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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
James P. Gleason, Chairman
Dr. Jerry R. Kline
Mr. Glenn O. Bright

In the Matter of	Docket Nos. 50-440-OL 50-441-OL
CLEVELAND ELECTRIC ILLUMINATING COMPANY, et al.	ASLBP No. 81-457-04 OL
(Perry Nuclear Power Plant, Units 1 & 2)	April 9, 1985

MEMORANDUM AND ORDER
(Motions for Summary Disposition of Issues 1, 15 and 16)

The Cleveland Electric Illuminating Company, et al. (Applicants) have filed motions for summary disposition of Issues (Contentions) 1, 15 and 16. The Board, herein, grants the motions for Contentions B, C, G, H, I, O, DD, GG, JJ, and parts of A and Q of Issue 1, and Contention 15, but denies the motions for Contention 16 and for J, M, P, U, Z, BB, CC and parts of A and Q of Issue 1.

The standard applicable to summary disposition motions is found in the Commission's regulations in 10 C.F.R. 2.749(d). This provides for its imposition, when:

> "--the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law."

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The Applicants' motion on the three contentions considered herein are supported by the Staff. The motions on Contention 1 is opposed by the Intervenor, Sunflower Alliance, (Sunflower) and motions on Contentions 15 and 16 are opposed by the Intervenor, Ohio Citizens for Responsible Energy (OCRE). The parties have set forth applicable regulatory rules and case law interpreting the rules on summary disposition for our guidance. They require no repetition here except for the following:

> [I]t is the party seeking summary judgment, not the party opposing it, which has the burden of showing the absence of a genuine issue as to any material fact.[1]
>
> The use of summary disposition is encouraged to resolve tenuous issues raised in petitions to intervene.[2]
>
> An issue may be summarily disposed only where no genuine issue remains and where the record is viewed in the light most favorable to the party opposing the motion.[3]
>
> ...a party opposing the motion may not rest upon the mere allegations or denials of his answer; his answer by affidavits or as otherwise provided...must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, shall be rendered.[4]

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1 Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753 (1977).

2 Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 550 (1980). See also, Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

3 Pennsylvania Power and Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981).

4 10 C.F.R. 2.749(b).

Contention 1

The Applicants filed the required statement of material facts and supporting affidavits for each of the contentions under Issue 1 and Sunflower submitted responses to all except three contentions. Opposing affidavits were also submitted in connection with several contentions. The Staff submitted affidavits buttressing its response from officials of the Federal Emergency Management Agency (FEMA) who were responsible for reviewing offsite emergency plans and from NRC officials who were responsible for reviewing the onsite emergency plan.

Contention A: This contention alleges that evacuation time estimates (ETE) were not reviewed by State and local organizations nor were adverse weather conditions considered. Statements and affidavits of the Applicants and Staff make evident that local and state officials were consulted on the development of the ETE and that adverse weather scenarios were considered. However, it is conceded that formal comments from these officials await a revision of the ETE. Accordingly that part of this contention which represents a material fact survives for litigation purposes: summary disposition of the remainder is granted.

Contention B: This contention states that evacuation route impediments have not been identified or considered, nor has evacuation of construction workers on site, nor has low or no power operation during inclement weather been included in the plans. The affidavit submitted by Applicants and Staff make clear that snow and disabled vehicles have been considered and resources to handle these impediments have been identified. Further, it is evident that low or no power

operation is not a requiremer in the regulations, that sheltering rather than evacuation is an option available to decision makers, and that the onsite plan provides procedures for the evacuation of onsite personnel who are without emergency response functions. This would include construction workers. With regard to Sunflower's affidavit from a local municipal official who alleges a lack of any agreement to supply road equipment in the event of an emergency, it is evident that it is the county government that has the responsibility for coordinating responses from various political subdivisions within the County. And this is provided for in the County plans. Since no issue of material fact exists, the Applicants' motion is granted for this contention.

Contention C: This contention states that the emergency plans do not contain a consistently defined role for County commissioners during an emergency nor is their legal authority to act set forth as required. From the information submitted by the Applicants and Staff concerning the State and local plans, it is evident that the roles of County commissioners during a radiological emergency are consistent and are authorized under State law. Intervenor's comments on the role of the Ohio governor in an emergency are not relevant to the question of what specific emergency responses local officials may take after receiving recommendations from the State. No issue of material fact exists here and therefore the motion is granted.

