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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of )

THE CLEVELAND ELECTRIC )  
ILLUMINATING COMPANY, ET AL. )

(Perry Nuclear Power Plant, )  
Units 1 and 2) )

Docket Nos. 50-440  
50-441 /oc

APPLICANTS' ANSWER TO  
OCRE MOTION TO REOPEN  
THE RECORD ON ISSUE #16

On April 30, 1985, Ohio Citizens for Responsible Energy ("OCRE") filed a motion to reopen the record on Issue #16 (TDI diesel generator reliability). OCRE's motion was based upon an item that appeared in the NRC Weekly Information Report for the week ending March 22, 1985. That item reported that a small piece of a metal pin had broken off a check valve in the air start system header of the Division 1 emergency diesel generator at the Grand Gulf facility. According to OCRE, "[t]his event demonstrates the failure of the TDI Owners Group program to compensate for the substandard design and quality of the TDI engines."

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Applicants oppose OCRE's motion. OCRE has failed to show that the air start system header check valve failure at Grand Gulf applies to the Transamerica Delaval, Inc. ("TDI") emergency diesel generators at the Perry Nuclear Power Plant ("PNPP"). Nor has OCRE established any basis for claiming that the Grand Gulf check valve failure, even if applicable, has any significance with respect to Issue No. 16 or would lead to a different result. As shown by the attached Affidavit of Edward C. Christiansen, the Grand Gulf check valve failure has no applicability to PNPP since the PNPP TDI units do not have air start system header check valves. Nor does it in any way undermine the adequacy of the TDI Owners Group program.

#### I. STANDARDS FOR REOPENING THE RECORD

The evidentiary record on Issue No. 16 was closed on April 10, 1985. See Tr. 2515. The tripartite standard to be applied by the Licensing Board to determine whether the record should be reopened has been repeated on many occasions by the Appeal Board, most recently in Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-807, 21 N.R.C. \_\_\_\_ (May 8, 1985) slip op. at 3 n. 5.

To prevail on a motion to reopen the record, the movant must demonstrate that its request is timely, that it addresses significant safety or environmental issues, and that a different result might have been reached had the newly proffered material been considered initially.

See also Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-803, 21 N.R.C. \_\_\_\_ (April 4, 1985) slip op. at 3 n.2, ALAB-786, 20 N.R.C. 1087, 1089 (1984) and ALAB-753, 18 N.R.C. 1321, 1324 (1983); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-738, 18 N.R.C. 177, 180 (1983); Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 N.R.C. 876, 879 (1980).

OCRE argues that the third test, that a different result might be reached had the newly proffered material been considered initially, does not apply in this case because no initial decision has yet been issued. In support of this argument, OCRE cites an August 18, 1983 decision in this proceeding, LBP-83-52, 18 N.R.C. 256 (1983).<sup>1/</sup> In that decision, the Board stated that NRC decisions adopting the different results test "are not applicable here" because those cases "are addressed to motions to reopen the record of a case after an initial decision on all or a portion of the record has been written." 18 N.R.C. at 257.<sup>2/</sup>

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<sup>1/</sup> OCRE also cites a licensing board decision in Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3, and 4), LBP-78-2, 7 N.R.C. 83 (1978). That case is irrelevant to OCRE's motion since "reopening the record here is the Board's sua sponte action." Id. at 85.

<sup>2/</sup> The August 18, 1983 decision cited two cases for this proposition. The first, Wisconsin Electric Power Co. (Point Beach Plant, Unit 2), ALAB-86, 5 A.E.C. 376 (1972), provides no

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Applicants oppose OCRE's motion. OCRE has failed to show that the air start system header check valve failure at Grand Gulf applies to the Transamerica Delaval, Inc. ("TDI") emergency diesel generators at the Perry Nuclear Power Plant ("PNPP"). Nor has OCRE established any basis for claiming that the Grand Gulf check valve failure, even if applicable, has any significance with respect to Issue No. 16 or would lead to a different result. As shown by the attached Affidavit of Edward C. Christiansen, the Grand Gulf check valve failure has no applicability to PNPP since the PNPP TDI units do not have air start system header check valves. Nor does it in any way undermine the adequacy of the TDI Owners Group program.

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Although the discussion in Section II below and the attached Affidavit of Mr. Christiansen clearly demonstrate that OCRE has not met the tests for reopening the record regardless of which tests are applied, Applicants would nevertheless urge the Licensing Board to apply the correct standard. Applicants respectfully submit that the August 18, 1983 decision which OCRE relies upon was, on this point, in error. The Appeal Board has explicitly applied all three tests for reopening in a case where the motion to reopen was filed prior to issuance of the licensing board's initial decision. Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 N.R.C. 775, 804 (1979). The motion to reopen in that case was denied by the licensing board on May 3, 1978. See ALAB-573, 10 N.R.C. at 804 n. 121. The initial decision was issued three and a half months later, on July 24, 1978. LBP-78-26, 8 N.R.C. 102 (1978). Nevertheless, the Appeal Board specifically applied the "different results" test, stating that "there was no need to reopen absent a 'showing that the outcome of the proceeding might be affected thereby.'" 10 N.R.C. at 804 (quoting

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(Continued)

support for eliminating the "different results" test since the motion to reopen in that case was filed after the relevant initial decision had been issued. See id. The second citation was to a licensing board decision in Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-83-50, 18 N.R.C. 242 (1983). That decision relied largely on ALAB-86, which as discussed above, does not apply, and in any case was issued long before the current line of Appeal Board cases.

Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 N.R.C. 33, 64 n. 35 (1977)). See also Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-807, supra at 38.

That the Commission understands the criteria for reopening a closed record to include the "different results" test, whether or not the initial decision has been issued, is further evidenced by a recently proposed rule which, according to the Commission, would "codify NRC case law criteria for reopening a closed evidentiary record in a formal licensing proceeding." 49 Fed. Reg. 50189 (1984). As stated in the Federal Register notice, the "current reopening criteria" include as one of the three tests:

It must be shown that a different result might be or might have been reached had the newly proffered material been considered initially.

Id. Nowhere in the Federal Register notice does the Commission exclude situations where a motion to reopen is filed prior to the initial decision. Indeed, the Commission's use of the phrase that "a different result might be ... reached," clearly indicates that the existing criteria apply to a case where the "result" (i.e., the initial decision) has not yet been "reached" (i.e. issued).

In applying the reopening tests, it is also clear that OCRE's pleading must face close scrutiny. "As is well settled,



the proponent of a motion to reopen the record has a heavy burden." Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 N.R.C. 320, 338 (1978). As the Appeal Board ruled in Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 N.R.C. 1361 (1984), a motion to reopen to be granted must be supported by a very strong showing.

Further, the Commission has emphasized in this very proceeding that the proponent of a reopening motion must present "'significant new evidence ... that materially affects the decision,'" not "bare allegations or simple submission of new contentions." At a minimum, therefore, the new material in support of a motion to reopen must be set forth with a degree of particularity in excess of the basis and specificity requirements contained in 10 C.F.R. 2.714(b) for admissible contentions. Such supporting information must be more than mere allegations; it must be tantamount to evidence. And, if such evidence is to affect materially the previous decision (as required by the Commission), it must possess the attributes set forth in 10 C.F.R. 2.743(c) defining admissible evidence for adjudicatory proceedings. Specifically, the new evidence supporting the motion must be "relevant, material, and reliable."

19 N.R.C. at 1366-67 (footnotes omitted). As the Appeal Board further explained:

In other words, only facts raising a significant safety issue, not conjecture or speculation, can support a reopening motion. The facts must be relevant to the proposition they support, and probative of the safety issues presented. General statements are of no value.

19 N.R.C. at 1367 n.18.

In any event, regardless of whether the test for reopening the record is as described by OCRE or as spelled out in Commission case law, the discussion which follows demonstrates that OCRE has failed to show any basis for reopening the record on Issue No. 16.

## II. OCRE HAS FAILED TO JUSTIFY A REOPENING OF THE RECORD

OCRE has not even approached satisfying the heavy burden it must meet to justify reopening the record on Issue No. 16. The entire showing provided by OCRE is NRC's report of a broken pin in a check valve in the air start system of Grand Gulf's Division 1 diesel generator. The NRC report states that "[t]here are several plants that have the same design of check valves in the air start system", but does not identify the plants. From this document, OCRE draws the conclusion that:

This event demonstrates the failure of the TDI Owners Group program to compensate for the substandard design and quality of the TDI engines.

OCRE's submission must be evaluated from two perspectives. First, does the Grand Gulf failure apply to the PNPP diesel engines? And second, does the Grand Gulf failure say anything about the adequacy of the Owners Group program? OCRE has totally ignored the first and has done no more than make an unsupported allegation as to the second. Clearly, OCRE has failed to carry its heavy burden.

A. Perry Diesels

As demonstrated in the Affidavit of Edward C. Christiansen which accompanies this Answer, the air start system header check valve failure at Grand Gulf is of no relevance to Perry. The Perry diesels do not have such check valves. Affidavit, ¶6. While OCRE's filing may be timely with respect to the occurrence of the particular Grand Gulf failure, there is no conceivable way that OCRE can show that the air start system header check valve failure at Grand Gulf has any significance -- whether safety-related or otherwise -- to Perry since the valve in question is not a part of the Perry engines. Nor are such check valves included in any TDI DSRV-16 engines built since about 1976. Id. Because of the tested redundancy in the air start system for the Perry diesels, the check valves (and the air start header cross-over which made the check valves necessary) are not needed for the Perry units. Affidavit, ¶¶7-9. Since the new information for which OCRE would reopen the record is of no significance to the Perry diesel generators, this information cannot conceivably lead to a different result.

