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RELATED CORRESPONDENCE

July 30, 1984

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 JUL 31 P2:52

Before the Atomic Safety and Licensing Board

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

Docket Nos. 50-440 *OL*
50-441 *OL*

APPLICANTS' ANSWER IN OPPOSITION TO OCRE
MOTION FOR SUMMARY DISPOSITION
OF ISSUE NO. 6

On July 6, 1984, Ohio Citizens for Responsible Energy
("OCRE") filed a motion for summary disposition of Issue No. 6.
Issue No. 6 states as follows:

Applicant should install an automated
standby liquid control system to mitigate
the consequences of an anticipated
transient without scram.

Since the Perry Nuclear Power Plant has a standby liquid
control system ("SLCS"), see Special Prehearing Conference
Memorandum and Order, LBP-81-24, 14 N.R.C. 175, 220 (1981), the
issue is whether the SLCS should be automatically initiated or
manually initiated.

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On June 26, 1984, the Commission published in the Federal Register its final rule on anticipated transients without scram ("ATWS"). 49 Fed. Reg. 26036. The rule explicitly resolves the question of the initiation mode for SLCS by specifying those cases in which reactors must have automatic initiation. New 10 C.F.R. §50.62(c)(4) states in part:

The SLCS initiation must be automatic and must be designed to perform its function in a reliable manner for plants granted a construction permit after July 26, 1984, and for plants granted a construction permit prior to July 26, 1984, that have already been designed and built to include this feature.

49 Fed. Reg. at 26045 (emphasis added). Summary disposition in OCRE'S favor can therefore only be granted if OCRE shows that there is no genuine issue of material fact that the Perry SLCS has already been designed and built for automatic initiation.

OCRE's motion on its face fails to establish either that the Perry SLCS has already been designed for automatic initiation or that it has already been built for automatic initiation. The motion must therefore fall of its own weight. OCRE's summary disposition motion rests on two claims which OCRE attempts to support by reference to Applicants' own documents.^{1/} OCRE'S Statement Of Material Facts As To Which

^{1/} Applicants do not controvert the first three statements of material fact submitted by OCRE (a statement of the con-

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There Exists No Genuine Issue To Be Heard, No. 4. OCRE's support for this statement is an August 13, 1982 letter from Applicants to the NRC Staff, attachment 2 to OCRE's motion. That letter provides no support whatever for the proposition that the Perry SLCS "is being...built" for automatic initiation. Indeed, the letter states that "only manual initiation will be functional." Nor does the letter support the regulatory criterion that the Perry SLCS has "already been designed" for automatic initiation. The letter merely states that the design "includes...automatic initiation capability." The design of SLCS system calls for manual initiation. See NUREG-0887, Supp. 3, "Safety Evaluation Report related to the operation of Perry Nuclear Power Plant, Units 1 and 2 (April 1983), p.9-1 ("The [standby liquid control] system is initiated by manual actuation of either of two key-locked switches on the control room panel"). See also Final Safety Analysis Report, §9.3.5.2.

The second claim on which OCRE bases its motion states that "[a]utomation of the SLCS can be achieved at low cost."

(Continued)

tention, a statement of the new ATWS regulation, and the date in which the construction permits for Perry were issued).

OCRE's Statement of Material Facts As To Which There Exists No Genuine Issue To Be Heard, No. 5. This statement is supported by a reference to Applicants' response to a Sunflower interrogatory. This claim demonstrates that Perry has not already been designed and built for automatic initiation. If SLCS automation "can be achieved at low cost," it logically follows that automation has not already been achieved. Indeed, OCRE's motion (at 2) refers to "converting the SLCS initiation (which was to be manual even though automation is possible) to automation." If the system has to be "converted" to automatic initiation, then by definition Perry is not a plant which has "already been designed and built to include" automatic initiation.

For OCRE's motion to succeed, it must show that there is no genuine issue to be heard with respect to the Perry facility having an SLCS which has "already been designed and built to include" automatic initiation.^{2/} OCRE has not met this burden. Since OCRE has not shown that it is entitled to a judgment as a matter of law, its motion must be denied. As the Appeal Board has noted, "No defense to an insufficient showing is required."

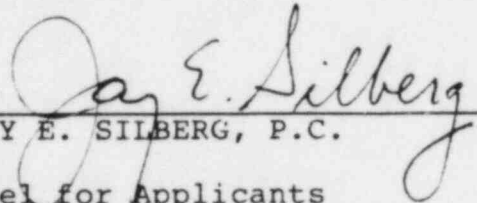
^{2/} Applicants expect to file in the near future a summary disposition motion on Issue No. 6 which will demonstrate affirmatively that Perry has not already been designed and built to include automatic initiation.

Cleveland Electric Illuminating Co. Perry Nuclear Power Plant,
Units 1 and 2), ALAB-443, 6 N.R.C. 741, 754 (1977) (quoting J.
Moore, Federal Practice). OCRE's showing in this instance is
clearly insufficient.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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DATED: July 30, 1984.