

October 22, 1982

Ms. Susan L. Hiatt  
OCRE Representative  
8275 Munson Avenue  
Mentor, OH 44060

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

Dear Ms. Hiatt:

I recently received a copy of "Ohio Citizens for Responsible Energy Seventh Set of Interrogatories to NRC Staff" in which OCRE sets forth twenty-nine interrogatories and/or requests for documents purported to be relevant to Issue #4 and Issue #6. Many of those requests are relevant neither to whether performance of a full-scale 30-degree sector steam test, nor to whether an automated standby liquid control system, is required by the Commission's regulations and do not appear reasonably calculated to lead to the discovery of admissible evidence on those issues. Some seek information already supplied by the Applicants or reasonably available from other sources than the Staff. All such requests are objectionable.

The purpose of this letter is to advise you that the Staff will not voluntarily respond to any of the interrogatories in OCRE's "Seventh Set" except Nos. 7-1, 7-2, 7-4, 7-5, 7-6, 7-15, 7-16, 7-18, 7-26 and 7-27. The documents identified in your discovery requests Nos. 7-13, 7-19, 7-20 and 7-28 are available for inspection and copying in the NRC Public Document Room at 1717 H Street, NW, Washington, DC. As you may be aware, discovery against the NRC Staff is on a different footing than that against other parties. Staff documents and records that are relevant to licensing proceedings, with limited exceptions, are routinely made available in the NRC Public Document Room. 10 CFR 2.790(a). The Rules of Practice limit document discovery against the Staff to items in the possession or control of the Staff that are neither made available in the PDR nor reasonably obtainable from another source (10 CFR 2.744) and allow interrogatories to be addressed to the Staff only with the advance permission of the Licensing Board upon its finding that the answers to the interrogatories are both necessary to a proper decision in the proceeding and not reasonably obtainable from any other source (10 CFR 2.720(h)(2)(ii)). See also Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 323 (1980).

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The Staff believes that it has been cooperative in voluntarily responding to reasonable discovery requests by Intervenors and will continue voluntarily to respond to requests that it deems not to be objectionable, i.e., requests to which responses could be required by the Licensing Board under the Rules of Practice. However, Intervenors should not blithely assume that responses to all requests to which the Staff has not formally objected will be volunteered.

Sincerely,

James M. Cutchin IV  
Counsel for NRC Staff

cc: Service List

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