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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY, ET AL.)

Docket Nos. 50-4400L
50-4410L

(Perry Nuclear Power Plant,)
Units 1 and 2))
)

APPLICANTS' ANSWER TO OCRE MOTION TO
REOPEN THE RECORD AND TO SUBMIT A NEW CONTENTION

I. INTRODUCTION

By motion of July 5, 1985, Intervenor Ohio Citizens for Responsible Energy ("OCRE") asks the Licensing Board to reopen the record in this proceeding for the purpose of admitting a late-filed contention. Motion To Reopen the Record and To Submit a New Contention (July 5, 1985) ("Motion"). The purported basis for OCRE's late-filed contention is a request by Applicants to the NRC Staff ("Staff") for a partial exemption from one of the containment leakage testing requirements of 10 C.F.R. Part 50, Appendix J. Applicants oppose reopening of the

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record and admission of this late-filed contention. The background of the contention, as well as Applicants' reasons for opposing the contention, are set forth below.

II. BACKGROUND

Appendix J to 10 C.F.R. Part 50 sets forth preoperational and periodic containment leakage test requirements for water-cooled power reactors. Among those requirements are requirements for periodic testing of air locks. Section III.D.2(b) of Appendix J provides, in relevant part, that:

(i) Air locks shall be tested prior to initial fuel loading and at 6-month intervals thereafter at an internal pressure not less than P_a . [P_a is defined in § II.I of Appendix J.]

(ii) Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than P_a .

(iii) Air locks opened during periods when containment integrity is required by the plant's Technical Specifications shall be tested within 3 days after being opened. For air lock doors opened more frequently than once every 3 days, the air lock shall be tested at least once every 3 days during the period of frequent openings. For air lock doors having testable seals, testing the seals fulfills the 3-day test requirements. In the event that the testing for this 3-day interval cannot be at P_a , the test pressure shall be as stated in the Technical Specifications. Air lock door seal testing shall not be substituted for the 6-month test of the entire air lock at not less than P_a .

The Staff has routinely granted partial exemptions from the testing requirements of § III.D.2(b)(ii).1/ This practice has been reflected in the Staff's Standard Technical Specifications (on which technical specifications for individual plants are modeled) for all types of water-cooled reactors since 1978, and for some types since 1977.2/ The exemptions allow testing of the air lock door seal in lieu of testing the entire air lock in cases where the air lock has been opened during periods when containment integrity is not required. Section III.D.2(b)(iii) explicitly allows this substitution of test methods in cases where the air lock is opened during periods when containment integrity is required.

1/ For two recent examples, see 50 Fed. Reg. 27388, 27389 (July 2, 1985) (Limerick Generating Station, Unit 1); 49 Fed. Reg. 35447, 35448 (September 7, 1984) (Grand Gulf Nuclear Station, Unit 1).

2/ See NUREG-0123, Rev. 1, "Standard Technical Specifications for General Electric Boiling Water Reactors" (April 1, 1978), § 4.6.1.3.a (attached hereto as Attachment 1); NUREG-0452, Standardized Technical Specifications for Westinghouse Pressurized Water Reactors (June 15, 1978); NUREG-0212, Standard Technical Specifications for Combustion Engineering Pressurized Water Reactors (March 15, 1977); and NUREG-0103, Rev. 1, Standard Technical Specifications for Babcock & Wilcox Pressurized Water Reactors (January 1, 1977).

Although the exemption, apparently inadvertently, was not included in NUREG-0123, Rev. 3 (Fall 1980), it reappears in the proposed Revision 4 to that document, dated Fall 1982.

The initial draft technical specifications for the Perry Nuclear Power Plant ("PNPP") submitted by Applicants to the Staff on July 31, 1984 included this routine partial exemption from § III.D.2(b)(ii), with the qualification that an overall air lock leakage test must be conducted when maintenance has been performed on the air lock that could affect the air lock sealing capability.^{3/} The draft technical specifications also required, in conformance with § III.D.2(b)(i), that an overall air lock leakage test be conducted every six months. See Attachment 2 hereto. Subsequent drafts of the PNPP technical specifications retained the partial exemption from § III.D.2.(b)(ii). See Attachments 3, 4 and 5 hereto.

