

April 28, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONDOCKETED
USNRCBefore the Atomic Safety and Licensing Board

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

'83 MAY -3 110:16

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

MOTION FOR SUMMARY DISPOSITION OF THE OPERATING LICENSE APPLICATION

Intervenor Ohio Citizens for Responsible Energy ("OCRE") hereby moves for summary disposition of the operating license application for the Perry Nuclear Power Plant, Units 1 and 2, on the grounds that Applicants have made a material false statement in their application, specifically, in an amendment to their Environmental Report.

I. The Material False Statement

Section 5.5.1.4 of NUREG-0884, the NRC's Final Environmental Statement for PNPP (Exhibit A), which describes the environmental impacts of transmission lines, contains the statement that it is not the policy of Applicants to use herbicides for vegetation control along transmission line corridors. The Staff apparently used Applicants' response to Staff Question 290.08 on the ER-OL (Exhibit B) to reach this conclusion. However, Applicants, in their Amended Application to the Ohio Power Siting Board for the Perry-Hanna 345 kV Transmission Line (Exhibit C) state that they will indeed use herbicides to control vegetation along transmission lines. (It should be noted that Applicants stated their intent to use herbicides in an earlier application to the OPSB as well.) It is thus obvious that Applicants made a material false statement to the NRC in response to Staff Question 290.08.

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Applicants might perhaps argue that they understood the Staff's question to pertain only to transmission lines on the Perry site; but, this interpretation is not substantiated by the evidence of the matter. Staff Question 290.08 was apparently generated as a result of information concerning an endangered species, the spotted turtle, Clemmys guttata, appearing on p. 2.2-9 of the ER-OL (Exhibit D). The Staff asked Applicants to assess the effects of transmission line maintenance on that species and to indicate whether herbicides will be used on any portions of the Perry transmission lines (emphasis added). Applicants knew that the spotted turtle is not confined to the PNPP site, but is also found along the proposed Perry-Hanna transmission line routes. See Exhibit E, from Applicants' Site Report on the Perry-Hanna 345 kV Transmission Line. Furthermore, Applicants knew or should have known that the environmental effects of offsite transmission lines are within the NRC's jurisdiction. See Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC -36, 939 (1974) and Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 83 (1977).

Moreover, Section 5.5.1.4 of the DES, issued March 1982, contains identical language pertaining to herbicide use as in the FES. It should be observed that Applicants submitted detailed comments (including the correction of minor omissions and typographical errors) on the DES. See FES pp. A-27 to A-32. At no point in those comments did Applicants attempt to correct the Staff's statement in the DES, even when it was obvious that the Staff interpreted Applicants' response to Question 290.08 as pertaining to all (offsite as well as onsite) transmission lines.

II. The Penalty for a Material False Statement

Under § 186 of the Atomic Energy Act (42 USC § 2236) a license may

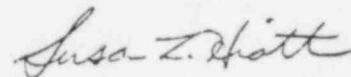
be revoked if an applicant has made a material false statement in an application. See also 10 CFR 50.100. The Appeal Board in Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-324, 3 NRC 347 (1976) held that: (1) scienter is not necessary to show that a statement is false; and (2) such a statement is material if a Staff member might consider it in reaching a conclusion. The Commission (CLI-76-22, 4 NRC 480) affirmed ALAB-324 and added that silence (i.e., omission) as to material facts is the same as making a material false statement.

In applying these standards to the situation at hand, there can be no doubt that Applicants made a material false statement and that the penalty of 42 USC § 2236 should be applied. Applicants submitted a false and/or incomplete statement in response to a Staff Question on the ER-OL. This statement, as part of an amendment to the ER-OL, became part of the OL application. See 10 CFR 50.30(f). The NRC Staff used this statement in preparing the DES and FES, thus demonstrating its materiality. Applicants, though aware that the Staff used their false statement verbatim in the DES, made no effort to correct it. OCRE thus requests that Applicants' OL application be dismissed and this proceeding terminated.

