

February 17, 1984

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USNRC

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION '84 FEB 21 A11:17

Before the Atomic Safety and Licensing Board OFFICE OF SECRETARY
NUCLEAR REGULATORY COMMISSION
BRANCH

In the Matter of

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, et al.

(Perry Nuclear Power Plant,
Units 1 and 2)

)
)
) Docket Nos. 50-440
) 50-441
) (OL)
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OCRE BRIEF IN SUPPORT OF "SUNFLOWER'S MOTION TO
READMIT ISSUE #2"

On February 14, 1984, intervenor Sunflower Alliance et al filed a motion seeking readmission of Issue #2, on financial qualifications, on the grounds that the District of Columbia Court of Appeals reversed the NRC's rulemaking action which caused the dismissal of Issue #2 from this proceeding. Intervenor Ohio Citizens for Responsible Energy ("OCRE") supports Sunflower's motion and urges the Licensing Board to readmit the issue, as mandated by the Court's ruling.

The Court, in New England Coalition on Nuclear Pollution v. NRC, found that the Commission's rulemaking action lacked a rational connection between the facts found and the choice made and remanded the rule to the Commission for further proceedings consistent with the Court's opinion. OCRE finds below that the only proceedings consistent with the Court's opinion are case-specific licensing proceedings.

Since the Court found that evidence in the rulemaking record contradicted the Commission's main premise, that electric utilities, by virtue of being regulated bodies, are able to meet all costs of construction and operation of nuclear facilities, the Commission clearly cannot reclaim this

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theory in any attempt to salvage its financial qualifications rule.

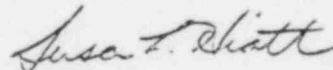
The Commission's second premise, that there is no documented relationship between financial capability and safety, was not only unsupported by evidence in the rulemaking record, but also was apparently contradicted by the Commission's action to retain financial qualifications review of applicants which are not electric utilities. Indeed, some notorious cases indicate that financial factors have a strong influence on plant safety. E.g., the Zimmer fiasco appears to have been caused by the applicant's commitment to building a "cheap" nuclear plant rather than to quality and safety. It has been alleged on national television ("60 Minutes") that the WPPSS 2 facility has serious quality deficiencies in its construction. WPPSS, of course, automatically comes to mind when discussing financial capability. It is further well known that the cleanup of TMI-2 has been slowed due to the utility's difficulty in obtaining funding.

With the purported bases for its action either contradicted or unsupported by evidence, the Commission cannot attempt to resurrect its financial qualifications rulemaking. The question remains as to what type of proceedings are consistent with the Court's opinion. This issue is clearly dissimilar to those issues ideally suited to generic review, e.g., environmental effects of the nuclear fuel cycle. In fact, generic proceedings are totally unsuited to this issue, since some utilities are having more financial difficulties than others. Thus, the only proceedings consistent with the Court's opinion in NECNP v. NRC are individual licensing proceedings such as this one.

The Licensing Board, in its Special Prehearing Conference Memorandum and Order, found that there was sufficient basis to admit Issue #2. There is no reason to believe that Applicants' financial situation has

improved since then. In fact, with Perry's price tag climbing past the \$5 billion mark, there is every reason to believe that the situation has worsened. Certain public statements made by one of the CAPCO investors further support this belief (see attachment). In any event, this issue must be decided upon the basis on evidence in the record. Since, as Sunflower states, the issue was dismissed before any interrogatories were answered, there is no evidence in the record. OCRE therefore urges the Board to readmit Issue #2 and permit liberal discovery thereupon.

Respectfully submitted,



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ATTACHMENT

from the Cleveland Plain Dealer, June 24, 1983

Toledo Edison plight could delay Perry unit

By James Lawless

PD 6-24-83
Toledo Edison Co. chairman John P. Williamson said yesterday construction on Unit 2 of the Perry nuclear power plant may have to be extended to help his company, which announced a major cost-cutting effort.

Toledo Edison, which is part owner of Perry, announced \$11 million in cuts in its operational and maintenance budget, on top of \$18 million in cuts in 1982.

Williamson said as a result of Toledo Edison's financial problems, Unit 2 of the Perry plant and Beaver Valley nuclear plant in Pennsylvania should be re-examined to see if they need to be built as quickly as scheduled.

The twin-reactor \$5.2 billion Perry plant is being built by Cleveland Electric Illuminating Co., which shares ownership with Toledo Edison, Ohio Edison Co. and two Pennsylvania utilities.

Rumors surfaced during the past several weeks that the second Perry reactor might be canceled, but that was denied flatly by both Toledo Edison and CEI spokesman yesterday. However, Public Utilities Commission of Ohio Commissioner Alan R. Schriber said he was asked this week about a potential cancellation by two Wall Street investors.

The speculation also has come from critics of transmission lines, who argue that the second unit will not be needed for years after its 1988 scheduled completion because the utilities have much excess electricity.

"The first unit at Perry has to be completed as quickly as possible," Williamson said, "but the second unit is the subject of some discussion."

William King, a CEI spokesman, said his company had no plans to extend Perry 2 construction.

Williamson said yesterday as many as 100 Toledo Edison employees might lose their jobs, the utility has frozen salaries for all management employees and cut 12 top executives' salaries 5%.

Its unionized employees will get no pay raise this year, he said.

Toledo Edison has asked for a \$79 million rate hike from PUCO but the PUCO staff has recommended less than half of that be granted. Further, the utility may lose its request for costs from Perry construction, because the PUCO staff says Unit 1 is not 75% complete.


Roger Buehrer, a Toledo Edison spokesman, refused to speculate about an emergency rate hike before the PUCO acts on the utility's pending rate hike.

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CERTIFICATE OF SERVICE

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This is to certify that copies of the foregoing were served by deposit in the U.S. Mail, first class, postage prepaid, this 18th day of February, 1984 to those on the service list below.


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