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January 9, 1987

DOCKETED
NENRC

Honorable Chairman Lando Zech
Honorable James Asselstine
Honorable Thomas Roberts
Honorable Frederick Bernthal
United States Nuclear Regulatory Commission
Washington, D.C. 20555

'87 JAN 15 A8:26

Re: Petition pursuant to 10 C.F.R. 2.206
Perry 1 & Perry 2

Dear Commissioners:

Energy Probe and the Western Reserve Alliance (WRA) request that the Nuclear Regulatory Commission (NRC) take immediate action to protect the public health and safety of Ohio, Pennsylvania, Canadian residents and the international shipping lanes of the Great Lakes through the following actions:

1. Require the suspension of the operating license of Perry Plant, and order an immediate shutdown to protect the public health and safety of the local population because of gross violations of 10 CFR 50, concerning the design, manufacture and installation of vital plant pipe support components for Class 1 and Safety Related piping systems, which by failure could lead to a loss of cooling accident (LOCA), which may lead to a release of radioactive materials to the general public. These pipe support components are pipe clamps which restrain the piping during an upset or emergency condition, such as during a seismic event.
2. Require an independent design review by qualified consultants to evaluate the design of these pipe clamps, and any interaction of their effect on the pipe wall, for compliance with stated Code and legal requirements.
3. Determine if any deliberate or fraudulent actions were perpetrated by the parties involved, and to investigate the cognizant persons who long had the knowledge of said deficiencies, but took no action, for whatever reasons, and to prosecute all criminal matters as stated in 10 C.F.R. 50, or under the U.S. Justice Department.
4. Require a complete and immediate removal of all defective or inappropriate General Electric components from the Perry nuclear plants whose existence was brought to the attention of the NRC by the Government

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Accountability Project by letter in October of 1985 and October of 1986.

This should be accomplished through a Director's Order for:

- a. An immediate and permanent halt on all construction/operation and any other activity with the exception of the permanent removal of all radioactive materials at the Perry nuclear plant site.
- b. The establishment of a special inspection team to review allegations that are enclosed. It is of prime importance that this team be completely independent since the current NRC QC and QA inspections and other special inspection teams have failed to adequately deal with the enclosed allegations. The inspection team must consist of inspectors from different regions other than Region III and others from outside the NRC itself. WRA request that the outside inspectors come from the Government Accountability Project (GAP), the Union of Concerned Scientists (UCS), Ralph Nader's Public Citizen and MHB Technical Associates.

I. BACKGROUND

Perry is a two unit station. It is being built/operated by the Cleveland Electric Illuminating Company (CEI).

Perry Unit 1 has received a full power license from the NRC. Unit 2 is allegedly 46 per cent complete. However, the degree of cannibalizing of Unit 2 that has taken place since its "unofficial" abandonment makes that estimate fanciful at best.

As a result of severe financial problems, as well as construction and operational difficulties at the Davis-Besse, Beaver Valley, and Perry sites, Toledo Edison (TE) and CEI joined forces to form a holding company called Centerior Energy Corporation (CEC) (formerly North Holding Company). CEC filed an application with the Securities and Exchange Commission (SEC) requesting an order of the Commission approving its acquisition of all the outstanding common stock of CEI and TE.

Senate investigations, testimony before Ohio House Subcommittees, and other sources have all indicated heavy influence of organized crime at the plants.

The Western Reserve Alliance (WRA) contacted the Government Accountability Project (GAP) because of the large number of workers and former workers that were contacting WRA. Since that time GAP has been advising and assisting WRA in regard to dealing with the numerous allegations made by the large number of whistleblowers that contacted WRA.

WRA and numerous other consumer groups raised the issues concerning major earthquake faults near the Perry nuclear power plants and a fault line on the plant site. An earthquake of a magnitude of approximately 5.0 on the Richter scale struck January 31, 1986.

Issues were raised in WRA's 2.206 petition before the Commission on February 4, 1986. Subsequently the NRC denied WRA's 2.206 petition of February 4, 1986. The denial of this petition was based for the most part on CEI and NRC investigative staff reports on scores of allegations made by whistleblowers at the Perry plant that were contained in the February 4, 1986 petition. Energy Probe and WRA have a good faith reason and belief that the NRC and CEI staff reports were essentially fraudulent. Energy Probe and WRA have good reason and belief that the NRC now has through the Office of Investigation (OI) documented the fraudulent investigation upon which the NRC based their denial of WRA's 2.206 petition. Energy Probe and WRA contend that the NRC is under an affirmative duty to reverse their denial of WRA's February 4, 1986 2.206 petition.

