

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

February 23, 1983

Before the Atomic Safety and Licensing Board '83 FEB 28 A10:27

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)

OCRE RJ/PLY TO NRC STAFF MOTION FOR A DEADLINE FOR THE
SPECIFICATION OF A SCENARIO FOR ISSUE #8 AND MOTION FOR
THE RJ/WORDING OF ISSUE #8 AND SPECIFICATION OF GUIDELINES
FOR ITS LITIGATION

On February 8, 1983 the NRC Staff filed a motion requesting that the Licensing Board establish a March 10, 1983 deadline by which Ohio Citizens for Responsible Energy ("OCRE") must identify with particularity and basis a TMI-2 type accident scenario for Perry necessary for the litigation of Issue #8 in this proceeding. See ALAB-675, 15 NRC 1105, 1115 (1982). OCRE opposes this motion because it is premature (on several grounds) to require specification of a scenario at this time.

First, OCRE believes that the Staff has incorrectly interpreted the Appeal Board's guidance in ALAB-675. The Staff in its motion states that the Appeal Board found that the litigation of Issue #8 requires that one particular TMI-2 type LOCA scenario for Perry be specified. The Staff also implies that the scenario is necessary to particularize OCRE's "vague, unparticularized hydrogen contention" so as to meet the requirements of Metropolitan Edison Co. (Three Mile Island Nuclear Station Unit 1), CLI-80-16, 11 NRC 674 (1980) ("TMI-1 Restart"). This is untrue. The Licensing Board found that the criteria of TMI-1 Restart had been met in admitting Issue #8;

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the Appeal Board did not find fault with the Licensing Board's decision.^{1/} The Appeal Board also indicated that the true purpose for specifying an accident scenario is not to comply with TMI-1 Restart, but rather is a more practical matter:

Different types of accidents, however, result in different rates and quantities of hydrogen generation. A given hydrogen-generating mechanism thus has obvious relevance to the efficacy of a hydrogen control system. In order to litigate meaningfully the adequacy of such a system, a particular accident or accidents [plural] should be specified. (ALAB-675, slip op. at 17.)

However, the Licensing Board has found the Appeal Board's opinion to be open to interpretation as to the purpose of the accident scenario:

A possible interpretation of the Appeal Board's non-binding directions to us is that we are adjudicating control of hydrogen and are looking to hydrogen generation only as an indication of how much and how rapidly hydrogen would be generated. Another possible interpretation of the Appeal Board's non-binding directions to us is that we must limit our concerns to specific credible scenarios of a TMI-2 type (We have not yet decided which of these views to take (December 23, 1983 Memorandum and Order (Concerning Discovery from Staff on Hydrogen Issue) at 4.)

OCRE believes that, as a prerequisite to the specification of a scenario, the Board should decide which of these views to take, as this would put OCRE on notice of the burden it is expected to bear when specifying the scenario. OCRE can only agree to a date for specifying the scenario if it knows with certainty what is expected of it.

^{1/} The Staff has implied that the Appeal Board did not approve of the Licensing Board's application of TMI-1 Restart, but merely reserved its views for later. See transcript of the November 15, 1982 conference call at 763-764. Staff counsel has also, in conversations with the OCRE Representative, indicated the Staff's belief that the Licensing Board's decision would be reversed on appeal, and that this possibility should preclude the litigation of Issue #8. OCRE would only say that
(continued next page)

Even without this difficulty, OCRE finds the March 10 deadline inappropriate for other reasons. The Staff requests that, by that date, OCRE "identify with particularity and basis a TMI-2 type LOCA scenario for Perry that OCRE contends would cause core damage, generation of large amounts of hydrogen, hydrogen combustion, containment breach or leakage and offsite doses greater than 10 CFR 100 values." (Staff Motion at 3.) These requests are again open to interpretation. E.g., what constitutes an adequate basis? If the Staff finds any fault with the basis given, one can be sure that a motion for summary disposition would be forthcoming.^{2/}

Because of the uncertainty as to what constitutes an adequate basis for the scenario, OCRE would want to conduct a thorough investigation of all available information before identifying the scenario. OCRE does not now possess all such information. OCRE has requested a great many documents from the Public Document Room, but of course it takes time for such requests to be filled. OCRE also suspects that a visit to the PDR will be necessary, but this will not be possible until late March.

