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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '84 APR 17 P1:47

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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In the Matter of )  
 )  
THE CLEVELAND ELECTRIC )  
ILLUMINATING COMPANY, ET AL. ) Docket Nos. 50-440  
 ) 50-441  
(Perry Nuclear Power Plant, )  
Units 1 and 2) )

APPLICANTS' ANSWER TO OCRE MOTION  
TO EXTEND THE DISCOVERY DEADLINE ON ISSUE NO. 16

By motion of March 28, 1984 (filed March 29, 1984), Intervenor Ohio Citizens for Responsible Energy ("OCRE") asks the Licensing Board to extend the discovery deadline on Issue No. 16, concerning standby diesel generator reliability. OCRE requests that the deadline of April 6, 1984 set by the Licensing Board in its December 23, 1984 Memorandum and Order (New Contention on Diesel Generators), at 8, be extended "until the NRC Staff issues its Safety Evaluation on the TDI DG Owners Group Design Review/Quality Revalidation Program (currently scheduled for May 15) and for a reasonable period of time (e.g., 2 weeks) thereafter." OCRE Motion to Extend the Discovery Deadline on Issue #16 ("OCRE Motion"), at 2.<sup>1/</sup> OCRE's motion is without good cause and should be denied.

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<sup>1/</sup> OCRE is apparently referring here to the NRC Staff's ("Staff's") evaluation of the Owners Group's reports on the 16 "critical items" identified by the Owners Group. Applicants understand that the Staff's evaluation is now scheduled to be issued June 15.

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The Licensing Board has made clear that it will not entertain blanket requests to extend discovery. In denying earlier in this proceeding a motion by Intervenor Sunflower Alliance Inc., et al. ("Sunflower") for an indefinite extension of discovery on Issue No. 1, the Licensing Board stated:

[T]he purpose of a discovery cut-off date is to require a party to complete as much discovery as is feasible before that date. The fact that Sunflower will obtain additional information in the future will permit it to argue that it has good cause for late-filing of interrogatories with respect to that material, providing that the information was not previously available to it.

We will not deprive Sunflower of its fair opportunity to seek discovery of matters not previously known to it, but that is not a reason to extend the deadline on matters already known to it.

Memorandum and Order (Concerning Request to Extend Discovery on Issue #1), dated October 8, 1982, slip op. at 1 (emphasis added). The Licensing Board reaffirmed these principles when it denied OCRE's motion to reopen discovery on Issues No. 6, 8, 14 and 15. See Memorandum and Order (OCRE Motion to Reopen Discovery), dated December 20, 1983, slip op. at 1-3. More recently, the Licensing Board elaborated on its requirements for conducting additional discovery by stating that, "[i]n general, we will not rule on general requests to reopen discovery unless they are accompanied by the interrogatories or questions to which answers are sought." Memorandum and Order (Motion to Reopen Discovery), dated February 28, 1984, at 3 (emphasis added).

The principles established by these previous discovery rulings by the Licensing Board clearly apply to the instant motion. However, OCRE ignores the Licensing Board's rulings entirely. OCRE's motion is not accompanied by specific interrogatories to which answers are sought. Neither does OCRE identify any particular additional information or material which it seeks to obtain.

Rather, OCRE in its motion observes generally that there is "voluminous information being compiled by the NRC Staff and by the utilities" and that "much more material will be produced and generated before this issue is near resolution." OCRE Motion at 1. OCRE also states that it has received a large number of documents from Applicants through discovery and that (as of March 28) there still were documents to be produced. OCRE complains that "[i]t is unreasonable to expect a public interest group with limited resources and personnel like OCRE to evaluate this extremely large amount of information and to formulate follow-up discovery based on these documents by April 6." Id. at 2.<sup>2/</sup>

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2/ OCRE filed initial discovery on Applicants on January 6, 1984. Applicants filed their answers on February 8, 1984. OCRE then submitted follow-up interrogatories to Applicants on February 18, 1984, which Applicants answered on March 8, 1984. OCRE's final inspection of documents produced by Applicants was conducted on April 2, 1984; and Applicants hand delivered the copies requested by OCRE as a result of that inspection (about 150 pages) on April 5, 1984, before the deadline for follow-up interrogatories established by the Licensing Board. In response to a telephone request by OCRE Representative Susan Hiatt to extend discovery, Applicants agreed to an extension until mid-April for OCRE to submit follow-up interrogatories on the documents recently received from Applicants and for OCRE to submit its answers to Applicants' interrogatories to OCRE, which were served on March 9, 1984 by Express Mail. Ms. Hiatt then indicated that she would file the instant motion. Applicants assume that OCRE will submit its answers to Applicants' interrogatories, which were due on March 26, 1984, and that Applicants will be permitted to file follow-up interrogatories on those answers.

OCRE's arguments simply miss the point of the Licensing Board's previous discovery rulings. The procedure established by those rulings is that, once a party obtains information which it believes provides good cause for further discovery, the party must make a motion for extension or reopening of discovery, setting forth the good cause for extension or reopening as well as the specific interrogatories to which answers are sought.<sup>3/</sup> OCRE, however, by seeking a blanket extension of discovery until some unspecified date, is attempting to receive assurance in advance that it may obtain further discovery without having to show good cause or provide specific discovery requests. OCRE is asking the Licensing Board to assume that any information (e.g., information contained in yet-to-be submitted Board Notifications) relating to Transamerica Delaval, Inc. standby diesel generators will constitute good cause for further discovery. Such information, however, may have been previously available or may not even apply to the Perry Nuclear Power Plant.

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<sup>3/</sup> OCRE's further argument that the Licensing Board's established procedure for additional discovery will "burden the Board with requests for permission to file late discovery every time some new information (e.g., a Board Notification) becomes available," OCRE Motion at 2, and thereby delay the proceeding is misplaced. Since the Licensing Board established the procedure to promote "thoughtful hearing amangement," Memorandum and Order (OCRE Motion to Reopen Discovery), dated December 20, 1983, slip op. at 2, presumably the Licensing Board will not be unduly burdened by it.

With respect to OCRE's complaint that it was unable to meet the April 6, 1984 deadline for follow-up discovery because of its "limited resources and personnel," the Commission in its Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 454 (1981), said:

Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.

For all of the above reasons, OCRE's motion should be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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April 13, 1984

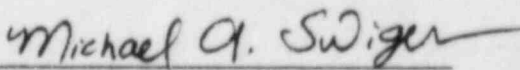
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Answer to OCRE Motion to Extend the Discovery Deadline on Issue No. 16" were served by deposit in the United States Mail, First Class, postage prepaid, this 13th day of April, 1984, to all those on the attached Service List.

  
MICHAEL A. SWIGER

DATED: April 13, 1984



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NUCLEAR REGULATORY COMMISSION

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Docket Nos. 50-440  
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