By letter of April 8, 1985, Applicants submitted to the Staff their formal request for an exemption from § III.D.2(b)(ii). See Motion, Ex. 1. Applicants included with the request an explanation of their need for the exemption, as well as an analysis of why the exemption is authorized by the Commission's regulations. OCRE Representative Susan Hiatt submitted a letter to the Staff on May 8, 1985 opposing the exemption. See Motion, Ex. 2. By letter of June 21, 1985, the Staff transmitted a copy of its Environmental Assessment and

^{3/} Inclusion of the exemption was explicitly noted in a footnote to the draft technical specifications.

Finding of No Significant Impact concerning the requested exemption. See Motion, Ex. 3. Based on the Staff's indication in the letter that it intended to grant the exemption, OCRE filed its motion to reopen the record to admit the following late-filed contention:

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.

Motion at 2.

III. ARGUMENT

Applicants oppose OCRE's motion to reopen the record and to admit its late-filed contention for the following reasons. First, OCRE fails to meet the heavy burden imposed on a party who seeks to reopen the record in an NRC adjudicatory proceeding. OCRE fails to meet its burden in that the Motion is not timely, does not address a significant safety or environmental issue, and fails to show that it could change the result of the proceeding.

Second, OCRE's contention does not withstand the Commission's five factors test for late-filed contentions. A balancing of those factors weighs heavily against admission of the contention because of OCRE's failure to show good cause for its untimely filing, OCRE's failure to show that it can reasonably be expected to aid in developing a sound record, and the extent

to which admission of the contention will broaden the issues and delay the proceeding.

A. Standards for Reopening the Record
To Admit a Late-Filed Contention.

As the Appeal Board has recently restated, a motion to reopen the record in an NRC adjudicatory proceeding

'must be timely and address a significant safety or environmental issue. It must also show that a different result might have been reached had the newly proffered material been considered initially.'

Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-812, 21 N.R.C. ___, slip op. at 4 (July 11, 1985) (quoting Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-786, 20 N.R.C. 1087, 1089 (1984).

"[B]are allegations or simple submission of new contentions is not sufficient." Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 N.R.C. 361, 363 (1981).

'At a minimum, . . . the new material in support of a motion to reopen must be set forth with a degree of particularity in excess of the basis and specificity requirements contained in 10 C.F.R. 2.714(b) for admissible contentions [I]t must be tantamount to evidence . . . [and] possess the attributes set forth in 10 C.F.R. 2.743(c) defining admissible evidence for adjudicatory proceedings. Specifically, the new evidence supporting the motion must be relevant, material, and reliable.'

ALAB-812, slip op. at 4 (quoting Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 N.R.C. 1361, 1366-67, aff'd sub nom. San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287 (D.C. Cir. 1984), vacated in part and reh'g en banc granted on other grounds, 760 F.2d 1320 (1985)). See also ALAB-755 at 1367 n.18.4/

A motion to reopen that seeks to introduce a new contention -- such as OCRE's motion here -- must also satisfy the Commission's standards for admitting late-filed contentions. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-39, 16 N.R.C. 1712, 1714-15 (1982); ALAB-812, slip op. at 4-5. The burden of satisfying all these requirements is heavy indeed. ALAB-812, slip op. at 5. See Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 N.R.C. 320, 338 (1978). See

4/ OCRE, based on an earlier Licensing Board decision in this case on a motion to reopen the record on Issue No. 3 (quality assurance), LBP-83-52, 18 N.R.C. 256, 257 (1983), questions the applicability of the rigorous tripartite standard to motions to reopen filed prior to the issuance of an initial decision. Motion at 8-9. Applicants submit that the standard applied by the Licensing Board in its earlier decision is not consistent with Appeal Board precedent. See Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 N.R.C. 775, 803-804 (1979) (applying the tripartite standard to a motion to reopen filed before issuance of a partial initial decision by the licensing board). This point is further discussed in "Applicants' Response to the Licensing Board's 'Memorandum and Order (Motion to Reopen'" (September 19, 1983), at 3-7.

also Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-85-07, 21 N.R.C. ___, ___ (May 3, 1985), slip op. at 3. For the reasons stated below, OCRE fails to meet this burden.^{5/}

B. OCRE's Motion Fails To Meet Its Burden for Reopening the Record in This Proceeding.

1. The Motion To Reopen Is Untimely.

OCRE claims that its Motion is timely because it was 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." Motion at 9. According to OCRE, "[f]iling before the receipt of that document was neither logical nor possible, as it was not then known whether the Staff would grant the exemption." Id.

