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October 15, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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)

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USNRC

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OCRE RESPONSE TO APPLICANTS' MOTION FOR LEAVE TO FILE REPLY

On October 12, 1984 Applicants filed their Motion for Leave to File Reply requesting the Licensing Board's permission to file a reply (attached to said motion) to OCRE's Response to Applicants' Motion for Specification of a Credible Accident Scenario Under Issue #8, dated October 3, 1984. Applicants claim that OCRE's "selective use of SECY-83-357" and "new legal arguments" necessitate a reply.

The fact is that Applicants were put on notice a month ago that OCRE would rely on SECY-83-357. At the September 11, 1984 meeting between OCRE and Applicants (for the purpose of discussing OCRE's interrogatories on Issue #8), Applicants informed OCRE of their intention to file a motion for the specification of a credible accident scenario for Issue #8. OCRE replied that much unnecessary work could be avoided if the parties could agree to the standards for litigating the issue; OCRE specifically mentioned the criteria of SECY-83-357 as constituting an appropriate standard. This proposal, along with all the other constructive proposals advanced by OCRE, was rejected by Applicants. Clearly, Applicants cannot legitimately claim surprise at OCRE's use of SECY-83-357.

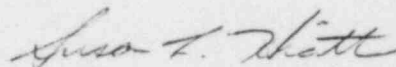
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Nor should "new legal arguments" constitute a valid ground for their motion. When a party files a motion, it should expect that the responding parties might advance a theory other than that it proposed. OCRE's arguments (based largely on materials previously cited in this proceeding) present no theory so novel that it could not have been anticipated by Applicants.

In essence, Applicants now seek "a second crack at bat when one crack would have done."<sup>1/</sup> Their motion must be denied.

However, in the event that the Board should choose to entertain Applicants' filing, OCRE requests that the Board also consider the attached "OCRE Response to Applicants' Reply to OCRE Response Regarding Specification of a Credible Scenario Under Issue #8."

Respectfully submitted,



Susan L. Hiatt  
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<sup>1/</sup> January 28, 1983 Memorandum and Order (Reconsideration: QA), slip op. at 12.