

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket Nos. 50-440
50-441

840.110159 840106
PDR ADCK 05000440
G PDR

DSO3

On December 8, 1983, OCRE filed an "Amendment to Motion to Reopen the Record on Comstock Issues" (Amended Motion). The Amended Motion is based on a December 1, 1983 Lake County News-Herald article concerning allegations made by Richard Wade, a former inspector with Johnson Controls, Inc. (JCI), another contractor at Perry. In its original Motion, OCRE had proposed that the Board "utilize the NRC Office of Investigations (headquarters personnel) as its investigatory arm" to question certain persons, obtain affidavits, and conduct investigations. OCRE also stated that "if a hearing is held, the [Comstock] inspectors (and others who have information which contradicts the views of Staff and Applicants but who do not wish to appear on behalf of intervenors) should be called as Board witnesses."^{2/} In its Amended Motion, OCRE states, with reference to the December 1, 1983 News-Herald article:

Because the allegations raised therein concern a different contractor [footnote omitted] and are much broader in scope than those in the three previous articles, OCRE finds it necessary to amend some of the particular requests in its motion.

OCRE now believes that, rather than than having OI take affidavits, justice and expediency [footnote omitted] might be better served by having the Board conduct an in camera exploratory hearing at which Perry workers can, without fear of publicity, reveal their concerns, under oath, to

^{2/} OCRE Motion at 3-4.

the Board. All such persons appearing would be considered Board witnesses. [footnote omitted] This exploratory hearing would serve to alert the Board to issues for consideration in later evidentiary hearings.3/

As OCRE acknowledges,4/ its Amended Motion falls beyond the limited scope of Issue #3 as defined, and decided, by the Licensing Board.5/ However, "OCRE trusts that the Board will reopen the record to include all serious issues (of which Staff and Applicants were apparently unaware) raised by Perry workers, regardless of their relevance to the Comstock issue."6/

While we believe the Board would be justified in dismissing OCRE's Amended Motion as falling outside the scope of Issue #3,7/ we are nonetheless furnishing the Board with Affidavits,8/ providing ample basis for the Board to consider, and

3/ Amended Motion at 1-2.

4/ Amended Motion at n.1.

5/ See Partial Initial Decision (Quality Assurance Contention), LBP-83-77, 18 N.R.C. __ (1983) (Partial Initial Decision), slip op. at 9.

6/ Amended Motion at n.1 (emphasis added).

7/ OCRE makes no attempt to show compliance with the standards, in 10 C.F.R. §2.714(a)(1), applicable to late-filed contentions.

8/ Affidavit of Steve C. Young, dated January 6, 1984 (Young Affidavit); Affidavit of Emanuel Riley, dated January 6, 1984 (Riley Affidavit). Copies of the Affidavits are attached.

reject, OCRE's Amended Motion on the merits.^{9/} The Affidavits show that Mr. Wade was at Perry for only six weeks, and was only certified to perform inspections for two days prior to his termination. He inspected (and approved) only 16 welds, all of which have been reinspected and found to be acceptable. Mr. Wade raised no safety concerns while at Perry. His charge that JCI officials passed out certification test answer sheets is completely without basis. Finally, the Affidavits show that Mr. Wade was terminated for good cause. Thus, contrary to OCRE's assertion in its Amended Motion, the newspaper charges, tested against the facts provided in Applicants' Affidavits, do not raise "serious issues." The Amended Motion, including all suggested procedural remedies, should therefore be denied.^{10/}

^{9/} In our Answer to OCRE's original Motion, we reviewed the stringent legal standards applicable to motions to reopen a record. See Answer to Motion at 4-6.

^{10/} The NRC Staff has opposed OCRE's Motion, and Amended Motion, by "NRC Staff Response in Opposition to OCRE Motion to Reopen the Record," dated December 22, 1983 (Staff Response).

II. SUMMARY OF FACTS
RELATING TO MR. WADE'S ALLEGATIONS

The December 1, 1983 News-Herald article quotes Mr. Wade as claiming that "he approved thousands of faulty welds that could lead to a serious nuclear accident at the plant." The claim is false. Mr. Wade worked at Perry for only six weeks, between October 4, 1983, and November 15, 1983, and was not certified to perform inspections until November 11, 1983. He inspected a total of 16 welds on the two days he performed inspections. The welds did not involve any of the hardware concerns discussed in the News-Herald article.^{11/} After reviewing the newspaper article, containing Mr. Wade's self-incriminating claim that he approved faulty welds, JCI and CEI reinspected the welds, and found them acceptable.^{12/} The only other specific hardware allegation in the newspaper article relates to hydraulic piping system welds, which do not even fall under JCI's jurisdiction. Mr. Wade raised no concerns about the hydraulic piping system welds while at the plant. All of the welds in question have received complete engineering and QA/QC review and approval, and have passed subsequent hydrostatic testing.^{13/} Thus, Applicants' Affidavits show Mr.

