

April 1, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
THE CLEVELAND ELECTRIC	)	Docket Nos. 50-440 OL
ILLUMINATING CO. ET AL.	)	50-441 OL
	)	
(Perry Nuclear Power Plant,	)	
Units 1 and 2)	)	

MOTION TO STRIKE PORTIONS OF APPLICANT AND STAFF TESTIMONY

Intervenor Ohio Citizens for Responsible Energy ("OCRE") hereby moves to strike portions of Applicant and Staff prefiled direct testimony on Issue #16, on Transamerica Delaval diesel generator reliability.

I. Applicants' Testimony

OCRE moves to strike "Applicants' Direct Testimony of John C. Kammeyer on Issue No. 16" in its entirety, "Applicants' Direct Testimony of Charles D. Wood III on Issue No. 16" in its entirety, and "Applicants' Direct Testimony of Edward C. Christiansen on Issue No. 16", with the exception of paragraphs 39 (with Footnote 3), 41, and 42.

10 CFR 2.743(c) states that only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Applicants' testimony (with the exception of the three paragraphs in the Christiansen testimony, which contain new information) clearly fails to meet the latter requirement.

The Kammeyer testimony is virtually identical to the January

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28, 1985 Affidavit of John C. Kammeyer, filed in support of Applicants' Motion for Summary Disposition of Issue III16. The Wood testimony is virtually identical to the January 31, 1985 Affidavit of Charles D. Wood III, also filed in support of Applicants' summary disposition motion. The Christiansen testimony is a combination of the Affidavit of Edward C. Christiansen and the Affidavit of Gary R. Leidich, both dated February 1, 1985 and filed in support of Applicants' summary disposition motion.

(Specifically, paragraphs 1 through 27 of the Christiansen testimony are virtually identical to paragraphs 1 through 26 of the Christiansen affidavit; paragraphs 28 through 38 are virtually identical to paragraphs 7 through 17 of the Leidich affidavit; paragraphs 40, 43, and 46 of the Christiansen testimony are equivalent to paragraphs 19, 21, and 22, respectively, of the Leidich affidavit; and paragraphs 44 and 45 of the testimony are equivalent to paragraphs 27 and 28 of the Christiansen affidavit.)

A clearer example of unduly repetitious material could not be found. Furthermore, the testimony is of questionable value, as it failed to accomplish its objective of demonstrating the absence of a genuine issue of material fact at the summary disposition stage. Unlike the Staff's testimony, it has not addressed the matters raised in OCRE's response to the summary disposition motion. Thus, there is little purpose to be served

by admitting this testimony.

## II. Staff's Testimony

OCRE moves to strike portions of the "Joint Testimony of Carl H. Berlinger, Drew Persinko, Spencer H. Bush, David A. Dingee, Howard M. Hardy, Adam J. Henriksen, and B. J. Kirkwood on Issue 16 Concerning TDI Emergency Diesel Generators at the Perry Nuclear Power Plant", specifically: the phrase numbered 4), "previous Staff conclusions on similar engines at Comanche Peak, Grand Gulf, and Catawba", in the last paragraph on page 12; and the last sentence in the third paragraph from the bottom of page 21, "These same guidelines have been applied in recommending licensing actions for other TDI DSRV-16-4 engines at Grand Gulf, Catawba, and Comanche Peak."

These statements are objectionable because they are not relevant. The staff's licensing actions at Grand Gulf, an uncontested case, Comanche Peak, in which the issue of TDI DG reliability is not contested, or Catawba, where the issue was raised but no Licensing Board decision ever reached its merits, are simply not applicable at Perry, where the issue is at hearing.

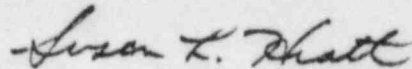
If the Staff's findings had been affirmed by a Licensing Board in the cited cases, and if the parties in those proceedings had been afforded an opportunity to challenge or rebut the Staff's position, and if it could be proven that the other engines were identical to those at Perry in terms of

design, fabrication, installation, and usage, then the Staff's conclusions at the other sites would be relevant. But such is not the case.

### III. Conclusion

Since the portions of the testimony challenged above fail to meet the Commission's standards for admissibility, OCRE's motion must be granted. OCRE prays the Board is so moved.

Respectfully submitted,

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

Susan L. Hiatt  
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing were ~~sent~~ **APR 18** **11:39**  
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