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July 10, 1985

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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 FOR LEAVE TO RESPOND TO APPLICANTS' REPLY TO PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED BY THE OTHER  
PARTIES (HYDROGEN CONTROL)

On July 1, 1985 Applicants filed their reply to the findings of fact and conclusions of law submitted by the other parties. That reply was little more than a compendium of distortion, deception, insinuation, and invective directed toward the findings and conclusions of Intervenor Ohio Citizens for Responsible Energy ("OCRE"). In addition, new arguments were made and new cases cited. That reply is extremely prejudicial to OCRE and may lead the Licensing Board to commit reversible error, should the Board rely upon the misrepresentations therein. Therefore OCRE respectfully requests permission to file the attached response to Applicants' reply. OCRE's response is confined to the new cases and arguments advanced by Applicants.

It is the policy of this Licensing Board to permit parties to respond to new information contained in the replies of their adversaries. See LBP-82-89, 16 NRC 1355 (1982), in which the

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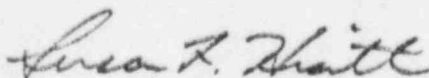
Board declared:

The principle that a party should have an opportunity to respond is reciprocal. When applicant raises legal and factual issues in its response, intervenors may respond to those. When intervenor introduces material that is entirely new, we will permit applicant to respond. Due process requires an opportunity to comment.

The Board has even applied this standard to motions for summary disposition, where 10 CFR 2.749(a) expressly prohibits supporters of summary disposition from filing further supporting statements. See LBP-83-46, 18 NRC 218 (1983), note 22. Since 10 CFR 2.754, the regulation governing proposed findings of fact and conclusions of law, neither prohibits nor permits parties not having the burden of proof from filing responses, the Board's policy is applicable here and permits such responses in the interest of due process.

Finally, as discussed in the attached response, Applicants' arguments can be distilled to the theory that OCRE, and not Applicants, bears the burden of proof in this proceeding. If Applicants believe this, then they should certainly not object to OCRE having the last word on Issue #8.

Respectfully submitted,



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Docket Nos. 50-440 OL  
50-441 OL

OCRE RESPONSE TO APPLICANTS' REPLY TO PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW FILED BY THE OTHER PARTIES (HYDROGEN  
CONTROL)

Intervenor Ohio Citizens for Responsible Energy ("OCRE")  
hereby responds to Applicants' reply to the findings and  
conclusions filed by the other parties. OCRE has confined this  
response to the most egregious of the new, false arguments  
advanced by Applicants. Omission of any particular point should  
not be construed as acquiescence thereto. To refute every point  
would be inconsistent with the Commission's goal of brevity in  
such submittals. See Section V(g)(3) of Appendix A to 10 CFR  
Part 2. The examples herein are sufficient to demonstrate that  
Applicants' assertions, based on a distorted and  
misrepresentative interpretation of the record, are entirely  
without merit.

Applicants imply that OCRE advocates a literal  
interpretation of the role of the Staff under the new hydrogen  
rule. Applicants' Reply at 6. OCRE does not advocate such an  
interpretation; OCRE's discussion on this point instead