

April 14, 1983

DOCKETED
USNRC

UNITED STATES OF AMERICA:48

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
THE CLEVELAND ELECTRIC)	Docket Nos. 50-440
ILLUMINATING COMPANY, <u>ET AL.</u>)	50-441
)	
(Perry Nuclear Power Plant,)	
Units 1 and 2))	

APPLICANTS' MOTION FOR RECONSIDERATION
AND CLARIFICATION OF THE LICENSING BOARD'S
MARCH 30, 1983 MEMORANDUM AND ORDER ON
SUMMARY DISPOSITION OF ISSUE NO. 9

I. Introduction

By Memorandum and Order (Polymer Degradation: Summary Disposition), dated March 30, 1983 ("Memorandum and Order"), the Licensing Board granted the NRC Staff's motion for summary disposition of Issue No. 9^{1/} with the exception of the following genuine issue of fact, which the Board admitted

1/ See NRC Staff Motion for Summary Disposition of Issue #9, dated January 14, 1983. Applicants supported the Staff's motion. See Applicants' Answer in Support of NRC Staff Motion for Summary Disposition of Issue No. 9, dated February 8, 1983 ("Applicants' Answer"). Ohio Citizens for Responsible Energy ("OCRE") opposed the Staff's motion, see OCRE Response to NRC Staff Motion for Summary Disposition of Issue #9, dated February 7, 1983, as well as Applicants' answer in support of the motion. See OCRE Reply to Applicants' Answer in Support of NRC Staff Motion for Summary Disposition of Issue #9, dated February 23, 1983.

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for hearing:

whether the inspection and maintenance program will be adequate to assure that safety functions will not be inhibited by radiation-induced embrittlement of polymers.

Memorandum and Order at 18. In addition, the Licensing Board ordered that:

Applicant and staff must, as a condition to the grant of summary disposition, file a stipulation committing applicant to completing its environmental qualification program for electrical equipment by November 1985.

Id. at 19.

For reasons stated herein, Applicants respectfully request that the Licensing Board reconsider its admission of the above issue regarding Applicants' surveillance and maintenance program and grant in its entirety the Staff's motion for summary disposition of Issue No. 9. Applicants also respectfully seek clarification of the Licensing Board's Memorandum and Order with respect to the required stipulation concerning the completion date of Applicants' environmental qualification program for electrical equipment.

II. CLARIFICATION OF DATE FOR COMPLETING ENVIRONMENTAL QUALIFICATION PROGRAM

The Memorandum and Order requires that

Applicant and Staff must, as a condition to the grant of summary disposition, file a stipulation committing applicant to completing its environmental qualification program for electrical equipment by November 1985.

Memorandum and Order at 19. The Board imposed this condition because "there is some ambiguity" concerning its interpretation

of the environmental qualification regulation, 10 C.F.R.

§ 50.49(g), that "full-scale equipment qualification must be completed by November 30, 1985".

Applicants assume that the Licensing Board seeks assurance that Applicants will meet the schedule requirements established by 10 C.F.R. § 50.49(g) for completion of environmental qualification. That regulation provides that "each holder of an operating license issued prior to February 22, 1983" shall submit a schedule establishing

a goal of final environmental qualification of electrical equipment within the scope of this section by the end of the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier. The Director of the Office of Nuclear Reactor Regulation may grant extensions of this deadline to a date no later than November 30, 1985 In exceptional cases, the Commission itself may consider and grant extensions beyond November 30, 1985, for completion of environmental qualification.

The Supplementary Information accompanying the promulgation of 10 C.F.R. § 50.49 stated that

The dates specified in this rule for completion of environmental qualification of electrical equipment important to safety apply to all licensees and applicants

48 Fed. Reg. 2729, 2730 (January 21, 1983) (emphasis added).

Our interpretation of § 50.49(g) is that its schedule for completion of environmental qualification applies to Perry. We therefore do not object to stipulating that Perry shall meet the schedule established by § 50.49(g) for completing its environmental qualification program as that program applies to

to Issue 9. That schedule allows for extensions by the Commission beyond November 1985 "in exceptional cases." We assume that the Board's reference to November 1985 is no more than a short-hand description of the § 50.49(g) schedule. (Any other interpretation would of course be inconsistent with the regulation.)