B. Owners Group Program

OCRE's motion, in one conclusory sentence (quoted above), claims that the check valve failure at Grand Gulf somehow demonstrates that the Owners Group program has failed "to compensate for the substandard design and quality of the TDI

engines." OCRE supplies no basis for this generalized and unsupported allegation.

To the extent that OCRE's motion to reopen is aimed at the consequences of the Grand Gulf check valve failure on the Owners Group program, OCRE's argument also fails to raise a significant safety issue and fails to indicate that reopening the record to receive the NRC report on the check valve failure might lead to a different result.<sup>3/</sup>

The Affidavit of Mr. Christiansen and the record of this proceeding demonstrate how the Owners Group program was applied to the air start system header check valve and show that the Grand Gulf failure does not call into question the Owners Group program. The check valves, as with all other components of the TDI engines, are included in the Component Tracking System established by the Owners Group to compile the experience with each such component. Affidavit, ¶ 11; Applicants' Direct Testimony of John C. Kammeyer on Issue No. 16, following Tr. 2179 ("Kammeyer") at 16-20. The experience base includes

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<sup>3/</sup> Although not necessary for the disposition of OCRE's motion, it is at least arguable that OCRE's motion as it applies to the Owners Group program is not timely. The possibility that a TDI diesel generator component could experience a failure or that a component was not inspected or tested as part of the Owners Group program is certainly not a new piece of information. Indeed, OCRE's opposition to Applicants' summary disposition motion included just such arguments. See OCRE Response to Applicants' Motion for Summary Disposition of Issue 16, dated February 27, 1985, at 42-44. Thus, OCRE is not raising a new issue by its motion.

nuclear industry experience, non-nuclear industry experience and utility site-specific experience. The Tracking System shows no adverse experience with these check valves. Affidavit, ¶ 11.

The check valves were designed and fabricated by a sub-vendor, not by TDI. Affidavit, ¶ 10. The design is not unique to diesel generator use and is a standard industry design. Id. Under these circumstances, and in the absence of any related failure history, it was neither necessary nor appropriate that the check valves be subject to the detailed review of either Phases I or II of the Owners Group program.<sup>4/</sup> Furthermore, the Owners Group did subject the check valves to an engineering application review to assure that the valves was appropriate for its intended use. Affidavit, ¶ 12.

The exclusion of some types of components from Phase II of the Owners Group program was explicitly discussed during the evidentiary hearings. Mr. Kammeyer explained that components supplied by sub-vendors and not manufactured by TDI were subject to an architect-engineering review to determine whether the component had been appropriately specified by TDI to meet

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<sup>4/</sup> Indeed, OCRE itself acknowledged that items such as "valves, filters, and other components not produced by TDI which are of standard design and are used extensively in the industry...do not need QR [Quality Revalidation]." OCRE Response to Applicants' Motion for Summary Disposition of Issue 16, dated February 27, 1985, at 44. Mr. Christiansen's Affidavit, ¶ 10, shows that the air start system header check valves are such components.



the required pressure, seismic, material compatibility, etc. conditions. Tr. 2493-94 (Kammeyer); see also Affidavit, ¶ 12. Absent any previous failure history for a component which was neither designed nor fabricated by TDI, OCRE has provided no basis for concluding that the Grand Gulf failure demonstrates a weakness in the Owners Group program.

The mere fact that an isolated failure occurred provides no support to OCRE's position. As both Messrs. Christiansen and Kammeyer testified, random failures associated with the diesel generators (or any other component) cannot ever be ruled out. Tr. 2231 (Kammeyer), 2263-64 (Christiansen, Kammeyer). It is because of the possibility of random failures that redundant systems (such as the redundant diesel generators) are included in the plant design. Id. It is also because of the possibility of such failures that regular surveillance and maintenance programs are implemented. Indeed, it was during a surveillance test that the check valve problem at Grand Gulf was discovered. See Exhibit "C" hereto, ¶4.A.

As the Appeal Board stated in the context of denying a motion to reopen a quality assurance issue, OCRE has "not presented evidence that establishes uncorrected design or construction errors that endanger safe plant operation." Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-775, 19 N.R.C. 1361, 1367 (1984). A significant safety issue cannot be shown by the absence of perfection.

What is required is reasonable assurance. Id. at 1366. OCRE has failed to meet its burden of establishing

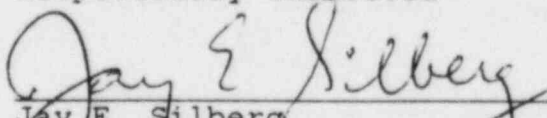
either that uncorrected ... errors endanger safe plant operation, or that there has been a breakdown of the quality assurance program sufficient to raise legitimate doubt as to the plant's capability of being operated safely.

Id., quoting from Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 N.R.C. 1340, 1345 (1983).

### III. CONCLUSION

For the reasons set forth above, OCRE's motion to reopen the record should be denied.

Respectfully submitted

  
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