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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'86 MAR -6 P3:31

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF 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 OL  
50-441 OL

NRC STAFF RESPONSE TO MOTION TO REOPEN THE  
PFCCRD FILED BY OHIO CITIZENS FOR RESPONSIBLE ENERGY

Colleen P. Woodhead  
Counsel for NRC Staff

March 5, 1986

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I. INTRODUCTION

On February 3, 1986 Ohio Citizens for Responsible Energy (OCRE) filed a motion (Motion) to reopen the record in this proceeding to admit a new contention for litigation. The motion to reopen and the proffered contention are based on a magnitude 5.0 earthquake which occurred on January 31, 1986 about 10 miles from the Perry Nuclear Power Plant (PNPP). The NRC Staff's (Staff) response to OCRE's Motion is set forth below.

II. BACKGROUND

The Concluding Partial Initial Decision (CPID) addressing three issues <sup>1/</sup> litigated at hearings held during April and May, 1985 was

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<sup>1/</sup> The issues litigated concerned (1) the hydrogen control system (2) the Transamerica Delaval Incorporated (TDI) emergency diesel generators at PNPP and (3) offsite emergency plans.

issued by the Atomic Safety and Licensing Board (Licensing Board) on September 4, 1985. Appeals of the CPID and six other decisions were filed by intervenors, OCRE and Sunflower Alliance, in late October 1985. Responses to the appeals were filed by Applicants and NRC Staff in late November and early December, respectively. On December 12, 1985 OCRE filed a motion to reopen the record to admit two new contentions concerning fire protection technical specifications and Applicants' request for approval of single loop operation. <sup>2/</sup> That motion was denied on February 27, 1986. <sup>3/</sup> The appeals of the CPID are presently pending before the Atomic Safety and Licensing Appeal Board (Appeal Board).

OCRE's most recent motion asserts that the Commission's standards for reopening the record as well as for late-filed contentions, are met by the issue raised in the motion, and that the contention submitted has a valid basis and meets the standard for admissible contentions. In Staff's view OCRE has failed to meet any of the standards as explained below and in the affidavits appended to this response. <sup>4/</sup>

### III. DISCUSSION

A motion to reopen the record that raises previously uncontested issues must satisfy three sets of standards and entails a heavy burden

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<sup>2/</sup> "Motion to Reopen the Record and To Submit New Contentions," December 12, 1985.

<sup>3/</sup> Memorandum and Order, ALAB-831, slip op., February 27, 1986.

<sup>4/</sup> Two affidavits are attached. See: Affidavit of Phyllis Sobel and Leon Reiter and Affidavit of Arnold J.H. Lee.

for the movant. <sup>5/</sup> To succeed with such a motion the movant must show (1) that reopening is justified, (2) that admission of the late-filed contention is supported by a balancing of the factors enumerated in 10 CFR § 2.714(a)(1), and (3) that a litigable contention has been submitted in accord with the standards set out in 10 CFR § 2.714(b). <sup>6/</sup> OCRE has not met this burden as demonstrated below.

A. CCPF Has Not Met The Standards for Reopening the Record

The Commission's standards for reopening the record were recently discussed in the Staff's response to OCRE's December 12, 1985 motion to reopen the record <sup>7/</sup> and need not be repeated at length here. Suffice it to say that reopening the record is an extraordinary action <sup>8/</sup> which requires (1) a timely motion, (2) raising a significant safety (or environmental) concern (3) which might have led the Licensing Board to reach a different result. <sup>9/</sup> Hearsay based on a newspaper article does not

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<sup>5/</sup> Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-812, 22 NRC 5, 14 (1985) (citations omitted).

<sup>6/</sup> Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2) CLI-82-39, 16 NRC 1712, 1714-15 (1982); Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-41, 18 NRC 104, 109 (1983). See also; Philadelphia Electric Co. (Limerick Generating Stations, Units 1 and 2), ALAB-828, 23 NRC \_\_\_, Slip op. at 3-4 (January 16, 1986).

<sup>7/</sup> "NRC Staff Response to Motion to Reopen the Record Filed by Ohio Citizens for Responsible Energy, January 2, 1986.

<sup>8/</sup> Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-82-34A, 15 NRC 914, 915 (1982).

<sup>9/</sup> Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), CLI-86-1, 23 NRC \_\_\_, slip op. at 3 (January 30, 1986);

constitute the type of evidence required to support reopening. <sup>10/</sup> Bare allegations or simple submission of new contentions is insufficient and the new information must be relevant, material, reliable and tantamount to evidence, set out with a degree of particularity in excess of the requirements of 10 CFR § 2.714(b) <sup>11/</sup> and considerably more than a promise of unspecified additional information. <sup>12/</sup> OCRE's motion falls far short of these standards.