WRA's February 4, 1986 petition also stated the following: "GAP acknowledges the lead role that it has played in investigating and submitting the allegations and documentation regarding the Perry site. GAP will continue to follow up these and any subsequent allegations and documentation. GAP has turned this material over to OCRE and WRA. WRA is to be considered the formal filers of this petition pursuant to 10 C.F.R. 2.206. GAP intends to continue its investigations into the situation at the Perry facility and will turn over any new materials to OCRE and WRA to be added to this their present petition under 10 C.F.R. 2.206 or any new or different filings that WRA may deem needed in the future." GAP has investigated the matters contained in this 2.206 petition and the NRC should consider this a continuation and expansion of the investigation into Perry.

II. LEGAL BASIS

A. Legal Requirements

The law gives the Commission broad discretion to revoke, suspend, or modify the construction permit of an NRC licensee. 42 U.S.C. 2.206 states that:

(a) Any person may file a request for the Director of Nuclear Material Safety and Safeguards, Director, Office of Inspection and Enforcement, as appropriate, to institute a proceeding pursuant to S. 2.206 to modify, suspend or revoke a license, or for such other action as may be proper . . .

B. Criteria to Exercise Discretion

According to 10 C.F.R. 2.206, the NRC "may institute a proceeding to modify, suspend or revoke a license or for such

other action as may be proper by serving on the licensee an order to show cause which will: (1) allege the violations with which the licensee is charged, or the potentially hazardous condition or other facts deemed to be sufficient ground for the proposed action." As interpreted by the Proposed General Statement of Policy and Procedure for Enforcement Action, published in the Federal Register, 44 Fed. Reg. 66754, Oct. 7, 1980 (10 C.F.R. 2.204), suspending orders can be used to remove a threat to the public health and safety, the common defense and security or environment.

C. Specific Bases for Suspension

It is our good faith belief that the NRC currently has in its possession documented evidence within the Office of Investigation that the reports issued by CEI and the NRC concerning WRA's February 4, 1986 2.206 petition were created in a deliberately fraudulent manner and that these reports were used as the basis for denial of WRA's February 4, 1986 petition. It is our belief that these fraudulent reports were created by CEI and the NRC because a legitimate NRC investigation would have confirmed WRA's original contentions concerning the seismic design inadequacy of the plant. It is our further belief that during the entire construction of the Perry plants CEI has demonstrated an unwillingness to pursue the minimum necessary commitment to comply with the laws and procedures surrounding the construction of the Perry power plants.

The legal requirements for nuclear piping are given in reference 6, paragraph IV, list of references, which have been researched through Mr. William Omstead, Office of the Executive Legal Director, NRC. This shows the chain of legal authority on all aspects of regulation for nuclear piping, down to the system component parts.

In view of the seismic design ground motion engineering of Perry being substantially below that recorded during the January 31, 1985 earthquake, having substandard seismic snubber pipe clamps on the critical piping system warrants a revocation of the plant operating license at Perry. The extent of Class 1 and safety related systems having these illegal and substandard pipe clamps should prompt an immediate suspension/revocation of the plant operating license.

III. ADDITIONAL ALLEGATIONS AND SUBSTANTIATING DOCUMENTATION

The following is a list of allegations and documentation given to GAP/Energy Probe/WRA by various whistleblowers through the course of the investigations regarding the Perry plants.

Energy Probe and WRA contend that these issues have been

brought to the Commission's attention and that the Commission has not responded in good faith. Through this petition, Energy Probe and WRA request a complete halt to bad faith activities on the part of the NRC and/or its staff.

A. List of Technical/Legal Deficiencies

1. The pipe clamps furnished by Western Piping & Engineering Co. (WPE), 1428 Yosemite Ave., San Francisco, CA 94124, are of two principal types: single connection clamps, and double connection clamps. These pipe clamps are used on Class 1 and Safety Related piping systems, whose pipe material may be stainless steel or carbon steel. The single connection WPE pipe clamp is of a novel design, which is to eliminate thermal constraint stress to the pipe wall due to any diametric pipe expansion mismatch to the clamp by any dissimilar material expansion rates. This is accomplished by making the clamp U-bar expand with pipe expansion. Large thermal constraint loads can cause dangerous stress to the pipe wall, and must be accounted for by the piping designers. (See reference 1b.)

2. The pipe clamp design and fabrication criteria are stated in the Perry plant preliminary and Final Safety Analysis Report (PSAR and FSAR, respectively) which under the requirements of 10 CFR 50, state that the American Society of Mechanical Engineers (ASME) Code governs, and in this case, for the pipe clamps, it is Subsection NF (see reference 2b). The pipe clamps are "furnished to" that they are in compliance with said Code by statement and certification. (See reference 3.)

