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July 5, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
THE CLEVELAND ELECTRIC ILLUMINATING CO. ET AL.	)	Docket Nos. 50-440 OL 50-441
	)	
(Perry Nuclear Power Plant, Units 1 and 2)	)	

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MOTION TO REOPEN THE RECORD AND TO SUBMIT A NEW CONTENTION

I. INTRODUCTION

On April 8, 1985, Applicants requested from the NRC Staff an exemption from Section III.D.2(b)(ii) of 10 CFR 50 Appendix J, claiming that compliance therewith is financially burdensome. See Exhibit 1, attached hereto. On May 8, 1985, the OCRE Representative wrote a letter to the NRC Project Manager, Mr. John Stefano, explaining that the requested exemption must be denied as it is illegal and unwarranted. See Exhibit 2. On June 21, 1985, the Staff prepared an Environmental Assessment and Finding of No Significant Impact for the requested exemption (see Exhibit 3), apparently signifying its intention to grant the exemption.

As is explained below, the Staff has committed an ultra vires act in granting this meritless exemption. Furthermore, the health and safety of the public is endangered by this exemption. For these reasons, Intervenor Ohio Citizens for Responsible Energy ("OCRE") respectfully requests that the

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Licensing Board reopen the record for the purpose of admitting the following contention for litigation:

> Applicants have not demonstrated, pursuant to 10 CFR 2.758, that the application of Section III.D.2(b)(ii) of Appendix J to 10 CFR 50 to the Perry facility does not serve the purposes for which that regulation was adopted.

II. DISCUSSION

A. Standards for Exemptions under 10 CFR 50.12

10 CFR 50.12(a) states that the Commission may grant such exemptions from the regulations in 10 CFR Part 50 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Each of the three factors are addressed separately below.

1. Authorized by Law

In their exemption request Applicants claim that the exemption is authorized by 10 CFR 50.12 and that no laws or regulations would prevent the granting of the exemption. Applicants are mistaken on several counts. First, 10 CFR 50.12 does not authorize blanket exemptions from the Commission's safety standards; rather, it permits granting of exemptions only in circumstances where specific standards are met. As discussed later, this regulation is reserved for exceptional circumstances. Secondly, Applicants confuse the term "authorized by law" with "not prohibited by law." The standard dictionary meaning of "authorize" is "to give official approval or legal power to; to give a right to act; to empower." Webster's New Twentieth Century

Dictionary, Unabridged, Second Edition. "Authorized" clearly does not mean "not prohibited."

Of course, the governing law for the NRC is the Atomic Energy Act. This law does not authorize the Commission to grant exemptions; on the contrary, the Commission may issue a license only to those applicants

> who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may by rule establish. 42 USC 2133(b)(2).

Nor does 42 USC 2201(h), which governs consideration of license applications, contain any variance from this requirement. In the absence of a showing of Congressional authority in the legislative history of the Atomic Energy Act, the requested exemption cannot be said to be "authorized by law." See E.I. duPont de Nemours & Co. v. Train, 430 US 112, 138, 97 S.Ct. 965 (1977), wherein the Supreme Court established that the authority to provide for exemptions from agency regulations must be granted by Congress, either through the specific language of the enabling statute or its legislative history.

Even if the exemption were authorized by law, Applicants' basis for requesting relief clearly is not. The sole basis for non-compliance with Section III.D.2(b)(ii) of Appendix J is the purported financial burden created by compliance. The Supreme Court has made it clear that the Commission is not authorized to consider such claims. Power Reactor Development Corp. v. International Union of Electrical etc. Workers, 367 US 396, 413-416 (1961); Pacific Gas and Electric Co. v. State Energy

Resources Conservation and Development Commission, 51 LW 4449, 4453 (1983).

2. Endangering Life or Property

As Applicants and Staff admit, an exemption from Section III.D.2(b)(ii) of Appendix J would increase the probability of containment leakage during an accident. Since the purpose of the containment is to limit the escape of fission products into the environment, any increased leakage will endanger life or property due to increased exposure to fission products.