^{5/} OCRE argues, citing Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, 19 N.R.C. 1154 (1984), that because this is a contested proceeding, Applicants' request for an exemption must be submitted to the Licensing Board pursuant to the procedures set forth in 10 C.F.R. § 2.758 (b), (c) and (d) for seeking waivers of the regulations in adjudicatory proceedings. Motion at 7-8. This argument falls of its own weight. In Shoreham, the applicant sought an exemption as a result of a contention which was being litigated in its operating license proceeding. There is no admitted contention here. Section 2.758 does not apply. At the operating license stage, the role of the Licensing Board is limited to resolving contested matters properly placed in issue; all other matters are handled by the Staff. See 10 C.F.R. § 2.760a. OCRE's reliance on § 2.758 is no more than an attempt to bootstrap its way around its failure to meet the requisite standards for reopening the record and admitting late-filed contentions.

The Commission, however, clearly has precluded the type of approach taken by OCRE:

We start with the basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation

A second fundamental principle applicable here is that there is a substantial public interest in efficient and expeditious administrative proceedings

Taken together, these principles require intervenors to diligently uncover and apply all publicly available information to the prompt formulation of contentions. Accordingly, the institutional unavailability of a licensing-related document does not establish good cause for filing a contention late if information was available early enough to provide the basis for the timely filing of that contention.

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1048 (1983) (emphasis added). Thus, if information was previously available to provide the basis for an earlier filing of the contention, OCRE was not entitled to sit back and wait for the Staff to act on the exemption request.

In this case, information has long been available which OCRE could have used to formulate its untimely contention. NUREG-0123, the Standard Technical Specifications which apply to General Electric boiling water reactors like PNPP, have explicitly included the exemption since 1978. See Attachment 1

hereto. Applicants' July 31, 1984 initial draft technical specifications for PNPP, which have long been available to OCRE in the Local Public Document Room, also explicitly stated that air lock leakage testing would involve the exemption to 10 C.F.R. Part 50, Appendix J. See Attachment 2 hereto. Copies of subsequent drafts transmitted from the Staff to Applicants, which also contained the exemption, were served on Ms. Hiatt on January 30 and March 6, 1985. See Attachments 3 and 4 hereto. Thus, OCRE cannot escape from its failure "to diligently uncover and apply [the] publicly available information to the prompt formulation" of its contention prior to the April 8, 1985 formal submittal of Applicants' exemption request. Cf. Catawba, supra, 17 N.R.C. at 1048. In any event, OCRE had actual knowledge of the exemption request prior to May 8, 1985, when OCRE submitted its letter to the Staff objecting to Applicants' April 8 submittal. See Motion, Ex. 2.6/ Thus, the contention could have been filed a long time ago. It is not based on new information, and OCRE lacks good cause for its admission at this late stage of the proceeding.

6/ Although a two or three month delay in filing a contention might not be considered untimely at an earlier stage of the proceeding, it clearly is unreasonable at this late date. See Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-138, 6 A.E.C. 520, 526 (1973) (motion to reopen denied based on delay of one month).

2. The Motion To Reopen Does
Not Address a Significant
Safety or Environmental Issue.

OCRE offers two basic arguments why, it asserts, its Motion addresses a significant issue: (1) "containment integrity is vital to the protection of public health and safety during an accident," and (2) "noncompliance with the Commission's regulations is always a serious matter." Motion at 9. OCRE has utterly failed to show how these generalities bear any relationship to the facts at hand.

a. OCRE Fails To Show that Applicants'
Exemption Request in Itself Constitutes
a Noncompliance with the Regulations.

OCRE incorrectly assumes that Applicants' exemption is, by definition, a "noncompliance" with the Commission's regulations. As OCRE acknowledges (Motion at 2), 10 C.F.R.

§ 50.12(a) provides, in relevant part, that:

The Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part 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.

Nevertheless, OCRE claims that the exemption is not "authorized by law" because "the Atomic Energy Act . . . does not authorize the Commission to grant exemptions" Motion at 3. This argument is an impermissible challenge to the Commission's

regulations, since § 50.12 explicitly authorizes exemptions if certain criteria are met.^{7/}

OCRE also takes issue with Applicants' rationale for requesting the exemption. See Motion, Ex. 1. According to OCRE, the Commission is not authorized to consider the "financial burden" of meeting the regulation incurred by Applicants and, ultimately, the ratepaying public. Motion at 3. The cases cited by OCRE for this proposition, however, are inapplicable. Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, 367 U.S. 396 (1961), simply restates the Commission's obligation to grant an operating license based on its finding of reasonable assurance that the plant can be safely operated, not on the economic consequences of denying the license. The Court did not say that the Commission is prohibited from all cost-benefit considerations in its licensing activities for a plant. Pacific Gas and Electric Co. v. State Energy Resources Conservation & Development

^{7/} At any rate, the inherent authority of an administrative agency to provide for exemptions from its regulations is well established. E.g., U.S. v. Allegheny-Ludlum Steel Corp., 406 U.S. 742, 755 (1972).