3. However, serious deficiencies exist in these single connection clamps that are in violation of said code, as follows:

a.) The code states that the design of the pipe clamps must be certified by a professional engineer cognizant in his discipline. The engineer that certified the design was not a licensed engineer in California, the state in which he was practicing, nor was he licensed in the discipline that covered said pipe clamps design which is mechanical engineering, as Mr. Thailer is a structural engineer. In fact, the clamp certifications are null and void and may be criminal. (See reference 4.)

b.) Critical parts of said pipe clamps are in violation of the Code. The following parts have been exempted by the manufacturer from being under the jurisdiction of the code for design, materials and fabrication, by gross judgment error and without seeking qualification by the ASME Code Committee:

1. Clamp shoe, the part between the pipe and load bar.
2. Load nut load washers.
3. Jam nuts.

Failure of these parts due to design or materials will prevent the clamp from performing its intended function, and could thereby lead to piping failure should the dynamic loads be unmitigated, which could cause a nuclear accident.

The exemption of these part materials by the manufacturer may be deliberately improper, as he long knew that these should be code materials.

This violation was reported to the NRC on June 7, 1982 and to the Chairman on January 25, 1984 as a generic deficiency, in confidence.

A code case concerning this matter has been submitted to the ASME (see reference 5.), to bring final determination.

c.) The installation instructions of the clamp preload (torque) requirements are in error, causing an installed preload of double that intended, by which resulting load is significantly greater than the design load; and these overloads have caused stresses in the pipe wall unaccounted for in the design, which could cause the pipe to burst and lead to a LOCA. (See reference 1b and Note: A secrecy agreement, reference 7, prevents the production of this evidence at this time.)

d.) GAP's October 1985 letter to the NRC Commissioners identified potentially serious deficiencies in the Design Control, Quality Assurance/Quality Control (QA/QC) program's facility in San Jose, California. These programmatic deficiencies were identified by a former GE engineer. The deficiencies potentially impact upon GE components supplied to all power plants utilizing GE equipment. Published reports indicate that Perry is one of these plants.

GAP's letter to the Commissioners shows that although GAP had been in contact with GE for over a year, GE seems to have been unable to identify and correct the internally reported problems including those that affect Perry. GAP also pointed out that as of the date of their letter GE had not voluntarily reported the QA/QC deficiencies to the Commission. Instead GAP's letter indicates GE continues to insist that it has almost no records indicating any possible deficiencies in its Design Control and QA/QC program, except with respect to the problems already confirmed by the NRC. The GAP letter indicates that this is not possible because, "The former GE engineer had, however, provided detailed reports notifying his supervisors of numerous actual and potential violations." Energy Probe and WRA also share GAP's stated concern that there have also been more violations at GE -- specifically, the destruction of nuclear safety related documents. GAP has thus officially notified the NRC of potentially serious generic problems reportable under 10 C.F.R. Part 21, which apparently have a serious impact at the Perry plants. The NRC handling of this official notification has been grossly inadequate.

Energy Probe and WRA have good faith and reason to believe that some of the problems that the GAP October 1985 letter to the NRC Commissioners mention impact specifically on the Perry nuclear plant. Specifically, the NRC has been unable to successfully audit the GE Project. Energy Probe and WRA contend that defective GE components now exist at the Perry nuclear plants and the regulatory audit systems have failed to detect the programmatic design control deficiencies, and have failed to follow through successfully in monitoring corrective action even after confirming violations.

The NRC/GE QA/QC breakdowns have affected the Perry Plants in some of the following ways as they relate to design deficiencies: (1) knowingly building products differently than indicated by the construction drawing; (2) performing a review of drawing quality (layout, readability) without verifying the accuracy of information on it; (3) alteration of design documents by GE staff who did not appear on the document; (4) documents signed indicating they were reviewed when they were not; (5) incomplete testing of components, such as the Reactor Mode Switch; (6) labeling errors (a part would have two names); (7) duplicate labeling errors similar to (item 6) above but where two different parts have the same name; and (8) shipping this equipment to the Perry nuclear plants with known defects.

Energy Probe and WRA cite other examples of system problems that have also heavily impacted on the Perry nuclear plants. As the GAP letter to the Commissioner noted, some of these system problems are: (1) appropriate training not being implemented for new employees; (2) a routine program environment that discouraged individual initiatives to verify legal compliance, and encouraged a "let someone else check that aspect" attitude; (3) inadequately documented procedures combined with incomplete or no training (ICER codes); (4) a computer tracking system which erased prior information when new information entered, destroying the chain of records (EIS); (5) use of unverified documents to verify a document (this practice was routinely encouraged by management); (6) generic structural weaknesses tainting the entire program, such as a QA manager reporting to production; (7) the practice of deferring verification on safety-related equipment.