The Commission's standard for this factor in 10 CFR 50.12(a) is that the facility in non-compliance with a regulation be as safe as if it were in compliance. Long Island Lighting Co. (Shoreham Nuclear Power Station), CLI-84-8, 19 NRC 1154 (1984). Applicants do not meet this standard.

Section III.D.2(b)(ii) of Appendix J requires that airlocks opened during periods when containment integrity is not required be tested by internal pressurization to P sub a [11.31 psig for PNPP] at the end of such periods. This pressurization test is the same as must be performed every 6 months under Section III.D.2 (b)(i).

The Staff proposes that the seal leak test of Section III.D.2(b) (iii) be substituted for the full internal pressurization test before establishing containment integrity. See Exhibit 3. However, Section III.D.2.(b)(iii) of Appendix J clearly states that the the seal leak test cannot be substituted for the 6 month internal pressurization test. Thus, the seal leak test

must not be the safety equivalent of the internal pressurization test.

Examination of FSAR design data verifies this. The airlock design incorporates an automatic seal leak test. Upon activation of the door interlock switch, the test cycle begins by pressurizing the space between the seals to 11.31 psig. At this pressure, leakage is tested and the result displayed in the control room. After the test cycle, the system resets to the ready state for the next closure. FSAR Section 3.8.2.1.4, p. 3.8-55. This test apparently fulfils the requirements of Section III.D.2(b)(iii) and is appropriate for periods when the interlocks are activated.

However, the test of Section III.D.2(b)(ii) is required after periods when containment integrity is not required. During these periods the interlock system is bypassed to permit both doors to be left open. FSAR p. 3.8-56. Operating experience at nuclear facilities indicates that airlocks have a poor record, and frequently one or both doors have failed to close or latch. NUREG/CP-0056, Proceedings of the Second Workshop on Containment Integrity at 36-37. If a door is left open and interlocks bypassed, no interlock signal will be present to start the automatic test cycle, and no seal leak test will be performed. Complying with Section III.D.2(b)(ii) will help assure that airlock integrity is maintained.

3. The Public Interest

Since the exemption would clearly endanger life and property by increasing the probability of containment leakage during an accident, the exemption is obviously not in the public interest. Applicants in their request take a novel view of "public interest." As explained in Exhibit 2, their reasoning is entirely erroneous.

Having found that Applicants' exemption request fails the tests of 10 CFR 50.12, OCRE maintains that the Staff should have denied the request. Since the Staff has granted this baseless request and in so doing has committed an ultra vires act, it is now appropriate for the Licensing Board to apply the proper standards for waiving regulations, i.e., 10 CFR 2.758.

B. Standards under 10 CFR 2.758

It has long been established that the Commission's regulations represent the "Commission's definition of what is required to protect the public health and safety." Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Plant), ALAB-138, 6 AEC 520, 528 (1973). Compliance with the regulations is the basis for a finding that a nuclear power plant can operate with a "reasonable assurance of safety" and in fact is the "sine qua non of adequate protection to public health and safety." Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1009-10 (1973).

It has likewise been established that allowing non-compliance with the regulations on the grounds that the plant is safe anyway, based on some overall finding of reasonable

assurance of safe operation, is tantamount to an impermissible challenge to the Commission's regulations. Vermont Yankee, supra, 6 AEC at 529. Challenges to the Commission's regulations are, of course, expressly forbidden by 10 CFR 2.758(a), unless the party seeking the waiver meets the standards of 10 CFR 2.758 (b), (c), and (d).