Furthermore, OCRE has uncovered the attached Staff memorandum which indicates that the Staff's answers to OCRE's Sixth Set of Interrogatories and the Board Questions may have been censored. OCRE has

1/ continued.

if it is improper for the Licensing Board to take the simple and harmless action of retaining jurisdiction over NEPA issues pending judicial review of the Commission's policy statement on psychological stress (see January 24, 1983 Memorandum and Order (Reconsideration: Psychological Stress)), then it is certainly improper to preclude the litigation of an important issue like hydrogen control based on possible future and speculative actions of the Appeal Board.

2/ (see next page)

filed a Freedom of Information Act Request to obtain the draft answers referred to in the memorandum. It again takes time before the items requested are received.

OCRE would also question whether the specification of a scenario at this time is really necessary to assure the orderly progress of the proceeding,^{3/} as the Staff states at p. 3 of its motion. OCRE suspects that Issue #8 will not be ready for litigation in the foreseeable future and that Applicants, not OCRE, control the progress of Issue #8. In fact, delay in the specification of a scenario may be beneficial. The Staff, in its answer to OCRE Interrogatory 6-9, states that a final rule on hydrogen control could be expected in May of this year. By waiting for this final rule, the Licensing Board could avoid the tortuous process of litigating the credibility of a TMI-2 type accident scenario for Perry, since Issue #8 then would not involve a challenge to 10 CFR 50.44, but rather would concern the Applicants' degree of compliance with the new regulation.

2/ The Board has suggested (see Staff notes on the December 9, 1982 conference call at 3) that summary disposition may be sought after the scenario is defined. That the Staff has rather stringent views on the adequacy of a contention's basis is shown by its position that reliance on studies performed by Sandia National Laboratories is not a sufficient basis for Issue #9 (see NRC Staff Motion for Summary Disposition of Issue #9, dated January 14, 1983.).

3/ Any delay in the progress of Issue #8 can be attributed to the Staff. The attached memorandum indicates that Staff members were actually preparing answers to OCRE's Sixth Set of Interrogatories before Staff counsel objected to them. Given that situation, the Staff's vigorous and lengthy objections to answering those interrogatories seem rather puzzling.

In summary, OCRE finds the March 10 deadline for specifying a scenario to be unacceptable. Furthermore, it is improper to expect OCRE to specify a scenario until the Licensing Board sets some guidelines for this scenario and for the litigation of the issue in general, as suggested strongly by the Appeal Board in ALAB-675 (slip op. at 21 and footnote 13 at p. 19). Therefore, OCRE moves that the Licensing Board:

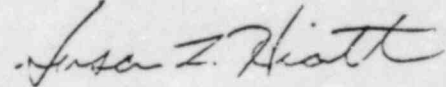
1. Reword Issue #8, since the current wording does not accurately reflect the scope of the issue. OCRE proposes the following wording:

Applicant has not demonstrated that, given an accident entailing the generation of large amounts of hydrogen, the combustible gas control measures to be implemented at Perry can accommodate large amounts of hydrogen without a rupture of the containment and a release of substantial quantities of radioactivity into the environment.

2. Defer any action on the specification of a scenario until after the final rule on hydrogen control in the Mark III containment is published (see proposed rule, 46 Fed. Reg. 62281, December 23, 1981.)
3. Determine whether a scenario is still necessary after the issuance of the final rule, and, if so, set the following guidelines for its specification:
 - (a) the purpose of the scenario, i.e., to fulfill the requirements of TMI-1 Restart or to meaningfully litigate (as to rate and quantity of hydrogen production) the adequacy of Applicants' hydrogen control measures;
 - (b) what a "TMI-2 type" accident is;
 - (c) what the Licensing Board considers to be a credible scenario
I.e., is there a numerical probability used for defining

- "credible," and if so, what is its legal or regulatory basis?
- (d) what constitutes an acceptable basis for an accident scenario?
I.e., does the Licensing Board expect OCRE to perform a
probability risk assessment for Perry?

Respectfully submitted,



Susan L. Hiatt
OCRE Representative
8275 Munson Rd.
Mentor, OH 44060
(216) 255-3158

ATTACHMENT

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DIST.