GAP's October 24, 1986 letter to Mr. Harold Denton, Director Nuclear Reactor Regulatory Commission, shows clearly that the NRC has not handled this matter appropriately. The fact that they would grant Perry a full power license without discussing these GE defects, much less correcting them, shows the arbitrary and capricious manner in which the NRC has handled the Perry licensing.

IV. LIST OF REFERENCES

1. "Interaction Between Piping & Pipe Clamps", David Terao, NRC Board Notifications:
 - a.) No. 82-105, November 24, 1982
 - b.) No. 82-105a, September 29, 1983
2. American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section III; Nuclear Power Plants:
 - a.) Subsection NB (Class 1 components)
 - b.) Subsection NF (Component Supports)
3. Western Piping & Engineering Co., Perry Plant Pipe Clamp Certifications, by Henery J. Thailer, Pennsylvania Engineer No. 16906-E (Seal).
4. California Board of Registration for Professional Engineers and Land Surveyors, ruling concerning Henery J. Thailer: see letter from G. Harrison Hilt, P.E. executive officer.
5. ASME Code Case; Pipe Clamp Materials; submitted October 29, 1986.
6. "Nuclear Power Plant Piping Legal Requirements", notes by William Van Meter, August 13, 1982.
7. Superior Court of the State of California, City and County of San Francisco, Suit No. 796825, William Van Meter vs. Western Piping.

V. CONCLUSION

For all the reasons stated above, WRA and Energy Probe seek an immediate closure of the Perry plants and/or an independent investigation of QA/QC problems outlined in this letter. Further, we seek a complete halt to bad faith actions by the NRC and public reversal of its denial of WRA's 2.206 petition which was based on fraudulent reports of the NRC and CEI.

The continued bad faith by the Centerior Energy Corporation (CEC), CEI, Toledo Edison and the NRC has far-reaching negative impacts on U.S. foreign relations that outstrip the NRC's authority. The handling by NRC, the state of Ohio and the utilities concerning the Davis-Besse Nuclear plant in Northwest Ohio, the Zimmer Nuclear plant in Southern Ohio, plus the additional problem created by the Department of Energy's allowing of high levels of radiation to escape from Southern Ohio's Fernald nuclear site topped by the listed problems at Perry nuclear plant make it extremely difficult for Senator John Glenn and

other U.S. representatives to have any credibility on the international scene when trying to convince other countries around the world to act responsibly when it comes to nuclear power.

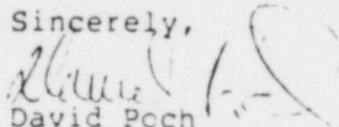
Three cases stand out as examples of international law that side with WRA's and Energy Probe's call for the permanent closure of the Perry nuclear plants. One is the Trail Smelter arbitration case (see 3 U.N. Rep. Intl. Arb. Awards 1905 (1949); 35 Am. J. Intl. L. 684 (1941). Another is the Lacmou 12 U.N.R.I. A.A. 281 (1957) 53 Am. J. Int'l 156 (1959). These cases show that international law has changed to assign liability to countries' actions causing environmental pollution within other countries.

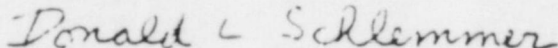
The International Court of Justice case on June 22, 1973, regarding the Nuclear Test Case (New Zealand v. France) Request for the Indication of Interim Measures of Protection has many similarities to the current situation which faces Canada and the International ships that travel the great Lakes.

In closing, Energy Probe and WRA would like to state that governments have long recognized the need to protect the world wide environment. Principle 21 of the Declaration of the United Nations Conference on the Human Environment (1972) said in part that nations have the "responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas outside the limits of national jurisdiction." This petition shows that this responsibility has not been fulfilled.

We look forward to your immediate response.

Sincerely,


David Poch
Counsel to Energy Probe


Donald L. Schlemmer
Western Reserve Alliance

CERTIFICATE OF SERVICE

I hereby certify that copies of this 2.206 petition regarding the Perry nuclear plant have been served by Federal Express or 1st class mail, postage prepaid, or hand delivered on this the 9th day of January, 1987, to the following:

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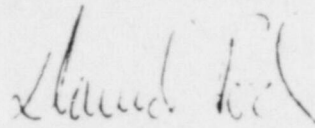
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