

October 25, 1982

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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 Nos. 50-440
50-441
(OL)

MOTION TO STRIKE "APPLICANTS' ANSWER
TO 'OCRE REPLY TO STAFF AND APPLICANTS'
RESPONSES TO OCRE'S MOTION FOR LEAVE
TO FILE ITS CONTENTIONS 21 THROUGH 26'"

On October 19, 1982 Applicants filed a motion for leave to file an answer to OCRE's reply brief to Staff and Applicants' responses to OCRE's Contentions 21 through 26. Applicants allege that OCRE's reply contains new factual material and legal arguments, and claim, pursuant to the Licensing Board's October 6, 1982 Memorandum and Order (Concerning Procedures for Late-Filed Contentions), that they should be permitted to respond. However, instead of waiting for the Licensing Board's ruling either granting or denying permission to respond, Applicants arrogantly assume that such permission is granted and file the answer instanter, attached to the motion for leave to file same. Since this filing violates the Commission's rules of practice and the Licensing Board's Order, intervenor Ohio Citizens for Responsible Energy ("OCRE") hereby moves to strike Applicants' answer from the record of this proceeding.

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The Commission's regulations clearly delineate the proper procedures pertaining to motions. Specifically, 10 CFR 2.730 allows time for other parties to respond to motions and indicates that the disposition of motions is to be made by the presiding officer. Applicants, by attaching their answer to the very motion requesting permission to file same, have usurped the Licensing Board's authority and undermined the conduct of this proceeding. Applicants should not be allowed to blatantly disregard the Commission's regulations.^{1/}

The Licensing Board's October 6 Memorandum and Order likewise does not sanction their instantter filing. Indeed, the following excerpt supports the conclusion that the Licensing Board must determine whether Applicants' allegations of the improper inclusion of new material in intervenors' reply briefs have merit before permitting a response:

In that decision (LBP-82-79), we discussed some "surprise statements of cause for late filing" and concluded that there was no good cause found in those surprise statements. Had we found that good cause had been shown in those filings, we would have provided applicant a chance to respond. Slip op. at 2-3.

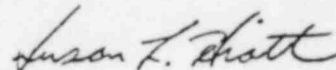
In addition, the Board stated that "(w)hen intervenor introduces material that is entirely new, we will permit applicant to respond." Ibid., emphasis added. Although OCRE will not refute here Applicants' answer to OCRE's reply brief, it should be noted that most of the items to which Applicants object are not entirely new. Unfortunately, Applicants have

^{1/} At the very least, some explanation should have been offered as to why instantter filing was necessary; of course, none was given.

seized upon the Licensing Board's October 6 Order as an open door to the filing of reply briefs to reply briefs to reply briefs, ad infinitum.

OCRE believes that, to ensure the fair and orderly conduct of this proceeding in accordance with NRC regulations, Applicants' answer must be struck.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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This is to certify that copies of the foregoing MOTION TO STRIKE "APPLICANTS' ANSWER TO 'OCRE REPLY TO STAFF AND APPLICANTS' RESPONSES TO OCRE'S MOTION FOR LEAVE TO FILE ITS CONTENTIONS 21 THROUGH 26'" were served by deposit in the U.S. Mail, first class, postage prepaid, this 25th day of October, 1982 to those on the service list below.

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