These sections require that a party to a proceeding seeking waiver of a regulation must make a prima facie showing that the application of the regulation to the particular case in question would not serve the purposes for which the rule was adopted and that application of the rule should be waived or exception granted due to the special circumstances of the case. If the presiding officer determines that a prima facie showing has been made, the matter is certified to the Commission, which may direct further proceedings to aid its determination. It must be recalled that this Licensing Board has ruled that the standard for granting petitions under 10 CFR 2.758 has two prongs (that the purposes of a rule are not served by its application and that special circumstances exist with respect to a particular case that make this so). LBP-81-57, 14 NRC 1037 (1981). If Applicants seek a waiver of Section III.D.2(b)(ii) of Appendix J, then they must follow the procedure in 10 CFR 2.758. Although Applicants have not yet submitted such a petition, OCRE can conclude, on the basis of their exemption request, that it will fail, as no arguments were made in the request even

remotely resembling the special circumstances of Section 2.758. Indeed, their claims of "harm" could be made at any facility and for almost any regulation.

The Commission has recognized that exemptions from the regulations are made only in extraordinary cases upon a showing of exceptional circumstances. Shoreham, supra, 19 NRC at 1156, note 3. The Commission also required that, in a contested proceeding, the application for exemption be submitted to the Licensing Board. Id. at 1155. In the absence of particular instructions for handling this case from the Commission (as were made for the Shoreham proceeding), Applicants are "a party to an adjudicatory proceeding involving initial licensing subject to" 10 CFR 2.758, and they therefore must petition to waive Section III.D.2(b)(ii) of Appendix J, pursuant to the requirements of Section 2.758, if they would seek an exemption from that regulatory requirement.

III. STANDARDS FOR REOPENING THE RECORD AND FOR LATE-FILED CONTENTIONS

A. Reopening the Record

The standards for reopening the record, as outlined in Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980), are (1) that the motion be timely; (2) that it address significant issues; and (3) that a different result might be reached had the newly proffered material been considered initially. However, this Licensing Board has questioned the applicability of these

standards (particularly the last one) to motions to reopen filed prior to the issuance of an initial decision (LBP-83-52, 18 NRC 256 (1983)), as one cannot show that a different result might be reached if no result has yet been reached.

This motion is timely, being filed within 10 days after the receipt of the Staff's notice of Environmental Assessment and Finding of No Significant Impact (Exhibit 3) by OCRE. Filing before the receipt of that document was neither logical nor possible, as it was not then known whether the Staff would grant the exemption.

This motion addresses a significant issue; containment integrity is vital to the protection of the public health and safety during an accident, and non-compliance with the Commission's regulations is always a serious matter.

Regardless of the Board's disposition of the issues presently before it, new information concerning non-compliance with the Commission's safety regulations will always warrant reopening of the record, since, as discussed above, compliance with the regulations is the basis for a finding that a nuclear facility is safe, and is also in itself one of the individual findings required to be made by the presiding officer. See 10 CFR 2.104(c)(2); compare 10 CFR 50.57(a)(2).

Each of the standards for reopening the record has thus been met.

B. Standards for Late-Filed Contentions

The five factors of 10 CFR 2.714(a) have likewise been met:

Factor (i) concerns good cause for late filing. As discussed above, filing at an earlier time was impossible.

Factor (ii) concerns the availability of other means for protecting OCRE's interests. OCRE is unaware of any other means left to it, and in fact tried other means, addressing its concerns to the Project Manager in the hope of avoiding litigation, without success. Since the Staff has caused this action by granting Applicants' meritless exemption request, a petition to the Staff under Section 2.206 will serve little purpose.

Factor (iii) concerns the extent to which OCRE's participation on this matter will assist in developing a sound record. OCRE has conducted considerable research on the subject of containment performance and integrity in preparing for the hearing on Issue #8. The Licensing Board has noted that, on that issue, OCRE could contribute substantially to the record. March 14, 1985 Memorandum and Order (Motions on Hydrogen Control Contention) at 7.

Factor (iv) concerns the extent to which OCRE's interest will be represented by other parties. OCRE is not aware that any other party can represent its interests on this matter. Certainly the Staff, having committed an ultra vires act in granting the exemption, cannot represent OCRE's interests.

Factor (v) concerns the degree of delay or broadening of the issues occassioned. While some delay might result, it is attributable to Applicants, who, had they anticipated the need

to comply with a regulation which has been in effect for years, would not now be trying to evade compliance. Furthermore, the effect of any delay is minimal in light of Applicants' ever-slipping fuel load date. See June 19, 1985 letter from Applicants' counsel to the Board.