42 USC § 2236 and 10 CFR 50.100 state that a license or construction permit may be revoked for material false statements in the application. Applicants, of course, hold only a CP and not an OL. The material false statement, however, was made in the OL application. Since the Licensing Board has no jurisdiction over the terms of the CP (Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-674, 15 NRC 1101 (1982)), and since the offense was committed at the OL stage application, OCRE is moving for summary disposition of the OL application pursuant to 10 CFR 2.749. 10 CFR 2.749(d) prohibits the use of summary disposition for determining whether the CP shall be issued, but that regulation contains no prohibition on

such use of summary disposition at the OL stage. And, although 10 CFR 50.100 only specifically addresses revocation of a license already held, further language ^{1/} in that section implies that refusing to grant a license is an appropriate sanction in the situation at hand. OCRE therefore concludes that this matter is within the jurisdiction of the Licensing Board and that summary disposition is an appropriate vehicle by which to seek the requested relief, i.e., denial and dismissal of the OL application for PNPP. The short statement of material facts required by 10 CFR 2.749(a) is appended hereto.

Respectfully submitted,



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1/ 10 CFR 50.100 reads in part: "A license or construction permit may be revoked . . . for any material false statement in the application for the license . . . or because of conditions . . . which would warrant the Commission to refuse to grant the license on an original application . . ."

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE EXISTS NO
GENUINE ISSUE TO BE HEARD

1. Applicants in their response to Staff Question 290.08 on the ER-OL stated that it is not their policy to use herbicides for vegetation control along transmission line corridors. See Exhibit B.
2. The NRC Staff used Applicants' response verbatim in preparing § 5.5.1.4 of the DES and FES, NUREG-0884. See Exhibit A.
3. Applicants, in their application to the Ohio Power Siting Board for Perry-Hanna 345 kV Transmission Line, state that they will use herbicides to control vegetation. See Exhibit C.
4. Applicants, in their detailed comments on the DES (see FES at pp. A-27 to A-32) made no attempt to correct or even address this discrepancy.
5. According to the standards of ALAB-324 and CLI-76-22, Applicants have made a material false statement in their OL application.
6. 10 CFR 50.100 and § 186 of the Atomic Energy Act (42 USC §2236) provide as a penalty for a material false statement the revocation of a license, and, by implication, refusal to grant a license in the first instance.
7. If the requested relief (dismissal and denial of the OL application and terminating this proceeding) is granted, there are no other issues to be heard in this proceeding as all other issues would be rendered moot.

5.1.1 Cooling-Tower Emissions

Terrestrial impacts resulting from the form of condenser cooling were reexamined by the staff in the light of the changes in cooling system design made by the applicant from once-through to closed-cycle natural-draft cooling towers. New information concerning the effects of operation of the PNPP natural-draft cooling towers is discussed below.

5.5.1.2 Drift Fallout

The applicant has provided calculations of the predicted distribution of drift for two units using onsite meteorological data (ER-OL Section 5.1.4). The staff has reviewed the applicant's calculations and concludes that they are within a range of model-predicted values for fresh-water natural-draft cooling towers. The estimated maximum offsite drift deposition rate of 89.6 g/ha/yr (0.08 lb/acre/yr) is expected at approximate distances of 1.6 and 3.6 km (1.0 and 2.25 mi) to the east-northeast of the towers. The composition of the drift will be as described in Section 4.2.6.3. Natural rainfall will prevent a build-up of chemical-drift deposits in the soil. A review of experience with fresh-water cooling towers, both in this country and abroad, has failed to provide any findings of an environmental effect beyond the immediate vicinity of the cooling towers (Carson). Therefore, the staff concludes that terrestrial impacts resulting from cooling-tower drift from the operation of PNPP will be small.

5.5.1.3 Bird Impactation

Bird kills by collision with cooling towers and other manmade structures have been studied and reviewed (Avery et al.). Based upon the results of monitoring programs at other facilities with similar types of cooling towers (Jackson and Temme), the staff expects that the number of birds killed will be small relative to their populations.

5.5.1.4 Transmission Lines

Construction of the Perry-Macedonia-Inland transmission line is nearing completion. The originally proposed Perry-Hanna line was recently refused certification by the Ohio Power Siting Commission, and an alternate line or an alternate segment to the proposed line has not been chosen by the applicant.

The staff has reviewed the environmental impacts which could be associated with the operation of the PNPP transmission system. The potential sources of impacts are (1) ozone production, (2) induced electrical currents, (3) electric fields, and (4) corridor maintenance.

Impacts associated with ozone are not expected to change significantly from those discussed at the CP stage of review (FES-CP Section 5.5.1.2).