The case cited by OCRE, E.I. du Pont de Nemours & Co. v. Train, 430 U.S. 112, 138 (1977), was based on the specific intent of Congress not to allow variances from regulations enacted under the particular provision of the statute being interpreted. OCRE can point to no such specific intent here.

Commission, 461 U.S. 190, 103 S.Ct. 1713 (1983), addressed the respective responsibilities of federal and state government with respect to decisions authorizing construction of new nuclear power plants. The case had nothing to do with the factors which the NRC should consider in deciding matters of nuclear safety.

The Commission has recently clarified in a proposed revision to § 50.12(a) the standards which are to be applied when it considers whether to grant exemptions to 10 C.F.R. Part 50. See Notice of Proposed Rulemaking, 50 Fed. Reg. 16506 (April 26, 1985). In its Statement of Considerations to the proposed revision, the Commission explicitly states that "financial or economic hardships" are among the equities which the Commission will consider in granting exemptions. 50 Fed. Reg. at 16508. This is consistent with the Commission's past practice. See, e.g., Shoreham, supra, CLI-84-8, 19 N.R.C. at 1156 n.3; United States Department of Energy (Clinch River Breeder Reactor Plant), CLI-83-1, 17 N.R.C. 1, 4, 6-8 (1983).

Finally, OCRE maintains, citing Shoreham, 19 N.R.C. at 1156 n.3, that exemptions from the Commission's regulations "are made only in extraordinary cases and upon a showing of exceptional circumstances." Motion at 8. Although there is language in Shoreham to that effect,^{8/} the Commission in its

^{8/} It should be pointed out that Clinch River, supra, the authority cited in Shoreham for the proposition that exemptions

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Statement of Considerations to the proposed revision of § 50.12(a) notes that the standards articulated in Shoreham "represented a departure from past staff practice in the exemption area." 50 Fed. Reg. at 16508.

- b. OCRE Fails To Show that the Requested Exemption Would Have a Significant Adverse Effect on Containment Integrity.

OCRE's second main argument is that, since "the purpose of the containment is to limit the escape of fission products into the environment," and since an exemption from § II.D.2(p)(ii) "would increase the probability of containment leakage during an accident," the requested exemption would endanger the health and safety of the public. Motion at 4.9/ However, OCRE fails to establish that the requested exemption would have a significant adverse effect on containment integrity or on the public health or safety.

(Continued)

are only to be granted in exceptional circumstances, did not involve an interpretation of § 50.12(a). That case involved application of the separate exemption procedure established by § 50.12(b) to permit site preparation activities prior to issuance of a construction permit or limited work authorization.

9/ OCRE here seems to confuse an increase in the probability of leakage with an increase in leakage, and also makes the outlandish and unsupported claim that "any increased leakage will endanger life or property." Motion at 4 (emphasis added).

OCRE argues, first, that the seal leak test "must not be the safety equivalent of the internal pressurization [overall air lock leakage] test," since § III.D.2(b)(iii) explicitly prohibits the seal leakage test from being substituted for the six month test required by § III.D.2(b)(i). Applicants, however, are not seeking an exemption from § III.D.2(b)(i); and the partial exemption sought by Applicants is not prohibited by the regulations. Moreover, OCRE fails to identify what additional leakage the overall air lock leakage test measures that the seal leakage test does not, and thus fails to show that there is a significant difference between the two tests.^{10/} Thus, OCRE has provided no basis to question Applicants' and the Staff's conclusion that any incremental increase in the probability of containment leakage is insignificant.^{11/}

^{10/} In fact, the only additional leakage measured by the overall air lock leakage test is leakage through the door itself. See 50 Fed. Reg. 27388, 27389. Such leakage, if any, would of course be expected to be insignificant.

In addition, the Staff has concluded, based on a probabilistic risk analysis, that air lock testing in general is of low significance since the probability of excessive leakage through the air lock is small in comparison with the overall probability of excessive containment leakage. See 49 Fed. Reg. 39397, 39398 (October 5, 1984) (granting exemption from § III.D.2(b)(iii)).