1. Timeliness

In addressing the standard for reopening the record, a movant must demonstrate that the information could not have been submitted earlier. <sup>13/</sup> OCRE's claim of timeliness is based exclusively on the accounts of the recent earthquake near PNPP. Clearly, information about the actual earthquake could not have been previously submitted. However, while OCRE has indeed timely filed a motion shortly after the occur-

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 285 n.3, reconsideration denied, CLI-85-7, 21 NRC 1104 (1985). See also: The Commission's proposed rule codifying standards for motions to reopen the record, 49 Fed. Reg. 50189 (December 27, 1984).

<sup>10/</sup> Waterford, supra, CLI-86-1, slip op. at 5, n.2.

<sup>11/</sup> Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 NRC 1361, 1366-67 aff'd sub nom. San Louis Obispo Mothers for Peace v. NRC, 751 F.2d 1287 (D.C. Cir. 1984) vacated in part and reh'g en banc granted on other grounds, 760 F.2d 1320 (1985).

<sup>12/</sup> Three Mile Island, supra, CLI-85-7, 21 NRC at 1106, citing Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-753, 18 NRC 1321, 1324 (1983).

<sup>13/</sup> Limerick, supra, ALAB-828, slip op., at 5.

rence of the earthquake, it could be argued that this event per se, does not constitute new information which for the first time raises a concern about the seismic design of PNPP since the recent earthquake is within the magnitude of earthquakes described in the FSAR and SER as historically occurring in the region of the PNPP site and considered in the seismic design of PNPP, as explained further below. While the recent earthquake is certainly a new occurrence, it is not information substantially different from previously available information concerning the seismicity of the region of the PNPP site. Thus, although OCRE's motion to reopen was promptly filed after the recent earthquake and is timely in that respect, OCRE is tardy in waiting until now to first question the PNPP seismic design. The timeliness of the instant motion is questionable.

2. The Significance of the Information

The most important factor to be considered in a motion to reopen is the significance of the information regarding plant safety.<sup>14/</sup> However, the information provided by OCRE does not raise a significant safety issue concerning the adequacy of the seismic design of PNPP and does not meet the second criterion in the standard for reopening records.

OCRE states that "preliminary information" (obtained from a newspaper article) of a magnitude 5.0 (Richter scale) earthquake near PNPP on January 31, 1986 "clearly shows" the seismic analyses and conclusions in the FSAR and SER "to be erroneous" in describing the area around PNPP as one of "low seismicity" without capable faults. Motion, pp. 1-2.

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<sup>14/</sup> Limerick, supra, ALAB-828, slip op. at 6.

OCRE bases this claim on the newspaper report of recorded motions of 0.19g and 0.25g, which OCRE asserts exceeded the PNPP safe shutdown earthquake (SSE) anchor of 0.15g. Motion, p. 2. OCRE offers no support for this interpretation of the FSAR and SER analyses, but nevertheless concludes that the SSE and OBE (Operating Basis Earthquake) for PNPP should be "more severe" and the plant should be upgraded. Motion at 2. OCRE claims no other basis for reopening the record than its own assertions that seismic design is a "serious matter", and that it is "virtually certain" a different result would have been reached by the Licensing Board had this event been known. Motion, pp. 2-3. OCRE requests that the record be reopened to admit a new contention which generally challenges the adequacy of the entire seismic design of PNPP. <sup>15/</sup> Motion, p. 1. In support of the motion, OCRE provides as evidence only a newspaper account of the earthquake and OCRE's arbitrary characterization of sections of the FSAR and SER which assess the earthquake potential for the PNPP site. These references and unfounded conclusions do not constitute the specific, material information "tantamount to evidence," set out with particularity which is required to support reopening the record Diablo Canyon, ALAB-775, supra, 19 NRC at 1366-67. Moreover, neither the newspaper article nor the referenced portions of the FSAR and SER support OCRE's motion.

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15/ The proposed contention states:

Applicants have not demonstrated that the seismic design of the Perry Nuclear Power Plant is adequate in light of observed local seismicity.