Applicants respectfully request that the Board confirm our interpretation of this aspect of the order.

III. RECONSIDERATION OF BOARD FINDING OF GENUINE ISSUE OF MATERIAL FACT

The Staff's motion for summary disposition included two Statements Of Material Facts As To Which There Is No Genuine Issue To Be Heard on maintenance and surveillance programs for polymer degradation.

4. The Applicants have committed to implement surveillance and maintenance procedures based on the guidance of Regulatory Guide 1.33 (Rev. 2) to detect age-related degradation of safety-related electrical equipment and replace or refurbish significantly degraded equipment before it could cause a safety problem. Affidavit of James E. Kennedy (Affidavit) at ¶¶ 5, 6 & 7.
5. The Staff will verify that an appropriate surveillance and maintenance program for detecting and replacing or refurbishing significantly degraded equipment is implemented at the Perry facility. Affidavit at ¶ 8.

These statements were supported by an Affidavit of James E. Kennedy, an NRC Environmental Qualification Engineer. Kennedy stated:

1. The NRC Staff requires applicants to develop and implement surveillance and maintenance procedures for detecting age-related degradation of safety-related equipment.

2. Regulatory Guide 1.33 and an industry standard endorsed by the Regulatory Guide contain recommendations for surveillance and maintenance procedures acceptable to the Staff.
3. Applicants have committed to follow the Regulatory Guide in developing the surveillance and maintenance procedures.
4. The Staff will verify that an appropriate surveillance and maintenance program is implemented.

See Affidavit of James E. Kennedy in Support of Summary Disposition of Issue #9, ¶¶ 5-8.

OCRE's February 7, 1983 Response argued that the Board could not grant summary disposition because Applicants had not yet submitted their surveillance and maintenance program. Response at 5. OCRE acknowledged that the Staff had put forward Regulatory Guide 1.33 as the basis for the conclusion that radiation exposure of polymers would not cause unsafe conditions. OCRE did not even allege a reason for disregarding the Regulatory Guide as a basis. Instead, OCRE made the essentially legal argument that resolving this issue prior to Applicants' submittal of the surveillance and maintenance program would be "tantamount to delegating an important issue to the Staff for resolution". Id.

Applicants' February 8, 1983 Answer to the Staff's motion included, via affidavit, Applicants' statement that they were developing a surveillance and maintenance program based on the guidance of Regulatory Guide 1.33. Affidavit of David R. Green in Support of NRC Staff Motion for Summary Disposition of Issue

No. 9, ¶ 2. Mr. Green's Affidavit described the six program elements to provide the means for detecting polymeric degradation. Green Affidavit ¶¶ 2-9. Based on these elements, Mr. Green concluded that

The CEI surveillance and maintenance program thus includes features that enable identification of equipment degradation and the approach to failures whether caused by wear mechanisms, aging mechanisms or other mechanisms.

Id., ¶ 10. Mr. Green is amply qualified to reach these conclusions based on his extensive experience in design, construction, startup, operations, maintenance, and electrical equipment failure diagnosis and repair engineering for both nuclear and fossil-fueled power plants. See Exhibit A to Green Affidavit. This conclusion was strongly supported by the Affidavit of Srinivasan Kasturi, also attached to Applicants' Answer. Mr. Kasturi, an electrical engineer with a decade of experience in the equipment qualification field, stated that a surveillance and maintenance program incorporating the program elements described in the Green Affidavit "should detect any significant degradation of polymeric materials in PNPP, from radiation dose-rate effects as well as other causes". Kasturi Affidavit, ¶ 46.