Potential biological effects from electrical fields associated with transmission lines have been reviewed by the U.S. Department of Energy (DOE). While experimental work is still under way on the biological effects of electric fields along transmission lines, the staff has found no evidence at this time that the operation of 345-kV lines similar to the PNPP system will have a significant effect on the health of humans or that it will affect plant or animal life.

The applicant has designed the transmission system in accordance with clearance requirements of the National Electric Safety Code to ensure the safeguard of persons from shock hazards arising from induced electrical currents emanating from transmission lines. In addition, the applicant undertakes an extensive grounding program within the right-of-way to further reduce shock potentials. Complaints regarding annoyances from induced voltages outside the right-of-way are responded to by the applicant by additional grounding procedures (ER-OL Q&R, 5.5.1).

Maintenance procedures for vegetative control along the PNPP transmission lines will consist of periodical mechanical cutting employing a bush hog. The applicant indicates that it is not his policy to use herbicides for vegetation control along the PNPP transmission lines. Thus, it is the staff's evaluation that adverse impacts from maintenance activities will be minimal.

5.5.1.5 Monitoring

The staff has concluded (Section 5.5.1.2) that the potential for damage to the surrounding ecosystem caused by the water and chemicals in drift from the PNPP cooling towers will be small. Nevertheless, the staff believes it is prudent to undertake a limited-term inspection program because a margin of uncertainty still exists in the foregoing conclusion. An acceptable monitoring program could rely on infrared aerial photography with accompanying ground verification. A program to accomplish this will be specified in an environmental protection plan that will be included as Appendix B of the operating license. This plan also will include requirements for prompt reporting by the licensee of any occurrence of important events that potentially could result in significant environmental impact causally related to plant operation. Examples of such events are excessive bird destruction due to collision with plant facilities, onsite plant or animal disease outbreaks, and mortality of any species protected by the Endangered Species Act of 1973 as amended.

5.5.2 Aquatic

The impacts of PNPP operation on aquatic biota of Lake Erie were considered in the FES-CP (Sections 5.5.2, 11.1.1, and 11.1.2) for the once-through cooling design proposed at that time. The denial of certification of that system by the State of Ohio in 1974 (see Section 4.2.4 above) required the installation of the closed-cycle cooling system now proposed and under construction. The Partial Initial Decision (LBP-74-69, 8 AEC 538) of the AEC Atomic Safety and Licensing Board (ASLB) on September 18, 1974 reviewed the applicant's closed-cycle design and found the impact potential to be greatly reduced in comparison with the previous once-through proposal.

This analysis does not reiterate the detailed findings of the AEC ASLB, but it focuses rather on identification of any new concerns and a general confirmation of previous findings based on information available since 1974 including: studies at the Perry site (see Section 4.3.4); data collected at other operating power plants on Lake Erie in the Perry vicinity; NRC confirmatory assessment of the impacts of operation of closed-cycle cooling at the Davis-Besse Nuclear Plant. The potential impact of PNPP on fish spawning and nursery activities is addressed.

290.08 Provide an assessment of the effects of transmission
(5.5) line maintenance procedures on the spotted turtle
(Clemmys guttata). Indicate whether herbicides will
be used along any portions of the Perry transmission
lines.

Response

It is not the policy of CEI to use herbicides for vegetation control along the Perry transmission lines. CEI cuts the vegetation periodically with a bush hog. To date, there have not been apparent effects on the spotted turtle.

Exhibit B

Sitting Board. Perry-Hanna 345 KV
Transmission Line: 1982

C 2.

than grubbing methods, and allow the soil cover to remain.

(This method may be changed if requested by a landowner during the process of obtaining an easement).

Vegetation control with herbicides during transmission line operation is described in the following section.

3. Herbicides

P. 05-73 To control the many plant species found on the various sites along the right-of-way, a number of herbicides and application methods will be used. In selecting a herbicide and its application methods, consideration is given to the species to be controlled, its size, density, reproductive habits, time of application, and the susceptibility to the herbicide, the site and sensitive crops in the area. In addition, the herbicide is also considered for its selectivity, persistence, toxicity, and its Federal EPA Registered Label Instruction and uses.

Several methods of application are normally used along the right-of-way. The five major brush treatments are: the application of foliage sprays for treating dense or low growing stands of brush; basal sprays for treating less dense stands of tall trees where aerial application should be avoided; cut surface treatment; stump application where

Exhibit C

C 3.

species need to be cut; and soil applications for herbicides that are taken up through root absorption.