The SER states that the seismic design spectrum used for PNPP was compared to data from past earthquakes with 22 components of strong motion records with magnitudes ranging from 5.0 - 6.1 and epicentral distances of 3.6 - 13 miles. SER pp. 2-26, 2-27. The SER also explains that the PNPP SSE design spectrum (a Regulatory Guide 1.60 spectrum anchored to 0.15g) envelopes the 84th percentile of a site specific subset of average magnitude  $5.53 \pm 0.3$  at an average epicentral distance of  $8.5 \pm 3$  miles. SER, pp. 2-26, 2-27. The application of this design spectrum to structures and equipment at PNPP is described in the SER Section 3, (specifically pp. 3-17 to 3-45). Finally, the SER describes some areas of the Central Stable Region surrounding PNPP as areas of "moderate" seismic activity. SER p. 2-25. There is no mention of "low activity" as OCRE alleges.

The recent magnitude 5.0 earthquake near PNPP is clearly within the magnitude of the earthquakes used to assess the SSE design spectrum for PNPP. Sobel-Reiter Affidavit, ¶ 8, Lee Affidavit, ¶ 10. The controlling earthquake for the PNPP site described in the SER was a magnitude 5.3 event similar to past earthquakes in Anna, Ohio and Sharpsburg, Kentucky. SER p. 2-26; Sobel-Reiter Affidavit, ¶ 7. Moreover, the PNPP SSE actually exceeds the 84th percentile ground motion spectrum from recordings of magnitude  $5.3 \pm 0.5$  earthquakes. Sobel-Reiter Affidavit, ¶ 8. The recent earthquake demonstrates no error in the FSAR and SER assessment of the magnitude of potential earthquakes near PNPP or the seismic design of the plant. Nor does the earthquake demonstrate that a nearby capable fault exists. Sobel-Reiter Affidavit, ¶ 10. On the contrary, it would appear that the recent earthquake

empirically confirmed the adequacy of the seismic design of PNPP, and the previous seismic analyses. Lee Affidavit, ¶¶ 1, 13; Sobel-Reiter Affidavit, ¶¶ 7-9. Extensive inspections by NRC Staff have revealed no damage to the structure or safety equipment at PNPP resulting from the earthquake. Lee Affidavit, ¶ 1.

The in-plant seismic monitoring instruments at PNPP did record some high frequency exceedences of the SSE-OBE design spectra. Sobel-Reiter Affidavit, ¶ 3, Lee Affidavit, ¶ 1. However, the earthquake was not recorded in the free-field outside the plant. Sobel-Reiter Affidavit, ¶ 3. Thus, the newspaper account of recorded motions to which OCRE refers were recordings on structures at PNPP. Id. Structures usually reduce or amplify ground motion and the structural recordings must be distinguished from local site conditions and the earthquake source. Lee Affidavit, ¶ 6; Sobel-Reiter Affidavit, ¶ 4. Moreover, the high frequencies recorded are not significant to the seismic design for PNPP since these brief high frequency motions do not contain significant energy or potential for damage. Lee Affidavit, ¶¶ 2, 9. Consequently, even actual ground motion at the high frequencies recorded in the plant, would not affect the design of PNPP. Lee Affidavit, ¶¶ 9-10; Sobel-Reiter Affidavit, ¶ 5. Because they are not significant to plant design, high frequencies, while commonly known to occur during earthquakes, have not been included in the Regulatory Guide 1.60 design basis spectrum to which PNPP was designed. Sobel-Reiter Affidavit, ¶ 5. The PNPP SSE is a high frequency anchor point for a design response spectra which was conser-

vative for most frequencies of the January earthquake, and was exceeded only at high frequencies. Sobel-Reiter Affidavit, ¶ 3.

In short, the January 31, 1986 earthquake neither damaged the structure or safety-related equipment at PNPP nor produced accelerations that exceeded the plant's design basis in any manner significant to plant integrity. OCRE has provided no information concerning the recent earthquake or its effect on PNPP which constitutes substantially new information or raises doubt about the adequacy of the PNPP seismic design. Consequently, OCRE raises no significant safety issue in the motion to reopen. Moreover, the evidence presented consists only of a newspaper article and OCRE's unsupported speculation about the interpretation of the newspaper article and the FSAR and SER seismic analyses. This does not constitute information tantamount to evidence as required by Diablo Canyon, ALAB-775, supra. OCRE has not provided information sufficient to raise a significant safety issue and consequently fails to meet the second criterion for reopening the record.