It thus can be concluded that all five factors have been met, and the Board should grant the instant motion. OCRE prays that the Board is so moved.

Respectfully submitted,

Susan L. Hiatt

Susan L. Hiatt
OCRE Representative
8275 Munson Rd.
Mentor, OH 44060
(216) 255-3158

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EXHIBIT 1

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MURRAY R. EDELMAN
VICE PRESIDENT
NUCLEAR

April 8, 1985
PY-CEI/NRR-0218 L

Mr. B. J. Youngblood, Chief
Licensing Branch No. 1
Division of Licensing
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Perry Nuclear Power Plant
Docket Nos. 50-440; 50-441
Request for Exemption to 10CFR50
Appendix J

Dear Mr. Youngblood:

During the development of Technical Specifications for the Perry Nuclear Power Plant, CEI has identified an implicit exemption to the provisions of 10CFR50, Appendix J, Section III.D.2(b)(ii) that is contained in a footnote to Section 4.6.1.3 of the Technical Specifications.

Based on your staff's guidance and pursuant to 10CFR50.12(a), CEI is submitting its evaluation of the need for this exemption in the attachment. The attachment provides the information required by 10CFR50.12(a), including a description of the issue addressed in the exemption and the basis upon which CEI concludes that the exemption may be acceptable to the NRC.

If you have any questions, please call.

Very truly yours,

R. Kaplan for

Murray R. Edelman
Vice President
Nuclear Group

MRE:njc

Attachment

cc: Jay Silberg, Esq.
John Stefano (2)
J. Grobe

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1/1

REQUEST FOR EXEMPTION TO 10CFR50 APPENDIX J

Applicant requests a permanent exemption from the provisions of 10CFR Part 50 Appendix J Paragraph III.D.2(b)(ii).

The requested exemption is authorized by 10CFR50.12, and there are no laws or regulations which would prevent the granting of the exemption. The exemption will not present an undue risk to the public health and safety, is consistent with the common defense and security, and is in the public interest.

PUBLIC HEALTH AND SAFETY JUSTIFICATION

Paragraph III.D.2(b) of Appendix J to 10CFR 50 details three explicit air lock testing requirements which are further required to be included in the Technical Specifications. With one exception, Technical Specification 4.6.1.3 items a, b.1, and b.2 correspond to and comply with those Appendix J requirements.

Technical Specification 4.6.1.3.b.1 requires that containment air locks be demonstrated operable by conducting a leak test every 6 months, when containment integrity is required, by pressurizing the interior of the air lock to P_a (the calculated peak containment internal pressure under design basis accident conditions, 11.31 psig for PNPP Unit 1) and verifying that the leakage rate is within its limit. This is in compliance with Appendix J requirement III.D.2(b)(i).

A further Appendix J requirement in paragraph III.D.2.(b)(iii) to test air locks within 3 days after being opened (or at least once every 3 days for closings more frequent than every 3 days) specifies that air lock seal tests satisfy the 3 day test requirements. Technical Specification 4.6.1.3.a corresponds to and complies with this portion of Appendix J.

The portion of Appendix J to which the exception applies is paragraph III.D.2(b)(ii) which requires that "Air locks opened during periods when containment integrity is not required by the plant's Technical Specification shall be tested at the end of such periods at not less than P_a." In lieu of this requirement, Technical Specification 4.6.1.3.b.2 requires that an overall air lock leakage test be conducted at P_a when maintenance has been performed on the air lock that could affect the air lock sealing capability. This Technical Specification contains a footnote stating that this requirement is an exemption to Appendix J of 10CFR50.