Contention G: This contention argues that emergency plans should include the availability of potassium iodide (KI) for emergency workers and the public. The Applicants and Staff substantiate the conclusion

that federal regulations do not require the availability of KI for the public and emergency workers. The State of Ohio, which is currently reviewing its decision, has recommended against the issuance of KI for emergency workers and local governments within the Perry EPZ are following this decision. It is the policy of FEMA to accept State and local guidance in this area and the NRC Staff refers to the fact that NUREG-0654 is only a regulatory guide and does not require compliance. The Staff points out that KI is available for use by workers onsite at Perry. Accordingly, no issue of a material fact exists and the Applicants' motion is granted.

Contention H: This contention alleges that an inconsistency in local emergency plans on radiation exposure levels for emergency workers and the non-availability of respirators evidence an inability to provide protection for such workers in the event of a major radiation leakage. The information submitted by Applicants and Staff makes clear that local emergency plans set forth radiation exposure limits that conform to EPA guidance. Further, the plans established a procedure for authorizing higher exposures if found necessary. Although there is no express guidance on respiratory apparatus for offsite emergency workers, there are a number available for use within the three counties. Accordingly, there exists no material issue of fact in this contention and the Applicants' motion is granted.

Contention I: This contention advances the proposition that Applicants' emergency plan contemplates that an evacuation would not take place beyond a 5-mile radius of the Perry plant. The basis for

this contention is Applicants' use of an alternate procedure for determining protective actions wherein specific recommendations associated with curves shown in the plan extend only to a 5-mile area. This procedure is being supplemented by Applicants to state that evacuation to 10 miles is included and the Staff has made the matter confirmatory and to be identified as such in the SSER-5. Additionally, the onsite and offsite plans have adopted a plume exposure pathway (EPZ) of about 10 miles. There is no question that evacuation plans cover a 10-mile EPZ and, accordingly, there is no material issue of fact remaining to be litigated here. The Applicants' motion is granted.

Contention J: This contention alleges that emergency action level indicators are incomplete in Applicants' emergency plans. The Applicants concede that there are 13 incomplete items in the emergency action levels but attest that they will be completed prior to licensing. Although the Staff commits itself to a continuing review of the Applicants' emergency plans to assure completion, the Intervenor is entitled in this context to contest the absence of these indicators. Applicant's motion is denied.

Contention M: This contention recites that independent data monitoring systems should be installed within all counties in the emergency planning zone (EPZ). The Applicants and Staff both contend that the regulations only require that each organization with emergency responsibilities, where appropriate, is to provide for offsite radiation monitoring equipment, and that the State of Ohio has three independent fully-equipped mobile radiological teams to monitor radiation releases.

However, the Intervenor makes an argument that the State teams are three hours distant and that no capability exists to monitor "hot" samples. Additionally, we have been advised by FEMA in a letter dated March 29, 1985 that Lake County plans to have a fixed monitoring system. In our view, there are material issues of fact existing in this contention and they should be placed in an adjudicatory framework. Accordingly, Applicant's motion is denied.

Contention O: This contention alleges that the emergency plans do not set forth plans and procedures for reentry and recovery of property, or the means for relaxing protective measures within the 10-mile EPZ. The Applicants have pointed out that only general onsite and offsite plans are called for in the criteria of NUREG-0654 and in 10 C.F.R. 50.47(b)(13). Local and State plans provide that reentry and recovery actions of the County will be coordinated with the State. FEMA has found the plans adequate even though there were two deficiencies noted by the Regional Assistance Committee which are to be corrected in a revision of the State plan. There exists no material fact remaining to be litigated in this contention and, accordingly, Applicants' motion is granted.

Contention P: This contention advises that emergency plans are deficient with respect to hospital designations and medical services as well as procedures required to assist contaminated individuals. The Applicants and Staff contend that regulatory criteria are met on hospitalization and medical services by the designation in the plans of four local hospitals and an additional 50 hospitals surrounding the EPZ

which are capable of treating radiation injuries. However, Intervenors' affidavit, submitted by a medical practitioner at one of the four hospitals listed, supra, testifies to a lack of medical resources at his hospital and also the limited training that has been accomplished. There exist material issues in connection with this contention that require further exploration and the Applicants' motion is denied.