3. The Information Concerning the Recent Earthquake, If Known to the Licensing Board, Would Not Have Affected the Outcome of the Proceeding

The issues litigated during hearings before the Licensing Board did not concern the seismic design of PNPP or the seismicity of the area surrounding PNPP. <sup>16/</sup> Thus, information arising from the recent

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<sup>16/</sup> At the operating license stage, the Licensing Board only decides issues put in contest. All other matters are the responsibility of the NRC staff and the Commission outside the adjudicatory proceeding. Waterford, supra, CLI-86-1, slip op. at 8, n.5. As explained in the accompanying affidavit, the Staff and consultants have extensively investigated the magnitude of the earthquake and thoroughly inspected PNPP for any sign of damage.

earthquake would not have affected the Licensing Board's decisions on any previously litigated issue. The question, instead, is whether the new information from the recent earthquake might lead the Licensing Board to change its generally favorable conclusion that PNPP should be authorized to operate. On that account, OCRE has not provided new information of any significant safety issue. It has not shown that the recent earthquake caused any damage to seismically-designed structures or safety-related equipment at PNPP nor has it established that the earthquake exceeded the PNPP seismic design basis in any manner significant to plant design. In short, OCRE's motion does not credibly call into question the PNPP seismic design basis or the PNPP seismic design. In the circumstances, the new information raised in OCRE's motion would not have affected the ultimate decision of the Licensing Board authorizing issuance of the operating licenses. Thus, OCRE has also failed to meet the third criterion in the standard for reopening the record.

In sum, apart from the timeliness of OCRE's motion (which is questionable), OCRE has failed to show that the January 31, 1986 earthquake raises a significant safety issue or that the Licensing Board's decision favorable to licensing would be affected by it. Accordingly, OCRE's motion does not justify reopening the record.

B. OCRE Has Not Met The Standards For Admission of Late-Filed Contentions

In addition to meeting the standards for reopening the record, OCRE must also affirmatively demonstrate that on balance, the five factors <sup>17/</sup> to be considered before admitting untimely contentions favor the tardy admission. <sup>18/</sup> As explained below, OCRE also fails to demonstrate that the five factors weigh in favor of the untimely contention.

1. Factor (i): Good Cause For Late Filing

To demonstrate good cause for late filing, "a dominant" factor of the five factors, OCRE must meet an "objective test" showing the issue could not have been raised earlier. <sup>19/</sup> However, OCRE's sole assertion of good cause for submitting an untimely contention concerning the seismic design bases of PNPP is the recent magnitude 5.0 (Richter) earthquake near PNPP. Since the FSAR and SER contain information concerning the history of earthquakes of this magnitude in the region surrounding PNPP, the actual occurrence of an earthquake of the magnitude described by

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<sup>17/</sup> The five factors are as follows:

- (i) Good cause, if any, for failure to file on time;
- (ii) the availability of other means whereby the petitioner's interest will be protected;
- (iii) the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;
- (iv) the extent to which the petitioner's interest will be represented by existing parties; and
- (v) the extent to which the petitioner's participation will broaden the issues or delay the proceeding. 10 CFR § 2.714(a)(1).

<sup>18/</sup> Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041 (1983); Diable Canyon, supra, CLI-82-39.

<sup>19/</sup> Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2) ALAB-707, 16 NRC 1760, 1764-65 citing Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973).

these documents does not provide good cause for an untimely contention. Indeed, as previously stated, data from earthquakes of greater magnitude than the one which actually occurred formed the basis of the PNPP seismic design. Therefore, OCRE's contention rests on information essentially the same as that in the FSAR which was available to OCRE even prior to issuance of the SER in May, 1982. <sup>20/</sup> Consequently, OCRE fails to show good cause for its late contention by reference to an actual earthquake within the range of those used to assess the plant design, which did not damage the plant. Having failed to demonstrate good cause for untimeliness, OCRE's demonstration on the remaining four factors must be "compelling." <sup>21/</sup>

2. Factor (ii): Other Means To Protect OCRE's Interest

OCRE claims that there is no other means to protect its interest since use of 10 CFR § 2.206 procedures is rarely successful and in OCRE's view, is not a meaningful option. <sup>22/</sup> Motion, p. 3. While the

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<sup>20/</sup> It is well established that intervenors have an iron clad obligation to explore publicly available documents to uncover information to support contentions. Duke Power Co. (Catawba Nuclear Stations Units 1 and 2), ALAB-687, 16 NRC 460, 468 (1982), rev'd in part on other gnds., CLI-83-19, 17 NRC 1041 (1983).