NRC PUn
PRC System
LB#1 Rdg.
MRushbrook
JStefano

Docket Nos.: 50-440
and 50-441

MEMORANDUM FOR: T. P. Speis, Assistant Director for Reactor Safety, DSI
W. R. Houston, Assistant Director for Radiation Protection, DSI
J. P. Knight, Assistant Director for Components and Structures Engineering, DE

FROM: B. J. Youngblood, Chief, Licensing Branch No. 1, DL

THRU: Thomas M. Novak, Assistant Director for Licensing, DL

SUBJECT: PERRY LICENSING BOARD'S ORDER DIRECTING STAFF TO RESPOND TO OCRE'S INTERROGATORIES AND BOARD QUESTIONS ON ISSUE #8 (HYDROGEN CONTROL)

In a Memorandum and Order dated December 23, 1982 (copy enclosed), the Licensing Board in the Perry OL-proceeding directed the staff to respond to: (1) OCRE's 6th Set of Interrogatories to staff dated September 13, 1982; and (2) five Board questions at page 8 of the Order.

Although the staff had earlier prepared draft answers to many of OCRE's interrogatories, those answers should be reviewed and updated as necessary in light of the Board's Order, and in light of the Applicant's answers to OCRE's interrogatories on Issue #8 (see the Board Order at page 9). It should be understood that staff persons are not required to perform studies or make calculations in providing responses, but to only provide information that already exists.

A meeting was convened on January 4, 1983 by the project manager (J. Stefano) with those staff persons from RSB, CSB, SED and AEB who had provided earlier draft responses to the OCRE interrogatories. The five Board questions were also discussed. Copies of the Board Order and the Applicant's responses to OCRE interrogatories on Issue #8 were provided to the staff at the meeting. In discussing the draft responses, guidance was provided by the Perry Attorney (Mack Cutchin) as to the scope and focus of the expected staff responses.

It had been understood by the project manager that AEB would be preparing responses to the Board's questions; however, in subsequent conversations with the AEB staff, the project manager was advised that CSB and RSB should be addressing the Board's questions since they relate to responses being prepared in response to OCRE's interrogatories and because the Board's questions relate to work that was performed by CSB and RSB for TMI-2. We are committed to provide the Perry Attorney your approved staff responses to the OCRE and the Board questions (with the required

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staff affidavits) not later than COB, Tuesday, February 1, 1983. Based on this commitment, OELD has advised the Board that it will receive our responses by February 4, 1983. It is therefore requested that the project manager be advised which organization will be responding to the Board's questions.

As a means of ensuring that we can meet our commitments to OELD (and ultimately the Board), it is urged that drafts of staff responses be made available for consultation with the project manager and the Perry Attorney by January 21, 1983.

Your continued support of the Perry project will be most appreciated and your immediate attention to this request is urged.

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B. J. Youngblood, Chief
Licensing Branch No. 1
Division of Licensing

Enclosure:
As stated

cc w/encl.: D. Eisenhut
R. Mattson
R. Vollmer
E. Christenbury
W. Butler
J. Hulman
D. Sheron
F. Schauer
J. Gray
J. Cutchin, IV

OFFICE	DL:LB#1	DL:LB#1	DL:AD/1				
SURNAME	JStefano/lg	JYoungblood	TMovak				
DATE	01/06/83	01/7/83	01/12/83				

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing OCRE REPLY TO NRC STAFF MOTION FOR A DEADLINE FOR THE SPECIFICATION OFFER SCENARIO FOR ISSUE #8 AND MOTION FOR THE REWORDING OF ISSUE #8 AND SPECIFICATION OF GUIDELINES FOR ITS LITIGATION were served by deposit in the U.S. Mail, first class, postage prepaid, this 23rd day of February 1983 to those on the service list below.

Susan L. Hiatt
Susan L. Hiatt

SERVICE LIST

Peter B. Bloch, Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Comm'n
Washington, D.C. 20555

Daniel D. Wilt, Esq.
P.O. Box 08159
Cleveland, OH 44108

Dr. Jerry R. Kline
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Comm'n
Washington, D.C. 20555

Mr. Glenn O. Bright
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Comm'n
Washington, D.C. 20555

Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Comm'n
Washington, D.C. 20555

James M. Cutchin, IV, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Comm'n

Jay Silberg, Esq.
1800 M Street, N.W.
Washington, D.C. 20036

Atomic Safety and Licensing Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555