Contention Q: This contention challenges the adequacy of school buses to transport children in an emergency and also challenges evacuation procedures for not considering transportation obstacles which might originate with parents picking up children at school. Information furnished by Applicants demonstrates that there are an adequate number of buses available to the three counties during an emergency and that the information provided to parents before and during an emergency will be adequate to instruct them not to go to school to pick up their children. If some parents do ignore the instructions, it is contended that traffic control procedures will handle any congestion problems that ensue. We are concerned about the lack of formal letters of agreement for the use of buses that are outside of EPZ areas. Accordingly, the Applicants' motion is granted except for the issue of letters of agreement. This is a material issue and requires resolution in the context of a litigative proceeding. That part of Applicants' motion is denied.

Contention U: This contention alleges that reception centers do not have the means or facilities for handling contaminated property. The Applicants' response reveals that fire department personnel who will

be responsible for handling contaminated property at reception centers will be trained for these duties. The response also indicates that emergency kits for handling contaminated property will be furnished to reception centers prior to fuel load. It appears to the Board that the Intervenors are entitled to ascertain the extent of training and the present availability of emergency kits in order to ascertain whether the regulatory standards are being met. The Applicants have not put this issue to rest yet and the motion for summary disposition of this contention is denied.

Contention Z: This contention alleges that the plants do not provide for contamination protection for bus drivers during an emergency. Although, as Applicants state, federal regulations and guidance do not require bus drivers to be provided with protection equipment, the State Department of Health requires protective equipment for all emergency workers. FEMA has accepted the State plan in this matter and since bus drivers do have self-reading dosimeters and will be trained in their use the Board believes that their status as possible emergency workers and their training remains to be explored at the hearing. The Applicants' motion accordingly is denied.

Contention BB: This contention reads as follows: Offsite emergency plans are inadequate due to planning deficiencies set forth in FEMA's Interim Report of March 1, 1984. The Applicants and Staff both assert that FEMA's 1984 Interim Report found the offsite emergency plans adequate despite some planning deficiencies which were in the process of being corrected. A material issue exists as to whether these

deficiencies have been corrected and this can only be resolved in an adversary proceeding. Applicants' motion is denied.

Contention CC: This contention alleges that the resolution items in the Staff's Safety Evaluation Report (SER) NUREG-0887, Supp. 4 (February 1984), pp. 13-1 to 13-22 are uncorrected deficiencies in the emergency plans. Both the Applicants and Staff concur that all of the unresolved issues have been resolved by Revision 3 to the Perry onsite plan and by subsequent letters to the Staff for additional revisions to the plan. Whether these deficiencies have been corrected is a material issue of fact and accordingly Applicants' motion is denied.

Contention DD: This contention alleges that the Applicants' emergency operation facility (EOF) is located contrary to criteria and guidance provided by the NRC. The Applicants and Staff attest to the fact that the EOF is located in conformity to NRC regulations in 10 C.F.R. 50.47(b)(8) and NUREG-0654, Criterion H2. The Intervenor did not respond to this motion and we find no material issue of fact existing. The Applicants' motion is accordingly granted.

Contention GG: Emergency plans have not made provisions for communicating with individuals (such as Amish people) who do not utilize radio or television devices. The Applicants gave evidence that no Amish people exist in the EPZ and both Applicants and Staff attest to the provision in the plans for communicating with all segments of the population: radio and television broadcasts, special needs information calls, a siren system of alerting people, loudspeakers for communicating and a public education program to prepare residents for an emergency.

The Intervenor did not respond to this motion and we can find no issue of material fact that requires litigation. Applicants' motion is granted.

Contention JJ: This contention alleges that the emergency plans do not provide for backup power so that evacuation procedures and activities can be carried out. The Applicant provided evidence that there is adequate backup power to provide for all emergency functions: sirens have built-in batteries, loss of traffic signals can be overcome by police directing traffic manually, backup gasoline is available and the emergency communication network including all the EOFs have backup power. The Staff provided information that power will be available from the electrical grid system if Perry tripped off the line and that the onsite radiation monitoring system can be powered by diesel generators. The Intervenor provided no response and the Board can ascertain no issue of a material fact unresolved in this contention. Accordingly, the Applicants' motion is granted.

Contention 15

This contention reads: Applicant has not yet demonstrated that it is prepared to prevent, discover, assess and mitigate the effects of steam erosion on components of the nuclear power plant that will be subjected to steam flow.