^{11/} OCRE cites the Shoreham case, CLI-84-8, supra, for the idea that an exemption will be granted only if the facility is "as safe as" it would be without the exemption. Motion at 4.

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OCRE further claims that, according to information in Applicants' Final Safety Analysis Report, air lock doors could be left open or could fail to latch completely after use; and failure to activate the automatic seal leakage test could result in leakages going undetected. Motion at 5.12/ However, OCRE confuses the door interlock switch which activates the automatic seal leakage test with the door interlocks which must be bypassed to allow both doors to be left open when an air lock is being used. These two types of interlocks are not the same; thus, bypassing the door interlock system will not inhibit the automatic operation of the seal leakage test. Compare FSAR § 3.8.2.1.4 at pp. 3.8-55, 3.8-55a. Moreover, an

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However, the Commission has made clear that the "as safe as" language applied by the Commission to 10 C.F.R. § 50.12(a) in Shoreham was limited to the particular facts of that case. See 50 Fed. Reg. 16506, 16508.

12/ OCRE references NUREG/CP-0056, "Proceedings of the Second Workshop on Containment Integrity" (August 1984), at 36-37, for the argument that air locks have a history of failing to latch. However, OCRE provides no nexus between the air lock operating experience data reported in this document and the particular design of the PNPP BWR Mark III containment. Indeed, personnel air lock failures were not specifically discussed in the report in connection with BWRs. See id. at 36. Moreover, the report concluded that "airlock or similar penetration failures may not be of major concern due to the short failure duration and frequent testing interval." Id. at 39. In any event, as discussed infra, there are safeguards to alert the operator if an air lock door is left open at PNPP.

indicator light in the control room will alert the operator to any air lock door that has been left open; and a remote alarm is provided whenever both doors in an air lock are not locked closed. FSAR § 3.8.2.1.4 at p. 3.8-55a.

In sum, OCRE fails to establish a factual basis for the existence of any significant safety or environmental issue in connection with Applicants' exemption request.

3. OCRE Fails To Show That Its
Late-Filed Contention Could Change
the Result of the Proceeding.

OCRE suggests that the results of the proceeding could be changed if its contention were admitted because "compliance with the regulations is the basis for a finding that a nuclear facility is safe. . . ." Motion at 9. Again, OCRE assumes that Applicants' exemption constitutes a noncompliance. OCRE fails to produce any evidence that the exemption is improper or, even if improper, would have any significant adverse consequences to the public health or safety. Thus, OCRE does not show that the contention could provide a basis for altering the results of the proceeding, i.e., denying Applicants' operating license.

C. The Five Factors Test Does Not
 Favor Admission of the Contention.

As discussed supra, OCRE must also show that a balancing of the following five factors favors admission of its late-filed contention:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

10 C.F.R. § 2.714(a)(1).

The balancing of these five factors as applied to OCRE's proposed contention weighs heavily against admission of the contention. First, as discussed supra, the contention is not based on new information; and OCRE lacks good cause for failure to file on time.

Second, OCRE fails to demonstrate its ability to contribute to the development of a sound record. The Appeal Board has repeatedly observed that "[w]hen a petition addresses this criterion it should set out with as much particularity as possible

the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony."

Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 N.R.C. 1725, 1730 (1982). See also Washington Public Power Supply System (WPPSS Nuclear Project No. 3), ALAB-747, 18 N.R.C. 1167, 1177 (1983); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 N.R.C. 387, 399 (1983). OCRE has ignored this observation.

OCRE argues (Motion at 10) that its ability to contribute to the record on Issue No. 8 (hydrogen control) has been noted by the Licensing Board. However, OCRE's proposed new contention is a different issue than Issue No. 8. As this Licensing Board has recognized, the likelihood that OCRE can contribute to developing a sound record on one issue does not mean that OCRE can be expected to make a similar contribution with respect to other issues. LBP-82-11, 15 N.R.C. 348, 352 (no basis shown for OCRE special competence on core catcher issue). At any rate, the extent to which an intervenor's participation may reasonably be expected to assist in developing a sound record "is only meaningful when the proposed participation is on a significant, triable issue." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit_1), LBP-83-30, 17_N.R.C. 1137, 1143 (1983). Such is not the case here.

Third, admission of the contention clearly would broaden the issues and delay the proceeding, since the record is closed and no other issues are being litigated.^{13/} Although OCRE admits that "some delay might result," it claims that "the effect of any delay [would be] minimal in light of Applicants' ever-slipping fuel load date." Motion at 10-11. Fuel load for PNPP, Unit 1 currently is scheduled for September 1985. Obviously, there is insufficient time for discovery, possible summary disposition motions, hearing, and a decision by the Licensing Board all in the next several weeks -- or, indeed, in the next several months. Applicants' fuel load could well be delayed by admission of the contention.