The existing air lock doors are so designed that a full pressure test at P_a of an entire air lock can only be performed after strong backs (structural bracing) have been installed on the inner door. This is due to the fact that the pressure exerted on the inner door during the test is in a direction opposite to that of force experienced during a postulated accident and the locking mechanisms are not designed to withstand such reverse forces associated with pressures on the order of P_a. Installing strong backs, performing the test, and removing the strong backs is a cumbersome process requiring approximately 24 hours per air lock (there are 2 air locks), during which access through the air lock is prohibited. The basic design of the PNPP Unit 1 containment permits frequent access in order to perform required surveillance and maintenance activities.

The periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the 3-day test requirement of paragraph III.D.2.(b)(iii) of Appendix J provide assurance that the air lock will not leak excessively just because it has been opened when containment integrity is not required if no maintenance which could affect the ability of the air lock to seal has been performed on the air lock and the air lock is properly engaged and sealed.

Furthermore, this exemption is included as a part of the Standard Technical Specifications and is consistent with current regulatory practice and policy.

An exemption from paragraph III.D.2(b)(ii) of Appendix J, 10CFR50 is requested since this present Technical Specification provides equivalent protection to the requirement itself and does not endanger life or property.

PUBLIC INTEREST

If literal compliance with the applicable provisions of Appendix J discussed above were mandated, either a cumbersome and unwarranted test method must be used or a major design change would be required in order to permit the inner door to withstand full containment pressure in the test direction without strong backs. The remaining Appendix J test requirements for containment airlock testing in conjunction with the current Technical Specification post-maintenance test requirement achieve substantial compliance with the purpose of the Appendix J requirements, which is to provide reasonable assurance that leakage will be detected.

If design changes were undertaken, a corresponding delay in commercial operation of PNPP Unit 1 would be occasioned at this stage. Any delay in the commercial operation of PNPP Unit 1 would cause the cost of the unit to increase at the rate of more than $14.7 million per month. Under standard ratemaking practices, these costs would eventually have to be borne by ratepayers of the CAPCO companies.

If full complicance with the Appendix J testing requirement is undertaken using the current design then periodically over the remaining life of the plant, a cumbersome and lengthy test must be undertaken on one or both containment air locks. The duration of these tests taken over the life of the plant during which the plant must be shut down (since Appendix J requires the test at the end of each period during which containment integrity is not required and during which the air lock has been opened) is substantial. These tests would extend the duration of the outages by half a day or more several times a year. This would have a significant financial impact on the CAPCO companies and ultimately on the ratepayers as described above.

Either implementation of a full compliance test requirement with lost time over the life of the plant or a delay in commercial operation to implement a major design change has a substantial financial impact on the CAPCO companies and its customers and is not warranted inasmuch as, as shown above, the public health and safety are adequately protected.

POTENTIAL ENVIRONMENTAL IMPACT

The only potential incremental environmental impact associated with this exemption request is related to increased probability of containment leakage during an accident. Other areas of environmental impact, namely radiological and non-radiological effluents and other non-radiological consequences or impacts are not affected by the requested exemption.

The containment air locks are points of routine access with the containment and have no bearing on the plant radiological or non-radiological effluents. The exemption sought in this case, therefore, has no adverse impact on the normal operations effluents or, for that matter, any non-radiological areas.

Because of existing Technical Specification surveillance requirements, the requested exemption involves a de facto requirement for an air lock seal test in lieu of the Appendix J Paragraph II.D.2(b)(ii) test. Paragraph II.D.2.(b)(iii) already allows an air lock seal test in lieu of a similar required air lock test at a pressure of not less than P_a, thus recognizing the implicit equivalence of these tests under similar circumstances.

As a result, it can be concluded that there is a reasonable assurance against undue air lock leakage provided under the exemption and that no material increase in the probability or extent of air lock leakage (i.e., in excess of the design value for post accident containment leakage) is to be expected. Therefore, there is no significant increase in the probability of higher post accident offsite (or for that matter onsite) doses related to the exemption and therefore no significant increase in environmental impact beyond that experienced with no exemption.