Brief Description of Application Methods

a. Foliage Application Method

The wetting of the leaves and stems with a herbicide by spraying.

b. Basal Application Method

The wetting of the lower 12" to 24" of the plant stem, including the root collar, with a herbicide to the point of runoff.

c. Cut Surface Application Method

The cutting of the stem's bark to the sapwood and applying the herbicide to the cut surface.

d. Stump Application Method

The wetting of the stump surface with the herbicide, making sure the herbicide reaches the cambium and runs down to the root collar.

e. Soil Application Method

Applying the herbicide to the soil which is then taken up through the plant's root system. When this method is employed, the herbicide will be applied to the soil around the base of the plant.

Ex. C

C 3.e.

P. 05-74

Herbicides to be used will be of the low or nonvolatile formulation. The risks and hazards of drift will be reduced by the use of ground crews, for no aerial application will be made. In addition, the following guides are used for ground application methods:

- (1) Use as low a pressure as possible.
- (2) Spray down the right-of-way, not across, when foliage spraying.
- (3) Use a spray thickener when conditions warrant it.
- (4) In sensitive crop areas, change chemicals, application methods, or delay operation until dormant season.

The herbicides to be used to control plant growth are phenoxy herbicides: Dicamba; Picloram; ammonium sulfamate; Bromicil; Krenite; Triclopyr; and other herbicides registered for brush control.

The phenoxy herbicides will not be used in the northern portion of the routes, and no herbicides will be used in the Burton wetlands. All the herbicides listed to be used presently have a registered label with the U.S. EPA. A herbicide that is registered by EPA must also be classified by

Ex. C

C 3.e.(4)

EPA as a herbicide for general or restricted use. General use herbicides under the law are those that will damage the environment very little or not at all when applied as the label directs, and can be purchased by anyone for use on his property. All the herbicides listed by the Applicant for use on the right-of-way can be obtained with a general use label. The Applicant will notify the OPSB staff at least 15 days before applying herbicides and will submit a map of the area along the right-of-way which may be chemically treated, the labels of the herbicides that may be used, and written permission for the OPSB staff to inspect the site during the application of herbicides pursuant to OAC 4906-1-17.

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The application of the herbicides will be done by pesticide applicators licensed by the Ohio Department of Agriculture and in compliance with federal and state laws.

Herbicide Description

2,4-dichlorophenoxyacetic acid is a selective herbicide, is nonpersistent and with a soil persistence half-life of 4 days, has a toxicity rating of 4 (slightly toxic), and more specifically has an LD₅₀ of 500 mg/kg. Its mode of action is systemic and is effective on many plants.

Ex. C

Cleveland Electric Illuminating Company
Ohio Edison Company: Perry-Hanna

C 3.e.(4)

P. 05-75

Dicamba is a selective herbicide, is nonpersistent with a soil persistence half-life of 25 days, has a toxicity rating of 4 (slightly toxic), and more specifically has an LD₅₀ of 1,000 mg/kg. Its mode of action is systemic, and can be taken up by the plant roots.

Picloram is a selective herbicide, is more persistent than 2,4-dichlorophenoxyacetic acid, or Dicamba and has a soil persistence half-life of 100+ days; has a toxicity rating of 5 (almost nontoxic), and more specifically has an LD₅₀ of 8,200 mg/kg. Its mode of action is systemic, and it can be taken up by the plant roots and is effective on root suckering species, but shows resistance by ash and oak.

Ammonium sulfamate is a nonselective herbicide, is non-persistent and disappears after 6 to 8 weeks. It has a toxicity rating of 5 (almost nontoxic), and more specifically has an LD₅₀ of 3,900 mg/kg. Its mode of action is by contact on weeds and grass, and certain formulations are registered for use around reservoirs.

Bromocil is a nonselective herbicide, is persistent with a soil persistence half-life of 150+ days, has a toxicity rating of 5 (almost nontoxic), and more specifically has an

Ex. C

C 3.e.(4)

LD₅₀ of 8,200 mg/kg. Its mode of action is through root uptake, and it is effective in controlling ash and other hard-to-kill plant species.

Krenite is a selective herbicide which contains 42 percent ammonium ethyl carbamolyphosphate. It has an LD₅₀ of 24,000 mg/kg. Its mode of action is by contact with foliage.