Even if factors (ii) and (iv) might weigh in favor of admission,^{14/} and even if the Licensing Board might somehow overcome OCRE's inadequate showing on factor (iii), those factors are heavily outweighed by the total lack of good cause for OCRE's late filing and the delay to the proceeding which would result if the contention were admitted.^{15/} Thus, the balance

^{13/} The evidentiary record in this proceeding has been closed since May 3, 1985.

^{14/} Factors (ii) and (iv) are the least important of the five criteria. South Carolina Electric & Gas Company (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 N.R.C. 881, 895 (1981).

^{15/} As the Appeal Board stated in Summer, supra:

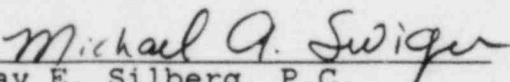
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weighs strongly against the admission of OCRE's late-filed contention.

IV. CONCLUSION

For all of the above reasons, OCRE's motion to reopen the proceeding for the purpose of admitting a late-filed contention should be denied.

Respectfully submitted,


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Dated: July 22, 1985

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[I]t is most difficult to envisage a situation in which [factors (ii) and (iv)] might serve to justify granting intervention . . . to one who (1) is inexcusably late; (2) seeks to expand materially the scope of the proceeding; and (3) offers, at best, a marginal showing with respect to its ability to make a truly significant, substantive contribution.

13 N.R.C. at 895.

LIS ORIGINAL

PB 279 753

NUREG-0123, Rev. 1

**STANDARD TECHNICAL SPECIFICATIONS
FOR
GENERAL ELECTRIC
BOILING WATER REACTORS**

Revision of April 1, 1973

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**Office of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission**

CONTAINMENT SYSTEMS

PRIMARY CONTAINMENT AIR LOCKS

LIMITING CONDITION FOR OPERATION

3.6.1.3 Each primary containment air lock shall be OPERABLE with:

- a. Both doors closed except when the air lock is being used for normal transit entry and exit through the containment, then at least one air lock door shall be closed, and
- b. An overall air lock leakage rate of $\leq 0.05 L_a$ at P_a , 40.4 psig.

APPLICABILITY: CONDITIONS 1, 2* and 3.

ACTION:

- a. With a primary containment air lock inoperable, maintain at least the OPERABLE air lock door closed; restore the inoperable air lock door to OPERABLE status within 24 hours or lock the OPERABLE air lock door closed; operation may then continue until performance of the next required overall air lock leakage test provided that the OPERABLE air lock door is verified to be locked closed at least once per 30 days. The provisions of Specification 3.0.4 are not applicable.
- b. With the primary containment air lock inoperable, except as a result of an inoperable air lock door, maintain at least one air lock door closed; restore the inoperable air lock to OPERABLE status within 24 hours.
- c. Otherwise, be in at least HOT SHUTDOWN within the next 12 hours and in COLD SHUTDOWN within the following 24 hours.

SURVEILLANCE REQUIREMENTS

4.6.1.3 Each primary containment air lock shall be demonstrated OPERABLE:

- a. **After opening, except when the air lock is being used for multiple entries, then at least once per 72 hours, by verifying seal leakage rate $\leq (5)$ scf per hour when the gap between the door seals is pressurized to $\geq (10)$ psig.

*See Special Test Exception 3.10.1

**Exemption to Appendix "J" of 10 CFR 50.

CONTAINMENT SYSTEMS

SURVEILLANCE REQUIREMENTS (Continued)

- b. At least once per 6 months by conducting an overall air lock leakage test at P_a (40.4) psig and by verifying that the overall air lock leakage rate is within its limit, and
- c. At least once per 6 months by verifying that only one door in each air lock can be opened at a time.

Licensing File Copy

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

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NUCLEARJuly 31, 1984
PY-CEI/NRR-0128 LMr. B. J. Youngblood, Chief
Licensing Branch No. 1
Division of Licensing
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555Perry Nuclear Power Plant
Docket No. 40-440; 50-441
Draft Technical Specifications

Dear Mr. Youngblood:

In accordance with your request, Cleveland Electric Illuminating Company is submitting the attached draft technical specifications for the Perry Nuclear Power Plant (dated July 26, 1984). These technical specifications are an initial draft and subject to ongoing reviews and verification programs.