The basis for this contention was founded on two NRC IE Information Notices in 1982 which identified steam erosion as the cause of failures in two nonsafety-related plant components; the contention also

referenced a lack of an inservice testing program for pumps, valves and leak testing of valves. The Staff responded in support of Applicants' motion and the Intervenor, Ohio Citizens for Responsible Energy (OCRE), in opposition, although in a limited area.

Information submitted by Applicants in support of its motion evidences the following: (1) a steam erosion hazards analysis was performed at Perry which reviewed all safety-related systems and components in areas containing steam and steam drain piping. The analysis concluded, after a review of 4,000 items, that Perry's design assured the plant's ability to achieve and maintain a safe shutdown condition in the event of any credible failure resulting from the effects of steam erosion; (2) a review by Applicants was conducted of those piping systems at Perry where steam erosion could theoretically occur and those systems were identified that had a potential for significant erosion-corrosion; namely, N36 Extraction Steam System and part of N11 system dealing with a high pressure turbine exhaust; (3) the Applicant will implement an inspection program, in addition to the required ASME inspection, for those portions of the piping system where steam erosion is a potential concern, including the Extraction Steam System; (4) prior to fuel load, an inspection will be conducted to provide baseline information on pipe wall thickness and an operational inspection will be conducted within the first three years of plant operation. Since steam erosion is a long-time phenomenon, this will assure detection of any steam erosion effects; the time intervals for tests thereafter will be determined on the basis of results of prior

inspections; (5) a BWR Owners' Group, to which Applicants belong, conducted a comprehensive study which found that steam erosion was not a contributing factor to leakage in main steam isolation valves (MSIV). MSIVs had been shown to have excessive leakage rates in one of the NRC IE Information Notices, supra.

The Staff response reflects that (1) extra piping weld thickness to allow for steam erosion is provided at Perry so that minimum wall thicknesses are exceeded by 50 to 400%; (2) that as a consequence, piping failures are not expected to occur at either unit of Perry; (3) that replacement of these lines, including the extraction steam piping, is not expected during the life of the plant; (4) that the Applicants' plant radiation protection/ALARA program meets NRC acceptance criteria and that the Applicants will have the ability to perform steam piping repairs, including steam extraction lines, in accordance with the requirements of 10 C.F.R. Part 20.1(c).

The Intervenor has focused its response on one component in the Perry plant and that is the Unit 1 Extraction Steam System, N36. The argument is made that Applicants essentially admit that repairs or replacement of N36 piping, due to erosion-corrosion, will be necessary eventually. OCRE points to the fact that one of Applicants' affidavits states that N36 piping in Unit 2 was replaced with a more erosion-resistant material but Unit 1 was not due to the piping having been already installed. (Pender at 12, fn. 3) OCRE contends that future repair workers would encounter radiation exposures if the piping needed replacement and this violates ALARA principles. The Intervenor

contends that replacement now would not result in radiation dose to workers. In support of this, OCRE references Applicants' Interrogatory Answers, 9-44 and 9-46.

The Board concludes that Applicants have demonstrated a thorough evaluation of potential corrosion problem areas and has proposed an additional inspection system to permit it to identify and correct any corrosion defects that develop at the Perry facility. We judge that OCRE's apprehensions concerning the Unit 1 Extraction Steam System are unfounded not only because of the Applicants' inspection procedure program but also because Applicants' design has produced a substantial conservative margin in the steam piping wall thickness. With regard to OCRE's reference to ALARA, and to the use of erosion-resistant material for the piping at Unit 1, Applicants' statement is that the piping in Unit 2 was not replaced because of its impracticality and also that an inservice inspection program would be designed to monitor the piping elbow wall thickness. ALARA permits the economics of improvements to be considered. (See 10 C.F.R. 20.1(c)). The interrogatories cited by OCRE do not support its claim that repairs or replacement of N36 piping will be necessary eventually. Further, an affidavit submitted by the Staff is support for the proposition that piping failures caused by steam erosion are not expected to occur at either Perry unit and the replacement of extraction steam piping is not expected during the 40-year life of the plant. Finally, we are advised that Applicants have submitted an inservice inspection program for pumps and valves. (See SSER-5, p. 3-10)

We are also reassured against erosion defects by the hazards analysis work performed by the Applicant which promises safe shutdown in the event of an erosion-caused defect and we are also assured by the BWR Owners' Group Study which ruled out corrosion as contributing to any failures in MSIVs.