^{11/} Young Affidavit, ¶6

^{12/} Young Affidavit, ¶15; Riley Affidavit, ¶18.

^{13/} Riley Affidavit, ¶9; Young Affidavit, ¶16.

Wade's hardware allegations, as discussed in the newspaper article, to be entirely false.

The News-Herald article also contains the serious charge by Mr. Wade that JCI officials furnished certification test answer sheets to inspectors "hoping to certify inspectors who could not recognize faulty construction." Applicants' Affidavits answer the charge in detail, demonstrating that it is entirely without basis.^{14/} JCI's corporate QA Director (based in Milwaukee, Wisconsin), and Mr. Young, the senior site QA Manager for JCI, interviewed Mr. Wade's instructors and supervisors and found no basis for the charge. Mr. Young spoke with other inspectors taking tests in the same time frame as Mr. Wade, and found no basis for the charge.^{15/} CEI thoroughly investigated and also found no basis to conclude that JCI officials had passed out answer sheets, or that other inspectors obtained or used answer sheets.^{16/}

Upon learning that Mr. Wade possessed copies of actual answer sheets, and before completing their investigations into Mr. Wade's charges, CEI and JCI jointly took a number of corrective actions. JCI's NDE certification exams^{17/} were

^{14/} Young Affidavit, ¶¶9-14; Riley Affidavit, ¶¶6-7.

^{15/} Young Affidavit, ¶14.

^{16/} Riley Affidavit ¶7; Young Affidavit, ¶14.

^{17/} JCI's closed-book, NDE certification exams are in accordance with Standards of the American National Standards

(Continued Next Page)

rewritten, and all JCI inspectors and supervisors were re-examined.^{18/} JCI's entire inspection staff passed the re-examinations, confirming their qualifications.^{19/} In addition, test answer sheets have been moved to a more secure area, JCI's open-book tests are being revised, and open-book testing will be more closely supervised in the future.^{20/} Thus, CEI and JCI took immediate corrective actions to assure the integrity of JCI's certification program.

Mr. Wade is quoted in the News-Herald article as stating that "he thinks he was fired for raising too many questions at the plant."^{21/} Mr. Wade's speculation is without basis. The

(Continued)

Institute and American Society for Nondestructive Testing. JCI's open-book exams are not used for the purpose of certifying inspectors to any Code or Standard, but are voluntarily-imposed training devices used to train JCI inspectors in project procedures. See Young Affidavit, ¶¶7, 8, 10-12.

^{18/} This was done despite the fact that only three other JCI inspectors had taken certification tests while Mr. Wade was employed at Perry. Also, JCI committed to re-inspecting all previous work of any individual failing the re-examinations. Young Affidavit, ¶¶10, 13.

^{19/} Young Affidavit, ¶13; Riley Affidavit, ¶7.

^{20/} Young Affidavit, ¶13. Riley Affidavit, ¶5.

^{21/} This contradicts another statement by Mr. Wade in the same newspaper story that "he didn't come forward for fear of losing his job" (emphasis added). Moreover, with regard to the statement that "he was fired for raising too many questions at the plant," the article fails to indicate what questions Mr. Wade raised which led to his termination.

Young Affidavit details the sequence leading to Mr. Wade's termination. The Affidavit shows that Mr. Wade failed to pass his probationary period as a new JCI inspector, because of serious management concerns over his conduct and attitude.^{22/} Mr. Wade did not raise safety concerns while at Perry, despite numerous procedural avenues, and active management encouragement, to do so.^{23/} CEI has also carefully investigated Mr. Wade's charges that he and other JCI inspectors were improperly terminated, and has found it to be without basis.^{24/} Finally, Applicants' Affidavits^{25/} refute Mr. Wade's generalized allegations about poor security, and intentional construction delays.^{26/}

III. Exploratory Hearings

OCRE argues that the three newspaper stories attached to its original Motion, and the "much broader" newspaper story attached to its Amended Motion, require "an in camera exploratory hearing at which Perry workers can, without fear of publicity, reveal their concerns, under oath, to the Board."^{27/} OCRE

^{22/} Young Affidavit, ¶¶19-21.

^{23/} Young Affidavit, ¶¶17-18.

^{24/} Riley Affidavit, ¶10.