We look forward to working with the NRC Staff during the review of the technical specifications towards establishing the final draft of this document.

Very truly yours,

*Murray R. Edelman*Murray R. Edelman
Vice President
Nuclear Group

MRE:njc

Attachments

cc: Jay Silberg, Esq.
John Stefano
J. Grobe - *attachment*
Don Hoffman

CONTAINMENT SYSTEMS

SURVEILLANCE REQUIREMENTS

4.6.1.3 Each containment air lock shall be demonstrated OPERABLE:

- a. Within 72 hours following each closing, except when the air lock is being used for multiple entries, then at least once per 72 hours, by verifying seal leakage rate less than or equal to ~~(5)~~ ^{2.5} scf per hour when the gap between the door seals is pressurized to Pa, ~~(15.0)~~ ^{11.31} psig.
- b. By conducting an overall air lock leakage test at Pa, ~~(15.0)~~ ^{11.31} psig, and verifying that the overall air lock leakage rate is within its limit:
 1. At least once per 6 months[#],
 2. Prior to establishing PRIMARY CONTAINMENT INTEGRITY when maintenance has been performed on the air lock that could affect the air lock sealing capability.*
- c. At least once per 6 months by verifying that only one door in each air lock can be opened at a time.~~(**)~~
- d. By verifying the door inflatable seal system OPERABLE by
 - ~~1. Demonstrating (two) seal air flask pressure instrumentation channel(s) OPERABLE by performance of a:
 - a) CHANNEL FUNCTIONAL TEST at least once per 31 days, and
 - b) CHANNEL CALIBRATION at least once per 18 months,~~
 - with a low pressure setpoint of $\geq (90)$ psig.
 - ~~2. At least once per 7 days, verifying seal air flask pressure to be greater than or equal to (90) psig.~~
 3. At least once per 18 months, conducting a seal pneumatic system leak test and verifying that system pressure does not decay more than ~~(2)~~ ^{1.5} psig from ~~(105)~~ ⁹⁰ psig within ~~(48)~~ ²⁴ hours.

[#]The provisions of Specification 4.0.2 are not applicable.

*Exemption to Appendix J of 10 CFR 50.

~~(**Except that the inner door need not be opened to verify interlock OPERABILITY when the containment is inerted, provided that the inner door interlock is tested within 8 hours after the containment has been de-inerted.)~~



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

JAN 30 1985

Docket No. 50-440

ATTACHMENT 3
PY - PER/CC-0160L
RECEIVED
FEB 6 1985
F P STAFF

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

Dear Mr. Edelman:

Subject: Perry Nuclear Power Plant Technical Specifications (First Draft)

Enclosed is a copy of the staff's first draft of the Perry Nuclear Power Plant Technical Specifications. This first draft is based on your July 31, 1984 and January 4, 1985 submittals and the results of the working meeting in Bethesda with members of your staff during the week of January 7, 1985. This draft document will be the basis for a site visit and meeting the week of February 4, 1985 to discuss areas where additional information may be required to ensure that the final plant technical specifications are documented in the FSAR and reflect the "as-built" plant design.

If you desire further discussion on this topic please contact the Project Manager, John Stefano, on (301) 492-7037.

Sincerely,

B. J. Youngblood
B. J. Youngblood, Chief
Licensing Branch #1
Division of Licensing

Enclosure
As stated

cc: See next page

PERRY

JAN 30 1985

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

cc: Jay Silberg, Esq.
Shaw, Pittman, Potts & Trowbridge
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Prosecuting Attorney
Ashtabula County Courthouse
Jefferson, Ohio 44047

4.6.1.3 Each containment air lock shall be demonstrated OPERABLE:

- a. Within 72 hours following each closing, except when the air lock is being used for multiple entries, then at least once per 72 hours, by verifying seal leakage rate less than or equal to 2.5 scf per hour when the gap between the door seals is pressurized to Pa, 11.31 psig.
- b. By conducting an overall air lock leakage test at P_a, 11.31 psig, and verifying that the overall air lock leakage rate is^a within its limit:
 1. At least once per 6 months[#],
 2. Prior to establishing PRIMARY CONTAINMENT INTEGRITY when maintenance has been performed on the air lock that could affect the air lock sealing capability.*
- c. At least once per 6 months by verifying that only one door in each air lock can be opened at a time.
- d. By verifying the door inflatable seal system OPERABLE at least once per 18 months by conducting a seal pneumatic system leak test and verifying that system pressure does not decay more than 1.5 psig from 90 psig within 48 hours.

