONTENTION 15

Ohio Citizens for Responsible Energy ("OCRE") hereby moves the Licensing Board to grant OCRE leave to resubmit its Contention 15, entitled "Safe Disposal/Storage of Radioactive Materials." OCRE originally filed Contention 15 on November 21, 1981; the Licensing Board in its February 26, 1982 Memorandum and Order did not admit this contention because the Commission, when promulgating the waste rulemaking, explicitly prohibited the consideration of this subject in individual licensing proceedings (see Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79 (1974)). This obstacle has now been removed by the April 27, 1982 ruling of U.S. Court of Appeals, District of Columbia Circuit (Natural Resources Defense Council (NRDC) v. NRC, Civil Action No. 74-1586), which supercedes any decision or issuance of the Commission. This ruling requires the Licensing Board to consider the environmental impact of nuclear waste generated by the operation of the Perry plant.

The Appeals Court held that the Table S-3 rules (10 CFR Part 51) are invalid, arbitrary and capricious, and in violation

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of the National Environmental Policy Act (NEPA) "because they fail to allow for consideration of uncertainties underlying the assumption that no radiological effluents will be released into the biosphere once wastes are sealed in a permanent repository." Slip op. at 34. The zero-release assumption for waste disposal included in Table S-3 is apparently "based on the assumption that long-term waste-disposal systems, yet to be developed, would work perfectly." Slip op. at 16. Since "none of the current proposals for disposal is certain to succeed" (slip op. at 13), the court has considered this assumption "a clear error in judgement." Slip op. at 39.

A central point in the court's decision is the Commission's generic treatment of the uncertainties of fuel cycle effects while precluding individual licensing boards from considering these uncertainties. While the court agreed that "the Commission can assess generic costs in a generic rulemaking" (slip op. at 47), it also held that the Commission "must, in some manner, factor its assessment into ultimate decisions to license plants." Ibid. Since NEPA requires that environmental costs be considered at every stage where the balancing of such factors is appropriate, the court found that "the Table S-3 Rule does not allow the uncertainties concerning permanent storage to play a role in the ultimate licensing decision. That omission, and hence, the rule, which causes it, constitutes a blatant violation of NEPA." Slip op. at 46. An individual licensing proceeding is the appropriate stage for considering these factors, because, as the court succinctly points out, each licensing decision "represents a decision to create additional nuclear wastes." Slip op. at 13.

OCRE would also note that, contrary to the Licensing Board's assertion in its February 26, 1982 Memorandum and Order (p. 3), the Supreme Court, in Vermont Yankee Nuclear Power Corp. v. NRDC 435 U.S. 519 (1978), did not disturb the appeals court's ruling in NRDC v. NRC 547 F.2d 633 (1976) that, "in the absence of a valid generic rule, the environmental impact of the fuel cycle must be dealt with in individual licensing proceedings." Slip op. at 18, note 38. Since the court has found the Table S-3 Rule to be invalid, OCRE thus contends that the effects of nuclear waste generation at PNPP must be evaluated by the Licensing Board before the plant can be licensed.

The court's opinion has buttressed OCRE's concerns about the lack of an effective waste disposal program. See, e.g., slip op. at 39, in which the continual deferral of the site selection and construction of waste disposal facilities is described. In fact, Judge Edwards, in his concurring opinion, even questions whether the "moving target" nature of this issue has been "contrived to frustrate effective judicial review." Slip op. at 11, note 5.

OCRE offers as good cause for this late-filed contention the recent (April 27, 1982) court ruling which demands its admission into this proceeding. For the other factors influencing the admission of a late contention under 10 CFR 2.714, see OCRE's original November 21, 1981 filing. Obviously OCRE does not now have to defend the timeliness of the November 21 filing, since the April 27 court decision constitutes abundant good cause for the instant consideration of this issue; OCRE would have filed this contention at this time even if it had not

attempted to seek its admission earlier.

Since the law now demands that this issue be considered by the Licensing Board, OCRE is confident that the Board will fulfil its obligations and admit this contention.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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This is to certify that copies of the foregoing OHIO
CITIZENS FOR RESPONSIBLE ENERGY ACTION TO RESUBMIT CONTENTION
15 were served by deposit in the U.S. Mail, first class, postage
prepaid, this 1st day of June, 1982, to those on the Service
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