<sup>21/</sup> Mississippi Power and Light Co. et al. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-704, 16 NRC 1725, 1730 (1982), citing South Carolina Electric and Gas Co. et al. (Virgil C. Summer Nuclear Station, Unit 1) ALAB-642, 13 NRC 881, 894 (1981), aff'd sub nom. Fairfield United Action v. Nuclear Regulatory Commission, 679 F.2d 261 (D.C. Cir. 1982).

<sup>22/</sup> Staff-notes that, despite this disclaimer, OCRE did in fact, file a § 2.206 petition on this subject concurrently with this motion to reopen. The petition requests that the low power license for PNPP be withheld until after a hearing is held pursuant to OCRE's motion to

staff will not concede that the show-cause procedures of 10 CFR § 2.206 may never provide an adequate alternative means to protect a person's interest, <sup>23/</sup> that process might not provide the equivalent adjudication of seismic issues sought by OCRE in this instance. In these particular circumstances, factor (ii) favors admission of OCRE's late-filed contention.

3. Factor (iii): The Ability to Assist in Developing a Sound Record

OCRE claims an ability to assist in developing a sound record on the issue raised, on the bases of its prior cross-examination and presentation of evidence at hearing in this proceeding as well as a purported search for seismologists to serve as expert witnesses. Motion, pp. 3-4. This vague and speculative assertion does not meet the standard established for prevailing on this factor. Because of the importance of this factor, OCRE should set out with as much particularity as possible the precise issues to be covered, the identity of prospective witnesses and a summary of proposed testimony. <sup>24/</sup> OCRE has not attempted to meet this standard. An assertion of the mere possibility of providing a witness and

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

reopen the record, if granted, as well as certain inspections, testing and plant upgrades. The Staff is preparing a separate response to this petition.

<sup>23/</sup> See Limerick, ALAB-828, at 12-13. The Appeal Board has described the § 2.206 procedure as a "real remedy" provided by the Commission for raising concerns outside the hearing process. Union Electric Co. (Callaway Plant, Unit 1), ALAB-750, 18 NRC 1205, 1217 n.39 (1983); Fermi-2, supra, ALAB-707, 16 NRC 1767-68.

<sup>24/</sup> Washington Public Power Supply System et al. (WPPSS Nuclear Project, No. 3), ALAB-747, 18 NRC 1167, 1177 citing, Grand Gulf, supra, 16 NRC at 1730.

a reference to prior participation in hearings does not provide support for admission of OCRE's contention <sup>25/</sup> and is far from the necessary "compelling showing" described in Grand Gulf. OCRE has not indicated the ability to provide specific evidence on the proposed issue by knowledgeable experts if hearing were held. At best, OCRE claims an ability to present unspecified documents of unknown significance and to cross-examine Staff and Applicants' experts. This vague promise does not meet the requirements for factor (iii), and certainly makes no showing of an ability to contribute sound evidence to the record. Consequently, factor (iii) does not weigh in OCRE's favor.

4. Factor (iv): Other Parties Capable of Representing OCRE's Interests

OCRE states it knows of no other party willing or able to represent OCRE's interests. Motion, p. 4. While this assertion is probably correct, and thus, this factor should be viewed in OCRE's favor, it is the least important of the five factors <sup>26/</sup> and contributes little to a compelling showing. Nevertheless, factor (iv) supports OCRE's motion.

5. Factor (v): The Extent of Delay in the Proceeding and Broadening of Issues

OCRE acknowledges, in regard to this factor, that the admission of the untimely contention will cause some delay and broadening of the is-

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<sup>25/</sup> A mere assertion of legal skills (such as an ability to cross-examine) is not sufficient to prevail on factor (iii). Sound evidence must be provided. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 513 n.14 (1982).

<sup>26/</sup> Fermi-2, supra, 16 NRC at 1767, citing Summer, supra, 13 NRC at 894-95.



sues, but argues that these consequences "pale in comparison to the significance of the issue," citing Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station) ALAB-124, 6 AEC 358, 365 (1973). Motion, p. 4. However, although the most important matter concerning reopening the record is the significance of the issue (as set out in Vermont Yankee), <sup>27/</sup> the test for factor (v) concerning untimely contentions, is the delay in the proceeding directly attributable to the petitioner. <sup>28/</sup> Moreover, factor (v) is of "immense importance" in the overall balancing process, <sup>29/</sup> since, in the final analysis, the true importance of tardiness generally hinges on the posture of the proceeding at the time of the petition. <sup>30/</sup>

In this proceeding, the record has been closed since May 1985 and no seismic issues were raised before or during the hearing. Reopening the proceeding now to admit an entirely new issue would clearly cause a substantial expansion of issues since there were no seismic issues admit-

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<sup>27/</sup> The Appeal Board in Vermont Yankee cited by OCRE, decided a motion to reopen the record, and did not address the five factors to be considered for late-filed contentions. However, the Appeal Board emphasized that the record need be reopened only for late contentions which raise matters of major significance to plant safety. ALAB-124, 6 AEC at 365. Such is not the case here.