[#]The provisions of Specification 4.0.2 are not applicable.

*Exemption to Appendix J of 10 CFR 50.



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

March 6, 1985

Docket No. 50-440

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

RECEIVED

MAR 06 1985

LICENSING

Dear Mr. Edelman:

Subject: Perry Nuclear Power Plant Unit 1 Technical Specifications
(Second Draft)

Enclosed is a copy of our Second Draft of the Perry Nuclear Power Plant Technical Specifications. This second draft is based on the first draft, provided to you by letter dated January 30, 1985, and the results of the working meeting at the Perry site with members of your staff during the week of February 4, 1985.

Please review this document and identify any statements which do not accurately reflect the Perry FSAR or the Perry "As-built" design. Your response by COB March 29, 1985 is necessary to support an April 8, 1985 issuance of a Proof and Review version of the Perry Technical Specifications.

If you desire further discussion on this topic please contact the Perry Project Manager, John Stefano, on (301) 492-7037.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. J. Youngblood".

B. J. Youngblood, Chief
Licensing Branch #1
Division of Licensing

Enclosure: /s stated

cc: See next page

CONTAINMENT SYSTEMSSURVEILLANCE REQUIREMENTS

4.6.1.3 Each containment air lock shall be demonstrated OPERABLE:

- a. Within 72 hours following each closing, except when the air lock is being used for multiple entries, then at least once per 72 hours, by verifying seal leakage rate less than or equal to 2.5 scf per hour when the gap between the door seals is pressurized to P_a , 11.31 psig.
- b. By conducting an overall air lock leakage test at P_a , 11.31 psig, and verifying that the overall air lock leakage rate is^a within its limit:
 1. At least once per 6 months[#],
 2. Prior to establishing PRIMARY CONTAINMENT INTEGRITY when maintenance has been performed on the air lock that could affect the air lock sealing capability.*
- c. At least once per 6 months by verifying that only one door in each air lock can be opened at a time.
- d. By verifying the door inflatable seal system OPERABLE at least once per 18 months by conducting a seal pneumatic system leak test and verifying that system pressure does not decay more than 1.5 psig from 90 psig within 48 hours.

[#]The provisions of Specification 4.0.2 are not applicable.

*Exemption to Appendix J of 10 CFR 50.

CONTAINMENT SYSTEMS

SURVEILLANCE REQUIREMENTS

4.6.1.3 Each containment air lock shall be demonstrated OPERABLE:

- a. Within 72 hours[#] following each closing, except when the air lock is being used for multiple entries, then at least once per 72 hours[#], by verifying seal leakage rate less than or equal to 2.5 scf per hour when the gap between the door seals is pressurized to P_a , 11.31 psig. X
- c. By conducting an overall air lock leakage test at P_a , 11.31 psig, and verifying that the overall air lock leakage rate is within its limit:
1. At least once per 6 months[#],
 2. Prior to establishing PRIMARY CONTAINMENT INTEGRITY when maintenance has been performed on the air lock that could affect the air lock sealing capability.*
- d. At least once per 6 months by verifying that only one door in each air lock can be opened at a time.
- e. By verifying the door inflatable seal system OPERABLE at least once per 18 months by conducting a seal pneumatic system leak test and verifying that system pressure does not decay more than 1.5 psig from 90 psig within 24 hours.

a. By verifying seal leakage rate less than or equal to 2.5 scf per hour when the gap between the door seals is pressurized to P_a , 11.31 psig:

1. Within 72 hours following each closing, except when the air lock is being used for multiple entries, then at least once per 72 hours[#]; and
2. prior to establishing PRIMARY CONTAINMENT INTEGRITY when the air lock has been used and no maintenance has been performed on the air lock.*

[#]The provisions of Specification 4.0.2 are not applicable.

*Exemption to Appendix J of 10 CFR 50.

- b. By verifying at least once per 7 days that the service and instrument air system pressure in the header to the containment air lock is ≥ 90 psig.

July 22, 1985

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'85 JUL 24 A10:42

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Answer to OCRE Motion To Reopen the Record and To Submit a New Contention" were served by deposit in the United States Mail, First Class, postage prepaid, this 22nd day of July, 1985, to all those on the attached Service List.

Michael A. Swiger
MICHAEL A. SWIGER

DATED: July 22, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

SERVICE LIST

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Washington, D.C. 20555

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