In light of the foregoing, it is the Board's judgment that no genuine issue of material fact exists in this contention, and, accordingly, the Applicants' motion is granted.

Contention 16

This contention alleges that the Applicants have not demonstrated that it can reliably generate emergency onsite power by relying on four Transamerica Delaval diesel generators, two for each of its Perry units.

The foundation for this contention, by Intervenor, Ohio Citizens for Responsible Energy (OCRE), was the failure of the main crankshaft at the Shoreham Nuclear Plant and cracks in other crankshafts in Shoreham's diesels, where the crankshafts are manufactured by Transamerica Delaval (TDI), the same manufacturer that produced Perry's diesel engines. The contention also referenced deficiencies in the Perry TDI diesels reported under Applicants' QA/QC program. The Staff's Safety Evaluation Report (SER) on the TDI diesel generators for Perry acknowledges

deficiencies in TDI's generators stemming "from inadequacies in design, manufacture, and QA/QC at TDI."[5]

As a result of these difficulties, 12 U.S. utility owners, including the Applicants herein, formed the TDI diesel generator Owners' Group (Owners' Group), on October 25, 1983, to assess operational and regulatory issues relating to the TDI diesel generators. The Owners' Group program plan was approved by the NRC as incorporating the essential elements needed to resolve concerns on the reliability of the TDI diesel generators and to assure their compliance with GDC-1 and GDC-17.[6] This program was to include the resolution of all known generic problems in Phase 1; a systematic design review and quality revalidation of all components important to reliability and operation of the generators in Phase 2, and identification of appropriate inspections, testing, maintenance and surveillance programs for the engines.

The Applicants' information in support of its motion outlines the extensive technical resources used to implement the Owners' Group program, and the comprehensive data base from nuclear and non-nuclear experience which was reviewed to select components for assessment.

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5 Safety Evaluation Report on Transamerica Delaval, Inc. diesel generators, Perry Nuclear Power Plant, Unit 1, p. 1; transmitted to the Board and parties by Staff memorandum of February 25, 1985.

6 See 10 C.F.R. Part 50, Appendix A, General Design Criteria 1 and 17 and Appendix B.

Sixteen components, including the crankshaft, were identified with significant problems of generic applicability and a design review on each was conducted by consultants for the Owners' Group. An independent engineering consultant firm for the Applicants verified the Owner's Group's 36 reports which were submitted to the NRC as a result of this effort and found the 16 components acceptable for nuclear service if provided maintenance and inspection recommendations were carried out. Critical aspects of components were inspected and tested independently of TDI. All of the applicable Phase 1 recommendations in the Owners' Group reports have been incorporated in the Applicants' TDI engine program. Further, Applicants have incorporated all of the Phase 1 Owners' Group recommendations on maintenance as well as those of their independent consultant into its program at the facility. Additionally, the Owners' Group recommendations will be reflected in the Applicants' specifications in all future purchase requisitions.

The Phase 2 program, which examined important components not considered in the Phase 1 effort, was completed at Perry and a report was submitted to the NRC on January 17, 1985. In this review, components that could shut down or prevent a startup of the engines under emergency conditions were normally given a full design and quality revalidation. An intensive engine and selected component testing and an inspection of selected engine components as recommended by the Owners' Group will be conducted on the diesel generators at Perry prior to plant licensing and operation. The engines at Comanche Peak, which are lead engines for Perry's diesels, have been successfully tested for 100 hours

and the same engine has been run successfully for over 1000 hours at Catawba. Information from the testing performed at these other facilities was incorporated into Perry's testing program. Each Perry diesel generator will be load tested at 100% for 24 hours and its ability to undergo a 100% load rejection without tripping will also be tested. A torsiograph test confirm the adequacy of the crankshaft to withstand operational torsional stresses will be performed also and 89 total tests will be undertaken to demonstrate the starting performance of the diesel generators. Of the 19 out of 22 significant deficiency reports submitted to the NRC which involved TDI-supplied equipment, the majority have been closed out and most of the rest are waiting for documentation, their resolution having been accepted by the NRC. In the review process, only two notable concerns developed during the engine revalidation (tear down, inspection, and reassembly) of Unit 1 diesel engines at Perry and these concerns which have been remedied or eliminated dealt with rocker arms and crankshaft oil holes.

