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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, ET AL.

(Perry Nuclear Power Plant,
Units 1 and 2)

Docket No. 50-440 OL
50-441 OL

NRC STAFF RESPONSE TO APPLICANTS' MOTION
FOR CLARIFICATION OF PARTIAL INITIAL DECISION

I. INTRODUCTION

On September 3, 1985 the Atomic Safety and Licensing Board (the Board) issued its Concluding Partial Initial Decision in this proceeding. By motion dated September 12, 1985, Cleveland Electric Illuminating Company, et al. (CEI or Applicants) requested that the Board clarify two conditions contained in its Decision regarding offsite emergency planning requirements. The NRC Staff has no objection to Applicants' motion.

II. DISCUSSION

Applicants ask in their motion that the Board clarify conditions 2 and 3 of its Decision ^{1/} as to whether these conditions must be satisfied

^{1/} Concluding Partial Initial Decision, September 3, 1985, slip op. at 123. The Board attached seven conditions to its order authorizing issuance of operating licenses for the Perry plant Units 1 and 2. Id.

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prior to issuance of a low power (limited to 5% rated power) ^{2/} or a full power license. Motion, p. 1. The conditions in question require Applicants to obtain letters of agreement from all school districts which will supply buses for use during evacuation (Condition #2) and to complete training of personnel in monitoring and decontamination procedures and to provide all reception centers with decontamination equipment (Condition #3), prior to issuance of operating licenses. Id. p. 2.

The two conditions imposed by the Board are as follows:

In accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations, and based on the Findings of Fact and Conclusions of Law, set forth in a Partial Initial Decision on quality assurance previously rendered and in this decision, the Director of Nuclear Reactor Regulation, upon requisite findings with respect to matters not resolved in the Board's Partial Initial Decision, is authorized to issue to the Applicants, licenses for the operation of the Perry Nuclear Power Plant, Units 1 and 2, upon the conditions set forth below.

Prior to the issuance of the aforementioned licenses, the Applicants shall demonstrate to the Director of Nuclear Reactor Regulation satisfactory completion of the following.

1. * * *

2. Letters of agreement have been obtained from all school districts for the supply of buses for evacuation purposes.

^{2/} In recent years it has been agency practice for the Director of Nuclear Reactor Regulation to issue a license authorizing fuel loading and low power operation prior to licensing full power operation. See Commission Review Procedures for Power Reactor Operating Licenses; Immediate Effectiveness Rule, 46 Fed. Reg. 47764, 47765 (September 30, 1981), and Statement of Policy on Issuance of Uncontested Fuel Loading and Low Power Testing Operating Licenses, 46 Fed. Reg. 47906 (September 30, 1981). This practice has not been codified, but, as the Appeal Board has noted, low power testing is a necessary prerequisite to full power operation. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 794 (1983).

3. Training of fire personnel in monitoring and decontamination procedures is complete and all reception centers are provided with necessary decontamination equipment.

* * *

Applicants point to the Commission's regulation 10 CFR § 50.47(d) which states that:

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, no NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local offsite emergency plans are required prior to issuance of an operating license authorizing only fuel loading and/or low power operations (up to 5% of the rated power). Insofar as emergency planning and preparedness requirements are concerned, a license authorizing fuel loading and/or low power operation may be issued after a finding is made by the NRC that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assessment of the applicant's emergency plans against the pertinent standards in paragraph (b) of this section and Appendix E of this part.

Based on this provision of the regulations, Applicants request the Board to modify its recent Order to clarify that Conditions 2 and 3 must be met prior to issuance of full power licenses. Id. p. 3. However, Applicants acknowledge that in two other proceedings the Licensing Boards declined to modify orders with similar conditions pertaining to offsite emergency planning due to the fact no application for a low power license was before the Boards pursuant to 10 CFR § 50.57(c) but rather, only an application for full power licenses. ^{3/} Id. Applicants further

