

August 19, 1983 <sup>DOCKETED</sup> 1983RC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'83 AUG 22 A11:25

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  
50-441

(Operating License)

OHIO CITIZENS FOR RESPONSIBLE ENERGY  
FILING OF EXCEPTIONS TO THE LICENSING  
BOARD'S AUGUST 9, 1983 MEMORANDUM AND  
ORDER (SUMMARY DISPOSITION OF TURBINE  
MISSILE ISSUE)

Pursuant to 10 CFR 2.762, intervenor Ohio Citizens for Responsible Energy ("OCRE") hereby files exceptions to the Licensing Board's August 9, 1983 Memorandum and Order (Summary Disposition of Turbine Missile Issue)<sup>1/</sup>. A brief in support of these exceptions will be filed within thirty (30) days.

Exceptions

1. The Licensing Board incorrectly denied OCRE's request under 10 CFR 2.749(c) that the summary disposition motion be refused. (Memorandum and Order at 13-14)
2. The Licensing Board incorrectly ruled that there had been adequate time for discovery (Memorandum and Order

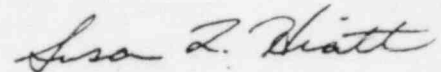
<sup>1/</sup> An order granting summary disposition is not interlocutory since it is a final order disposing of an issue in a case, and, as such, it is appealable. Louisiana Power and Light (Waterford Steam Electric Generating Station, Unit 3), ALAB-220, 8 AEC 73 (1974).

at 14), when its own schedule (January 5, 1983 Conference call, Tr. 800-1) imposed severe restrictions on the time for discovery and when the Licensing Board's peculiar handling of evidentiary hearings necessitates further discovery.

3. The Licensing Board incorrectly states that intervenors have not challenged the turbine overspeed protection program and therefore finds that aspect not to be at issue. (Memorandum and Order at 2).
4. The Licensing Board incorrectly states that intervenors' filings have not demonstrated the existence of a genuine issue of fact. (Memorandum and Order at 3).
5. The Licensing Board misinterprets the purpose of CCRE's citation of the Heasler study. (Memorandum and Order at 5-7).
6. The Licensing Board incorrectly accepts, without critical examination, assertions of Staff and Applicants while subjecting assertions of intervenors to the most exacting scrutiny, thereby violating the principle that the record must be viewed in the light most favorable to the opponents of summary disposition. (Memorandum and Order at 6-10, also passim).
7. The Licensing Board incorrectly permitted Applicants to file reply briefs to OCRE's responses to the Staff's summary disposition motion. (Memorandum and Order at 10, footnote 22).
8. The Licensing Board, by granting summary disposition before all critical reports were submitted to the NRC,

has essentially delegated this issue to the Staff for resolution, in violation of Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), ALAB-298, 2 NRC 730 (1975). (Memorandum and Order at 13).

Respectfully submitted,

A handwritten signature in cursive script, reading "Susan L. Hiatt".

Susan L. Hiatt  
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CERTIFICATE OF SERVICE

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This is to certify that copies of the foregoing were served by deposit in the U.S. Mail, first class, postage prepaid, this 19th day of August, 1983 to those on service list below.

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