EXHIBIT 2

May 8, 1985

Mr. John J. Stefano
Project Manager
Division of Licensing
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re Perry Nuclear Power Plant, Request for Exemption to 10CFR50 Appendix J

Dear Mr. Stefano:

On April 8, 1985 the Cleveland Electric Illuminating Co. requested an exemption from Section III.D.2.(b)(ii) of Appendix J to 10 CFR Part 50. The requested relief would eliminate leak testing of containment personnel airlocks by internal pressurization to 11.31 psig at the end of periods when containment integrity is not required if they had been opened in that period. Ohio Citizens for Responsible Energy ("OCRE") opposes this exemption for the reasons outlined below.

Applicants' main complaint against this requirement is that it is burdensome, requiring extra time and thereby costing them money. This complaint could be made against any of the NRC's regulations. In the portion of their request labelled "public interest" Applicants take a novel view of that term under the Atomic Energy Act. Public interest to Applicants means not the traditional public health and safety, but rather delay and cost increases, supposedly out of concern for ratepayers. First, it is not clear that such extra costs would be borne by ratepayers. The PUCO has become intolerant of the increasing cost of Perry and has denied the rate increases sought by CAPCO for the plant. The PUCO has also ordered a management audit of the costs of Perry. Thus, it is probable that that any costs due to compliance with the regulation (such as a design change) would be borne by stockholders and not ratepayers, since the argument could be made that, since Appendix J has been in its present form for some time, CEI management should have anticipated the need to comply with it and incorporated any needed design changes at an earlier date. Secondly, consideration of costs to utilities are improper under the AEA. See Power Reactor Development Co. v. International Unions, 367 US 396 (1961); Pacific Gas & Electric Co. v. State Energy Resources Commission, 51 LW 4449, 4453 (1983).
Furthermore, Applicants' allegations of financial harm are made in a most general sense and are not substantiated by reliable facts.

Applicants claim that the other airlock leak test provisions of Appendix J (the 6 month internal pressurization test and the 3

day seal test) provide equivalent protection to the requirement in question. This argument could be made at any facility, and represents a challenge to the requirement itself.

Applicants' claims of the burdensome nature of the questioned regulation are also inconsistent. They do not object to the 6-month internal pressurization test, which would require the same bracing of the inner airlock door as is needed for the test in question. The test in question is performed only at the end of periods in which containment integrity is not required, which, accordance with the draft Perry Tech Specs, is cold shutdown or refueling. Since these periods are expected to be a minimum compared to the time the plant is operating, in startup or in hot shutdown, we would expect the 6-month test to be performed more frequently.

There is a valid technical reason for the test in question. Pacific Northwest Laboratory's Reliability Analysis of Containment Isolation Systems Project has found that 90% of penetration failures in their LER review were attributable to personnel airlock problems, and that failure of one or both airlock doors to close and latch has been reported frequently. (NUREG/CP-0056, Proceedings of the Second Workshop on Containment Integrity, pp. 36-37.) Such failures are more likely to occur when containment integrity is not required, since interlocks are bypassed and personnel are more lax about containment integrity. The test in question would assure that airlock integrity is maintained.

Contrary to Applicants' assertions, the 3-day seal test would not detect airlock leakagefollowing a period in which containment integrity is not required. Section III.D.2.(b)(iii) of Appendix J requires this test after an opening of the airlock during periods when containment integrity is required. It is not required after periods when containment integrity is not required. Thus, it is possible that, if the requested exemption is granted, an improperly latched airlock would go undetected until the 6-month test or until the airlock is opened, whichever comes first after the refueling outage. This creates an unacceptable risk of containment leakage during an accident.

OCRE therefore concludes that Applicants' request for an exemption from Appendix J is unwarranted, contrary to the AEA, and a threat to the public health and safety. Their request must be denied.