OCRE's response to these Affidavits argued, without support, that "the information in the Green affidavit is too vague to have any bearing on Issue #9". OCRE Reply to Applicants' Answer in Support of NRC Staff Motion for Summary Disposition of Issue #9, dated February 23, 1983 at 5.

The Memorandum and Order did not address the factual material presented in either the Staff's or Applicants' Affidavits. Instead, it seems to rule that until the surveillance and inspection program itself is issued, the matter cannot be resolved.

Assurances that applicant will adopt an adequate plan are insufficient to demonstrate that its plan is (or will be) adequate.

Memorandum and Order at 3.

Applicants respectfully suggest that the Licensing Board should have addressed the issue on its merits. Applicants have committed to a program meeting the guidance of Regulatory Guide 1.33. Staff agreed with the adequacy of that commitment, including the industry standard it endorses. Applicants set forth the program elements to be incorporated and an equipment qualification expert stated by affidavit that these elements should detect any significant polymer degradation. OCRE came forward with nothing to support a claim that such a program would not be adequate. Summary disposition should therefore have been granted.

In addition, the Board's decision appears to be inconsistent with Commission regulations and practice. NRC regulations do not require that a surveillance and maintenance program be issued prior to the need for such a program. As a part of the overall quality assurance program for plant operation, the program should be "establish[ed] at the earliest practicable time, consistent with the schedule for accomplishing the activities". 10 C.F.R. Part 50, App. B, § II (emphasis added). While Applicants have stated

that they will complete the program prior to fuel loading of Unit 1, Green Affidavit ¶ 2, the Board's order would require that the program be completed long before fuel load in order to allow time for the summary disposition procedure suggested by the Licensing Board (Memorandum and Order at 3, 19) or on evidentiary hearing if needed.

Applicants are aware of no case in which a licensing board has mandated the completion of programs or procedures prior to the time that they are required by Commission regulation. Even where such programs and procedures may be in existence, they are rarely (if ever) submitted on the record. There is no reason why the Board cannot decide the issue based upon the criteria to be applied without requiring that the surveillance and maintenance program itself be presented. When Applicants addressed the surveillance and maintenance procedures to be used for Asiatic Clams, neither OCRE nor the Licensing Board required that the program itself be filed with the Board and litigated.

The Licensing Board's decision has put Applicants in the unenviable possession of risking a delay in fuel loading by staying with their current schedule for completing the surveillance and maintenance program, or unnecessarily spending additional money (estimated in the hundreds of thousands of dollars) to obtain the additional technical manpower to complete the program early enough to meet the Licensing Board's requirements. We see no justification for even being presented with this choice where the Licensing Board:

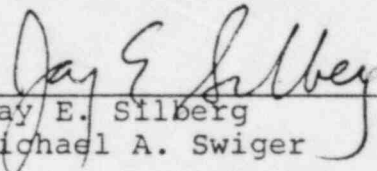
1. granted summary disposition of the portion of the polymer degradation question dealing with electrical equipment;
2. granted summary disposition with respect to mechanical equipment;
3. found that OCRE has not identified susceptible non-electrical equipment or explained why the use of polymers in such equipment may cause safety problems; and
4. found that the effects of polymer degradation would only appear over a period of at least several years.

The Licensing Board should therefore grant summary disposition of the surveillance and maintenance issue.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

BY:


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Dated: April 14, 1983

April 14, 1983

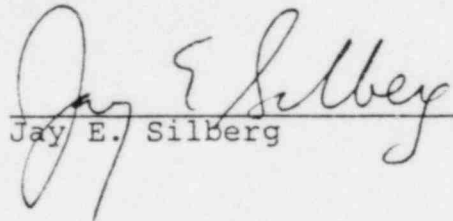
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Motion for Reconsideration and Clarification of the Licensing Board's March 30, 1983 Memorandum and Order on Summary Disposition of Issue No. 9" were served by deposit in the United States Mail, first class, postabe prepaid, this 14th day of April, 1983, to all those on the attached Service List.



Jay E. Silberg

Dated: April 14, 1983

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