It has a toxicity rating of 5 (almost non-toxic) and breaks down in soil in 2 to 3 weeks. Krenite is applied as a late season foliage application for control of woody species in noncropland areas including land adjacent to and surrounding domestic water supply reservoirs, water supply streams, lakes and ponds.

Triclopyr is a selective herbicide, is nonpersistent with an average soil persistence half-life of 46 days, has a toxicity rating of 4 (slightly toxic), and more specifically has an LD₅₀ of 2,140-2,830 mg/kg. Its mode of action is similar to that of the phenoxy herbicides, i.e., systemic, and it provides better control of ash than other herbicides.

*** Page 05-76

Where a choice exists, the herbicides to be favored are those that are selective and nonpersistent.

Ex. C

Cleveland Electric Illuminating Company
Ohio Edison Company: Perry-Hanna

C 3.e.(4)

The carriers for the herbicides to be used are water and/or oil. The rate of active ingredient per 100 gallons of mix will not exceed the Registered Label Instruction for the chemical and carrier to be used. The gallons of chemical applied per acre is dependent on the stand density, the method of application and the carriers used. The range for foliage application is one to four gallons per acre, with past averages being about two gallons per acre on established rights-of-ways.

4. Impact on Pest Species

The major, and most commonly encountered, group of pest species in the project area are the insects. Characteristic species associated with health hazards to both man and other animals include mosquitoes, fleas, mites, ticks, and flies. Another pest presenting potential health hazards is the Norway Rat. Not considered a pest species but of concern because of its susceptibility to rabies is the common striped skunk. Plant pests of economic importance include certain insect species such as grasshoppers, caterpillars, aphids, cutworms, beetles, and corn borers. Wildlife species such as rabbits and raccoons, if at sufficiently high population levels, could

EX.C

horned owls, one pair of barred owls, one pair of red-tailed hawks, and five to seven pairs of screech owls were believed to have bred on the PNPP site in 1978 (Figure 2.2-4). Changes in the raptors at the PNPP have corresponded to statewide variations from year to year.

2.2.2.2.3 Reptiles and Amphibians

Six species of amphibians, two species of turtles, and two species of snakes have been reported from the PNPP site since 1972 (Table 2.2-9). These species are typical of the region.

The spotted turtle (Clemmys guttata) was observed at the site in 1972 and 1977. In 1977, two were found in the marshy pasture near the reinforcement bar storage area, and one was found in the transmission corridor in the southeastern part of the site. This species is listed as "endangered" in Ohio by the State.⁽¹¹⁾ The spotted turtle inhabits shallow, clear waters, such as roadside ditches, small ponds, and slow streams.⁽¹²⁾

Exhibit D

ER-0L

localities are being traversed or disturbed by the proposed Preferred or Alternate Routes. The species of general concern are:

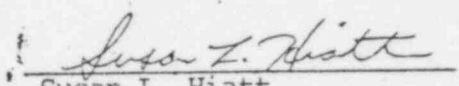
Clemmys guttata, Spotted Turtle - is a small (5" max.), thoroughly aquatic turtle which prefers shallow water in marshes, bogs, small streams and even roadside ditches. It is considered primarily carnivorous but will take plant materials on occasion. It has been collected from the west end of Mentor Marsh in Lake County, from Solon Bog and Aurora Pond in Aurora Township in Portage County and from Burton Township in Geauga County. This species has also been found near where the Alternate Route crossed Highway 6 west of Montville in Montville Township, Geauga County (Figure 02-3d). The transmission line will not cross any known collection sites but, because of its widespread distribution throughout the project area, the turtle could possibly occur within the proposed right-of-way. However, impacts on aquatic habitat will be minimal as discussed earlier and any impact on this species is considered unlikely.

Emydoidea blandingi, Blanding's Turtle - is a relatively large (10" or more), essentially aquatic turtle which will eat both plant and animal material. It occasionally wanders onto land but seldom far from marshes, bogs, lakes, and small streams. It has been collected from two areas in western Lake County: Black Run Swamp west of Fairport and from the west end of Mentor Marsh in Mentor Township.

Exhibit E

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing ^{DOCKETED} ^{USNRC} MOTION FOR SUMMARY DISPOSITION OF THE OPERATING LICENSE APPLICATION were served by deposit in the U.S. Mail, first class, postage prepaid, this 23rd day of April 1983 to those on the service list below.


Susan L. Hiatt

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