The Staff's response reflects that the Applicants' verification, inspection and test program of the 171 components of Perry's diesels was sufficient to ensure the reliability of the engines to provide emergency power to the plant. Basing its favorable conclusion partly on evaluations performed by its technical consultant, Batelle's Pacific Northwest Laboratory (PNL), the Staff also referenced previous Staff conclusions on similar engines at Comanche Peak, Grand Gulf and Catawba. The SER points out that Perry's diesel engines have been found to be the same as those at Comanche Peak with the exception of 11 out of 171

components which were assessed by the Owners' Group and the Applicant. Of these 11, 2 components are Phase 1 components, the crankshaft and cylinder block.[7] Although PNL and the Staff have not completed their review of the Phase 1 component analysis nor any of the Phase 2 Design Review and Quality Revalidation (DR/QR) reviews, a preliminary review of the Comanche Peak, Unit 1, DR/QR has not revealed any circumstances PNL considers significant. PNL has concluded that the Phase 1 components at Perry are suitable for their intended service with the exception of the crankshaft which requires, in PNL's judgment, a torsiograph test. PNL has also concluded that the DR/QR efforts from Phase 1 and Phase 2 components at Perry will be adequate based on the similarity of Perry's engines to those of Comanche Peak. PNL has reached preliminary conclusions that no open items require resolution at Comanche Peak before licensing. PNL has also concluded that the preoperational test proposed at Perry is adequate to demonstrate engine operability and that the plant's proposed maintenance and surveillance program will be adequate since it will be reviewed by the Staff. Since Perry has essentially performed the major actions the Staff considered necessary for licensing of Grand Gulf and Catawba, and the Staff has issued interim SER's on Grand Gulf, Comanche Peak and Catawba, all of which have similar engines, and in view of Applicants' agreement to perform

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[7] See Safety Evaluation Report on TDI diesel generators, Perry Nuclear Power Plant, Unit 1, p. 7.

certain activities prior to licensing, the Staff concludes that the TDI diesel generators will be able to reliably generate emergency onsite power at Perry.

The Intervenor, alleging that the Applicants have violated general design criteria in Appendices A and B in 10 C.F.R. Part 50, has raised a substantial number of questions covering the test program of the Applicants and the Owners' Group. Challenging the assessments on the diesel engines as not being conservatively based, OCRE criticizes the adequacy of the technical evaluations made of piston crowns and rings, AE piston skirts, cylinder heads, connecting rods bearing shells, engine base and bearing caps, nozzle ring vane, cylinder blocks, engine foundation chock plates and the engine's crankshaft. Finally, the Intervenor challenges one of the Applicants' and the Staff's basic foundations, the viability of the lead engine concept. To OCRE, an assumption that all V-16 category engines are identical, with a consistent quality and design, is simply fallacious. In an effort to shore up its response, OCRE submitted some 66 exhibits including some transcripts from the Shoreham licensing proceeding dealing with TDI diesel generator deficiencies.

The Board concludes that the extensive evaluation of the Perry generators represents an important complicated technical issue which does not at this stage lend itself to being summarily disposed. On the information presented, it is clear that the Staff's evaluation -- and indeed even the Applicants' assessment -- has been performed in a brief period of time and this circumstance alone would justify a decision that

litigation of the contention might not be a useless activity. The Staff's technical consultant, PNL, has acknowledged that its technical review of Perry's diesel engines has been brief and is not intended to provide a definitive and final evaluation of either their operability or reliability. The preliminary technical guidance PNL has provided regarding the status of TDI engines at Perry relative to similar TDI engines at other nuclear plants does not eliminate at this point material issues, such as the validity of the lead engine concept, from the proceeding. From the information submitted by Applicants, Staff, and Intervenor, it is evident that this contention requires ventilation in an adjudicatory context and accordingly the Applicants' motion must be denied.

ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Jerry R Kline for

James P. Gleason, Chairman
ADMINISTRATIVE JUDGE

Glenn O. Bright

Glenn O. Bright
ADMINISTRATIVE JUDGE

Jerry R Kline

Jerry R. Kline
ADMINISTRATIVE JUDGE

Bethesda, Maryland