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RELATED CORRESPONDENCE

July 6, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED  
USNRC

In the Matter of

CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, Et Al.

(Perry Nuclear Power Plant,  
Units 1 and 2)

'84 JUL -9 P12:37

Docket Nos. 50-440

50-441  
(Operating License & SERVICE  
BRANCH)

OCRE BRIEF IN OPPOSITION TO APPLICANTS' MOTION FOR PARTICULARIZATION  
OF ISSUE NO. 1

On June 26, 1984, Applicants filed a motion requesting that the Licensing Board order Sunflower Alliance, the lead intervenor on Issue #1, on emergency planning, to particularize that issue such that the specific concerns of Intervenor are identified. Issue #1 states:

Applicant's emergency evacuation plans do not demonstrate that they provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

OCRE disagrees with Applicants' assertion that Issue #1 is now "ripe for particularization." Motion at 5. Indeed, a recent decision of the Court of Appeals appears to require that particularization be delayed until after the emergency planning exercise for the Perry plant.

On May 25, 1984 the U.S. Court of Appeals for the District Columbia Circuit vacated the NRC's rule (10 CFR 50.47) exempting emergency preparedness exercises from consideration in licensing decisions. The Court ruled that that regulation denied a right to a hearing on a material factor relied upon by the Commission, in violation of § 189 of the Atomic Energy Act. See Union of Concerned Scientists v. U.S. NRC, Case No. 82-2053. Thus, the results of the emergency

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preparedness exercise for Perry must be considered by this Board in the litigation of Issue #1.

It is OCRE's understanding that that exercise is scheduled for November of this year. Certainly waiting until a reasonable period of time following that exercise will not create any great delay in this proceeding.

It is entirely possible that the exercise will reveal deficiencies that would not otherwise be revealed upon an examination of the prepared plans. Indeed, any plan can look good on paper, but it is the implementation of the plan that counts. It is this concern that seems paramount in the language of Issue #1. Intervenors at the Special Prehearing Conference expressed concerns over the implementation of the plans in an emergency. To particularize the issue now on the basis of paper plans alone flies in the face of UCS v. NRC.

OCRE therefore urges the Board to deny Applicants' motion as it is not ripe for decision.

Respectfully submitted,



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Dated: July 6, 1984

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing were served by deposit in the U.S. Mail, first class, postage prepaid, this 6th day of July, 1984 to those on the service list below. 12:37

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