^{25/} Riley Affidavit, ¶11; Young Affidavit, ¶22.

^{26/} Mr. Wade's published statements about intentional construction delays, and poor security, are not linked to quality concerns, and clearly fall outside Issue #3.

^{27/} Amended Motion at 1-2.

would have Applicants post notices of such a hearing throughout the site, and in Ohio and Pennsylvania newspapers. OCRE also asks the Board to send letters to "all inspectors (CEI and contractor) whose employment at Perry has ceased within the last 12 months . . . explaining the purpose and circumstances of the hearing and specifically requesting their appearance." OCRE cites, without reference or discussion, "rulings of the Catawba Licensing Board" as "precedent for this action."28/

Whether or not OCRE's drastic procedural remedies are appropriate in other hearings, and in other circumstances, they are not appropriate here. The Issue #3 record is closed, and a decision has been issued. To justify the reopening of the Issue #3 record at this juncture in the case, and certainly to justify the drastic procedural steps advocated by OCRE, OCRE is obligated to produce facts showing significant safety issues.29/ OCRE has not made such a showing with respect to the Comstock newspaper articles,30/ and it has not done so in

28/ Id. at 2-3. Applicants are not familiar with the details of the Catawba proceeding, and are unaware of the specific "rulings" OCRE has in mind. We cannot, therefore, address whether procedures invoked in that proceeding were appropriate, or whether they have any applicability to the facts, and present posture, of the Issue #3 proceeding.

29/ See Answer to Motion at 4-6, and cases cited therein.

30/ Applicants have addressed the merits of the Comstock newspaper articles in our Answer to OCRE's Motion.

the case of the newspaper article about Mr. Wade. Applicants' Affidavits in response to these stories have placed authoritative facts before the Board showing the absence of any safety issue. Moreover, OCRE should not be permitted to use the device of an "exploratory hearing" to search for a basis to reopen.^{31/} As the moving party, OCRE has the obligation to demonstrate that a present basis exists to reopen the record.^{32/} OCRE has failed to do so.

OCRE's request that the Board send notices to inspectors, and that the Board sponsor witnesses, would require the Board to abandon its impartial, adjudicatory role and assume the investigatory function of the NRC Staff.^{33/} There is no justification for such action. The Staff has indicated that it is thoroughly investigating all matters raised by the four inspectors, and that it will assure that the necessary corrective actions are taken.^{34/} Moreover, Applicants' Affidavits

^{31/} Thus, OCRE's argument, at page 2 of its Amended Motion, that "[t]his exploratory hearing would serve to alert the Board to issues for consideration in later evidentiary hearings" (emphasis added) should be rejected.

^{32/} See 10 C.F.R. §2.732.

^{33/} See Union Electric Company (Callaway Plant, Unit 1), ALAB-750, 18 N.R.C. ____ (1983), slip op. at 20 (addressing the division of responsibility between the Commission's adjudicatory boards and its staff); Union Electric Company (Callaway Plant, Unit 1), ALAB-750A, 18 N.R.C. ____ (1983), slip op. at 4.

^{34/} See Affidavit of James E. Konklin and Cordell C. Williams, dated December 16, 1983 (attached to the Staff Response).

clearly demonstrate that the Licensing Board has no basis, on the merits, to exercise the extreme option of calling Board witnesses, which should only be done in "the most extraordinary situation in which it is demonstrated beyond question that a board simply cannot otherwise reach an informed decision on the issue involved."35/

Finally, OCRE urges that the exploratory hearings be held in camera, because of "fear of retaliation" and "fear of publicity."36/ The four inspectors cited by OCRE hardly have evidenced a fear of publicity. Their assertions of having been discouraged from reporting problems while at the plant, and of improper terminations, are discredited, and disproved, by the facts set forth in Applicants' Affidavits. The Affidavits make clear that CEI, Comstock, and JCI have all encouraged the reporting of safety concerns. The inspector terminations in question have all been for good cause, with no evidence of any possible retaliatory intent on the part of Comstock, JCI, or CEI.

35/ South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-633, 14 N.R.C. 1140, 1163 (1981), reaff'd, ALAB-710, 17 N.R.C. 25 (1983).

36/ Amended Motion at 2, n.2.

IV. Conclusion

For all of the above reasons, Applicants respectfully request the Licensing Board to deny the Amended Motion.

Respectfully submitted,

SHAW, PITTMAN, POTTIS & TROWBRIDGE

By:


JAY E. SILBERG, P.C.
HARRY H. GLASSPIEGEL

Counsel for Applicants

1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

DATED: January 6, 1984