<sup>28/</sup> Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 650 n.25 (1975).

<sup>29/</sup> Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-743, 18 NRC 387, 402 (1983) citing Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-476, 7 NRC 759, 761-62 (1978); Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 650 n.25 (1975).

<sup>30/</sup> WPPSS-3, supra, ALAB-747, 18 NRC at 1173; Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 650 n.25 (1975).

ted for litigation. It would just as clearly cause substantial delay in the adjudicatory proceeding due to the time necessary to complete prehearing activities, such as discovery, and the actual additional time for hearings, proposed findings of fact and conclusions of law, and ultimately, the Board's decision. Admission of OCRE's untimely contention would significantly delay the proceeding. Factor (v) weighs heavily against OCRE's motion.

In sum, only factors (ii) and (iv) weigh in favor of admission of OCRE's contention, while the other factors weigh heavily against admission. No good cause for late filing has been shown, and the consequent compelling showing on factors (ii)-(v) necessary to prevail in a late filing without good cause has not been made. The positive showing on factors (ii) and (iv) <sup>31/</sup> does not overcome the other factors which are significantly adverse to OCRE. Therefore, OCRE's contention should not be admitted.

C. OCRE's Contention Is Not Admissible

The third standard to be considered in regard to OCRE's motion is whether or not the proposed contention raises an admissible issue. To be admissible, a contention must (a) be supported by reasonably specific bases, (b) put the other parties sufficiently on notice as to the defense required, (c) raise issues within the Commission's regulatory authority which are proper for adjudication in the particular proceeding, (d) concern a concrete issue, and (e) be supported by sufficient founda-

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<sup>31/</sup> These factors are given relatively less weight than the other factors. Sumner, supra, ALAB-642, 13 NRC at 895.

tion to warrant further exploration. <sup>32/</sup> OCRE's contention is not supported by a sufficient foundation.

OCRE asserts without support that in-plant recordings of peak accelerations in the recent earthquake near PNPP demonstrate that the seismic design of PNPP is inadequate. Motion, p. 2. However, as explained in the accompanying affidavit, this allegation is based on a misunderstanding of the newspaper account and the SSE and thus is erroneous. Sobel-Reiter Affidavit ¶¶ 4-5. Based on this erroneous assumption, OCRE then concludes that the FSAR analysis of site area seismicity and the SER are erroneous. However, as previously explained, it is OCRE who errs. The FSAR and SER evaluations of site area seismicity were not disproved by the recent earthquake whose magnitude was within the range of earthquakes by which the seismic design was assessed. Added to this is the confirmation of the adequacy of the seismic design by NRC inspections which found no damage to any safety related equipment or the structure at PNPP. Lee Affidavit, ¶ 1. Consequently, OCRE's contention asserts the seismic design of PNPP is inadequate based only on OCRE's unfounded interpretations of a newspaper account of the recent earthquake and the analyses in the FSAR and SER. While the merits of a proffered contention should not be explored in determining the admissibility of the contention, contentions must have a reasonable supporting basis. Clearly, OCRE's contention rests only on OCRE's incorrect assumption, rather than fact. The contention should be rejected.

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<sup>32/</sup> Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, at 20-21; 10 CFR § 2.714.

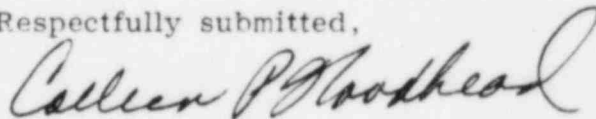
D. Summary

In sum, OCRE has not provided new information concerning a significant safety issue which could have affected the outcome of the Licensing Board's decision; admission of OCRE's untimely contention is not supported by a balancing of the factors required to be considered by 10 CFR § 2.714(a)(1), and finally, OCRE has not submitted a concrete issue with sufficient supporting basis. OCRE has failed to meet the standards (1) for motions to reopen the record, (2) for late-filed contentions and (3) for admissible contentions. OCRE's motion should be rejected.

IV. CONCLUSION

For the reasons stated, OCRE's motion to reopen the record should be denied.

Respectfully submitted,



Colleen P. Woodhead  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 5th day of March, 1986