Sincerely,

Susan L. Hiatt

Susan L. Hiatt
8275 Munson Road
Mentor, OH 44060

EXHIBIT 5

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JUN 21 1985

Docket No.: 50-440

Mr. Murray R. Edelman, Vice President
Nuclear Operations Group
The Cleveland Electric Illuminating Company
P. O. Box 5000
Cleveland, Ohio 44101

Dear Mr. Edelman:

Subject: Request for Partial Exemption from the Testing Requirements of Appendix J to 10 CFR Part 50 Pertaining to the Operation of the Perry Nuclear Power Plant, Unit 1

Your letter dated April 8, 1985 (PY-CEI/NRR-0218L), advised that during the development of plant Technical Specifications for the Perry Nuclear Power Plant, Unit 1, you identified the need for an implicit exemption from the test requirement of Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 related to containment airlock testing.

The NRC staff has prepared an Environmental Assessment and Finding of No Significant Impact of the requested exemption (copy enclosed), assuming that the seal leakage test program of Paragraph III.D.2(b)(iii) of Appendix J (to be specified in the Technical Specifications for Perry Unit 1) is substituted for the full pressure test requirement of Paragraph III.D.2(b)(ii) of Appendix J, prior to establishing containment integrity, when no maintenance has been performed on a containment airlock. The Environmental Assessment further assumed however, that whenever maintenance has been performed on a containment airlock, the full pressure testing required in Paragraph III.D.2(b)(ii) will be performed. The analysis of the requested exemption pursuant to 10 CFR 50.12 will be documented with this clarification in a SER supplement prior to licensing and the exemption, will be documented in the operating license for Perry Unit 1.

The enclosed Environmental Assessment and Finding of No Significant Impact is being forwarded to the Office of the Federal Register for publication.

Sincerely,

B. J. Youngblood

B. J. Youngblood, Chief
Licensing Branch No. 1
Division of Licensing

Enclosure: As stated

cc: See next page

JUN 21 1985

PERRY

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UNITED STATES NUCLEAR REGULATORY COMMISSION

CLEVELAND ELECTRIC ILLUMINATING COMPANY

DOCKET NO. 50-440

ENVIRONMENTAL ASSESSMENT

AND

FINDING OF NO SIGNIFICANT IMPACT

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Cleveland Electric Illuminating Company (the applicant) for the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio on the shore of Lake Erie, approximately 35 miles northeast of Cleveland, Ohio.

ENVIRONMENTAL ASSESSMENT

Identification of Proposed Action: The exemption would eliminate the full pressure test required by Paragraph III.D.2(b)(ii) of Appendix J normal air-lock opening and substitute a seal leakage test to be conducted at a pressure specified in the plant Technical Specifications. The proposed exemption is in accordance with the applicant's request submitted by letter PY-CEI/NRR-0218L dated April 8, 1985.

The Need for the Proposed Action: The proposed exemption is needed to provide the applicant with greater plant availability over the 40-year lifetime of the plant by reducing the duration of plant outages in the performance of the full pressure test required by Paragraph III.D.2.(b)(ii) of Appendix J.

Environmental Impact of the Proposed Action: The proposed exemption could permit the substitution of an air lock seal leakage test for an air lock full pressure test when an airlock test is required prior to establishing containment integrity. With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased possibility of containment leakage during an accident. This could lead to higher offsite and control room doses. However, this potential increase is very small due to the added seal tests and other tests required by Appendix J which are to be performed by the applicant.

Alternative to the Proposed Action: Because the NRC staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no environmental impact or greater environmental impact. The principal alternative would be to deny the requested exemption which would not reduce environmental impacts of plant operation and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of the Perry Nuclear Power Plant, Units 1 and 2," NUREG-0884, dated August 1982.

Agencies and Persons Contacted: The NRC staff did not consult other agencies or persons in assessing the proposed exemption.

FINDING OF NO SIGNIFICANT IMPACT

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applicant's request for exemption dated April 8, 1985 (letter PY-CEI/NRR-0218L), which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C., and at the Perry Public Library 3735 Main Street, Perry, Ohio.

Dated at Bethesda, Maryland, this 21st day of June, 1985.

FOR THE NUCLEAR REGULATORY COMMISSION

Thomas M. Novak, Assistant Director
for Licensing
Division of Licensing

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 5th day of July, 1985 to those on the service list below.

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