^{3/} Applicants cite Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), LBP-84-27, 20 NRC 125, 126 (1984) and Louisiana

acknowledge that the testimony of their witness at hearing on April 12, 1985 stated that provision of decontamination supplies for reception centers were "scheduled" to be completed prior to fuel load, but Applicants assert that the testimony did not state that the supplies were to be placed at reception centers. Id. at 4. Applicants explain that the testimony which stated that monitoring-decontamination kits "will be in place for all reception centers prior to fuel load" ^{4/} meant they are only "scheduled" but no commitment was made for the kits to be in place prior to fuel load. ^{5/} Further, Applicants point to their testimony at hearing which explained that the kits would be maintained at the fire departments responsible for monitoring at the reception centers, and not at the reception centers as stated in the Board's Finding of Fact 55. Id., p. 5. Applicants request that Finding 55 be modified to reflect

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

Power and Light Co. (Waterford Steam Electric Station, Unit 3), LBP-82-112, 16 NRC 1901, 1902-03 (1982) where the Boards noted that since no application for a low power license was before the Boards, the decisions authorizing licenses, necessarily pertained to the applications for full power licenses. This being the case, both Boards declined to modify their orders imposing conditions of licensing, since the issue of whether low power operation should be authorized was not before the Boards.

^{4/} Motion, p. 4 citing witness Baer, ff. Tr. 3055 at 3.

^{5/} Applicants failed to acknowledge, however, that the two conditions imposed by the Board are based on Applicants' prefiled testimony which stated that all letters of agreement for use of school buses would be obtained prior to fuel load, fire department personnel training would be completed prior to fuel load, and the kits would be in place prior to fuel load and that the fuel load date scheduled at the time of hearing was June 1, 1985. See Findings of Fact 51, 54, 55, Concluding Partial Initial Decision, supra, pp. 84-85.

that the testimony stated the kits "are scheduled" to be in place "for" each reception center prior to fuel load, ^{6/} and that the Board make a conforming change in the Opinion in the Decision. Id.

Although it is unfortunate that Applicants did not present more precise testimony concerning the time for completion of the offsite emergency planning items in question here, the Staff agrees that 10 CFR § 50.47(d) allows issuance of low power licenses prior to completion of offsite emergency planning requirements. ^{7/} For this reason, Staff does not object to a clarification of the Board's Order contained in its September 3, 1985 Decision to specify that conditions 2 and 3 must be fulfilled prior to issuance of full power licenses. However, the Staff believes the order need be modified only to clarify the storage place of decontamination kits, since in this proceeding no application for low power license has been made and thus was not considered or authorized by the Board's Decision.

III. CONCLUSION

For the reasons stated, the Board should modify Finding 55 and Condition 3 in the Concluding Partial Initial Decision to indicate that

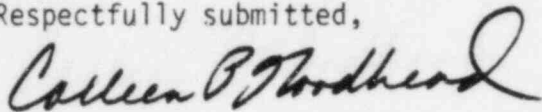
6/ Finding 55 states:

Emergency kits containing equipment and supplies for monitoring, decontamination and handling of property and vehicles are being assembled and will be in place at each reception center prior to fuel load. [Baer, ff. Tr. 3055] at 3; Baer, Tr. 3056.

7/ Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-83-17, 17 NRC 1032, 1034 (1983).

the kits for monitoring and decontamination at reception centers will be stored at fire department locations. The Staff does not object to a clarification by the Board to indicate that its decision pertains only to full power licensing or alternatively that the emergency planning conditions 2 and 3 in the Board's Order need not be met prior to issuance of a low power license.

Respectfully submitted,

A handwritten signature in cursive script, reading "Colleen P. Woodhead". The signature is written in dark ink and is positioned above the printed name and title.

Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of October, 1985

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANTS' MOTION FOR CLARIFICATION OF PARTIAL INITIAL DECISION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 2nd day of October, 1985:

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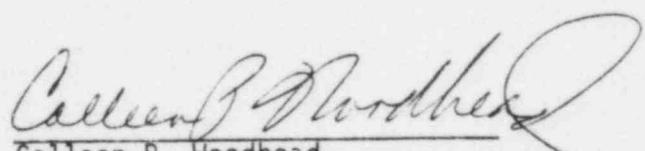
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