

October 24, 1983
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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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Before the Atomic Safety and Licensing Board

In the Matter of)

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY, et al.)

Docket Nos. 50-440
50-441

(Perry Nuclear Power Plant,)
Units 1 and 2))

APPLICANTS' ANSWER TO OCRE
REQUEST TO HOLD OPEN ISSUE #3
RECORD UNTIL FUEL LOAD

By filing dated October 7, 1983,^{1/} OCRE has replied to Applicants'^{2/} and Staff's^{3/} affidavits and arguments on the Quality Assurance Advisory Committee (QAAC) and inspector certification issues, submitted in response to the Licensing Board's "Memorandum and Order (Motion to Reopen)," dated August 18, 1983. As stated in its reply, "OCRE agrees with Staff and Applicants that a further hearing should not be held on the

^{1/} See "OCRE Reply to Applicant and Staff Affidavits Concerning the Motion to Reopen the QA Record," dated October 7, 1983 (OCRE Reply).

^{2/} See "Applicant's Response to the Licensing Board's 'Memorandum and Order (Motion to Reopen)'" , dated September 19, 1983.

^{3/} See Letter, Steven C. Goldberg to Licensing Board, dated September 29, 1983, and attached affidavits.

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matter."^{4/} OCRE's reply also states as follows:

However, OCRE does not condone closing the record on QA at this time. OCRE is conducting a campaign encouraging Perry workers to come forth with information; it is appropriate to hold the record open to receive any evidence such persons may provide. The construction of Perry is far from complete; it is likely that further QA deficiencies will occur at the plant, and that many of these will rise to a level demanding consideration by this Board. One such event has recently occurred (see attached articles). There is no compelling reason to close the record on QA. Unit 1 cannot load fuel until December 1984, at the earliest. Justice will be better served by permitting intervenors equal and uncomplicated access to adjudication until the time of fuel load. ^{5/}

OCRE's request to hold the record open is essentially a renewal of its "Motion to Hold Record Open on Quality Assurance Issue," dated April 18, 1983. The latter was similarly premised on OCRE's speculation that unidentified witnesses might come forward with new evidence on Issue #3 at some later date. Applicants^{6/} and Staff^{7/} opposed OCRE's April 18 motion. The

^{4/} OCRE Reply at 4. OCRE's reasons for reaching this conclusion are markedly different from the reasons given by Applicants and Staff in justifying their positions. Since the ultimate conclusions are the same, there is no need to address the specific elements of OCRE's position. However, Applicants cannot allow to go unanswered OCRE's irresponsible and totally unsupported suggestion that Perry workers must "risk their careers and perhaps their lives to make the truth known." OCRE Reply at 5. There is absolutely no basis for this allegation on the record of this proceeding or in OCRE's papers filed to date, as OCRE well knows.

^{5/} Id. at 5.

^{6/} See "Applicants' Answer to OCRE Motion to Hold Record Open on Quality Assurance Issue," dated April 27, 1983.

^{7/} See "NRC Staff's Answer in Opposition to OCRE's Motion to Hold Record Open on Quality Assurance Issue," dated April 29, 1983.

Licensing Board denied OCRE's motion during the May 9, 1983 telephone conference call, on the basis that OCRE had identified no witnesses. In denying OCRE's April 18 motion, the Board made clear that "the motion to reopen the record can be made if there's grounds for it in the future."^{8/} As was the case with OCRE's April 18 motion, OCRE's present request does not identify new witnesses or evidence^{9/} to justify holding the Issue #3 record open indefinitely. The motion should therefore be denied.

Moreover, OCRE apparently misapprehends the limited purpose and effect of the Licensing Board's August 18, 1983 Memorandum and Order. As stated at page 12 of the Board's Memorandum and Order, "The Atomic Safety and Licensing Board reopens the record on quality assurance to receive the filings authorized in this Order" (emphasis added). The "filings" to which the Board referred are filings on the QAAC and the inspector certification issues. As Applicants read the plain words of the Licensing Board's August 18 Memorandum and Order, the record was only reopened on these issues; it follows that the record remains closed on all other matters covered by Issue #3. If OCRE believes there is a reason to consider new evidence regarding other matters under Issue #3, OCRE must first identify this evidence and demonstrate that the Commission's requirements for reopening


^{8/} See Tr. 829.

^{9/} OCRE refers at page 5 of its reply to "attached articles," with no further discussion of the content of the articles, and no explanation of why the articles support holding open the Issue #3 record until the time of fuel load.

are satisfied. The Commission's procedures and standards for reopening provide intervenors "equal and uncomplicated access to adjudication,"^{10/} and the device of holding open, or reopening, a record for an indefinite time, for an indefinite purpose, is neither necessary nor appropriate to assure intervenors access to the Commission.

For all the above reasons, the Licensing Board should deny OCRE's request to hold open the Issue #3 record until the time of fuel load.

Respectfully submitted,


Jay E. Silberg, P.C.
Harry H. Glasspiegel

Counsel for Applicants
1800 M Street, N.W.
Washington, D.C. 20036

(202) 822-1000

Dated: October 24, 1983

^{10/} OCRE Reply at 5.

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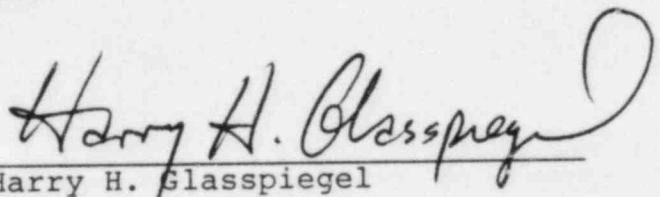
(Perry Nuclear Power Plant,
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Answer to OCRE Request to Hold Open Issue #3 Record Until Fuel Load" were served by deposit in the United States Mail, first class, postage prepaid, this 24th day of October, 1983, to all those on the attached Service List.


Harry H. Glasspiegel

Dated: October 24, 1983

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SERVICE LIST

Peter B. Bloch, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Glenn O. Bright
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
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Atomic Safety and Licensing
Appeal Board
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Gary J. Edles, Esquire
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Colleen P. Woodhead, Esquire
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ms. Sue Hiatt
OCRE Interim Representative
8275 Munson Avenue
Mentor, Ohio 44060

Terry Lodge, Esquire
618 N. Michigan Street, Suite 105
Toledo, Ohio 43624

Donald T. Ezzone, Esquire
Assistant Prosecuting Attorney
Lake County Administration Center
105 Center Street
Painesville, Ohio 44077

John G. Cardinal, Esquire
Prosecuting Attorney
Ashtabula County Courthouse
Jefferson, Ohio 44047