

October 17, 1990

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY, et al.)	Docket No. 50-440-OLA-2
)	ASLBP No. 90-605-02-OLA
(Perry Nuclear Power Plant,)	
Unit No. 1))	
)	

STIPULATION OF AGREED FACTS BETWEEN LICENSEES, NRC
STAFF AND OHIO CITIZENS FOR RESPONSIBLE ENERGY

The license amendment which is the subject of this hearing authorized Licensees to replace the cycle-specific core operating limits in the Technical Specifications for the Perry Nuclear Power Plant Unit 1 ("PNPP") with a reference to the values in the PNPP Core Operating Limits Report. Furthermore, the license amendment amended the Technical Specifications to require that cycle-specific core operating limits be established using the specified, NRC-approved methodology, as described in GESTAR (NEDE-24011-P-A, the approved revision at the time reload analyses are performed), and, before each reload cycle or remaining part of any reload cycle, that these limits be documented in a Core Operating Limits Report which is provided to the NRC upon issuance. The Technical Specifications also continue to require that Licensees operate the plant within the limits specified in the Core Operating Limits Report (referenced in the Technical

Specifications) and require the exact same actions to be taken as before, if these limits were to be exceeded.

Ohio Citizens For Responsible Energy, Inc. ("OCRE") has sought to raise the single issue of whether the license amendment violates section 189a of the Atomic Energy Act by depriving members of the public of the right to notice and opportunity for hearing on any changes to the cycle-specific parameters and fuel information.

By its Memoranda and Orders dated June 11, 1990 (LBP-90-15) and July 23, 1990 (LBP-90-25), the Atomic Safety and Licensing Board ("the Board") ordered that an evidentiary hearing be held in this matter to determine whether, "as a matter of fact, substantial engineering judgment is needed to derive" the cycle-specific parameter limits to be included in the Core Operating Limits Report. LBP-90-25, slip op. at 3, quoting from LBP-90-15.

Following the completion of discovery in this proceeding and the informal submission of additional information by Licensees to OCRE, the parties have agreed to stipulate to the following agreed statement of facts, including the parties' agreement that the approved methodology for setting cycle-specific parameter limits does not permit substantial discretion on the part of Licensees and does not require substantial engineering judgment to derive the cycle-specific parameter limits included in the Core Operating Limits Report. The parties agree that this stipulated

statement of facts represents a fair and reasonable settlement of the factual issue designated by the Board for evidentiary hearing.

The agreed statement of facts is as follows:

1. The license amendment (a) authorized Licensees to relocate cycle-specific core operating limits from PNPP's Technical Specifications into a Core Operating Limits Report, (b) authorized Licensees to replace the specific values for the core operating limits within the Technical Specifications with a reference to the Core Operating Limits Report, (c) requires that the core operating limit be determined by using the NRC-approved methodology specified in the Technical Specifications and (d) requires that the plant be operated within the limits specified in the Core Operating Limits Report.

2. The methodology used to establish the core operating limits for PNPP, including the process for developing inputs, the various models and correlations used in the methodology, the treatment of the model and model input uncertainties, and the application of the methodology, may not be changed without prior NRC approval.

3. GE Nuclear Energy establishes the cycle-specific core operating limits for PNPP in accordance with the NRC-approved methodology described in GESTAR (NEDE-24011-P-A, the approved revision at the time reload analyses are performed) as specified in PNPP's Technical Specifications.

4. Input parameters to the methodology are based on the intended modes of operation, plant and fuel design and configuration described in the safety analysis report and the Technical Specifications, and are developed from controlled design documents and test and performance data.

5. The reload analyses performed by GE Nuclear Energy are fully verified in accordance with the GE Nuclear Energy Quality Assurance Program approved by the NRC.

6. The CEI fuel management organization independently reviews the activities of GE Nuclear Energy, and the PNPP Nuclear Assurance Department performs quality assurance audits of the GE reload program and the CEI design control program.

7. CEI reviews the results of GE's reload analyses through its engineering, licensing, and reactor engineering and fuel management units, and any changes to the Core Operating Limits Report are required by PNPP plant procedures to be reviewed by the Plant Operations Review Committee.

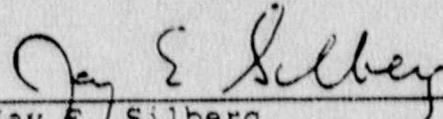
8. The GE Nuclear Energy methodology for setting cycle specific core operating limits, which is approved by the NRC and specified in the PNPP Technical Specifications, does not permit substantial discretion on the part of Licensees (or GE Nuclear Energy acting as their design agent) and does not require substantial engineering judgment to derive the cycle-specific parameter limits included in the Core Operating Limits Report.

OCRE, the NRC Staff and Licensees agree that the facts stipulated and agreed to above demonstrate that substantial engineering judgment is not needed to derive the cycle-specific information included in the Core Operating Limits Report from the methodology specified in the PNPP Technical Specifications. Therefore, the parties believe that the factual questions raised by the Board in its Memorandum and Order (Granting Petition to Intervene) dated June 11, 1990 (LBP-90-15) and in its Memorandum

and Order (Denying Staff's and Licensee's Motions for Reconsideration) dated July 23, 1990 (LBP-90-25) have been answered.

By stipulating and agreeing to these facts, Licensees, the NRC Staff and OCRE believe that the need for the factual hearing ordered by the Board has been obviated. Therefore, the parties respectfully submit that the Board accept as true the facts stipulated and agreed to above and cancel the factual hearing scheduled for October 30, 1990.

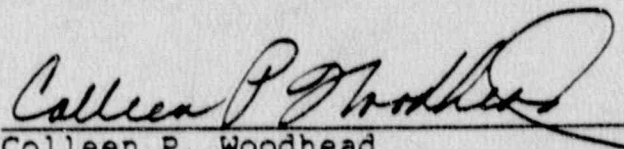
Respectfully submitted,



Jay E. Silberg
SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
Counsel for Licensees



Susan L. Hiatt
OCRE Representative
8275 Munson Road
Mentor, Ohio 44060



Colleen P. Woodhead
Counsel for NRC Staff
Office of General Counsel
US Nuclear Regulatory Commission
Washington, D.C. 20555

B:309jes5430.90

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, ET AL.
(Perry Nuclear Power Plant, Unit 1)

Docket No. (s) 50-440-OLA-2

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LBP-90-39 INITIAL DECISION(.) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
John H. Frye, III, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

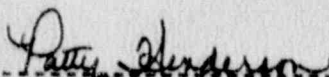
Colleen Woodhead, Esquire
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jay E. Silberg
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, DC 20037

Susan Hiatt
Ohio Citizens for Responsible Energy
8275 Munson Road
Mentor, OH 44060

Carol O'Claire
Technical Hazards Branch
Ohio Emergency Management Agency
2825 West Granville Road
Columbus, OH 43235

Dated at Rockville, Md. this
2 day of November 1990



Office of the Secretary of the Commission