

RELATED CORRESPONDENCE

September 26, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONDOCKETED
USNRCBefore the Atomic Safety and Licensing Board SEP 28 AM 11:10

In the Matter of

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, Et Al.(Perry Nuclear Power Plant,
Units 1 and 2)Docket Nos. 50-4404
50-441
(Operating License) 10cOCRE RESPONSE TO APPLICANTS' FURTHER ANSWER TO OCRE'S
MOTION TO REOPEN DISCOVERY ON ISSUE #8

On September 24, 1984 Applicants filed a further answer to OCRE's motion requesting the reopening of discovery on Issue #8, on hydrogen control. Because of the fallacious arguments and reasoning presented therein, OCRE finds it necessary to respond to this "further answer."

Applicants claim that the OCRE Representative did not negotiate in good faith the disputed interrogatories in the September 11, 1984 meeting between Applicants and OCRE. The fact is that OCRE made several offers for stipulations which would greatly reduce the scope of discovery and proof on this issue. These offers were rejected. Furthermore, it quickly became apparent that Applicants were not willing to negotiate in good faith. The OCRE Representative was met with a barrage of irrelevant statements such as "what do you think you will get out of this?", "what do you think you can prove?", "we gave you enough documents on the QA issue", "the Commission will decide this issue", "we don't enjoy working until midnight", etc. Obviously the true purpose of the meeting was not to discuss interrogatories, but rather it was an attempt to intimidate OCRE into dropping Issue #8.

In addition, Applicants' proposed objections to the interrogatories were so arbitrary and illogical that OCRE should not have the burden of compelling their answers. For example, Applicants did not object to answering interrogatories on containment response analyses performed specific to Perry using a computer code known as CLASIX-3. But they did object to answering interrogatories requesting information about the modelling and uncertainties in the CLASIX-3 code. Applicants objected to answering interrogatories on the construction (and deficiencies therein) of the PNPP containment vessel, apparently on the incredible theory that the as-built condition of the containment is somehow not relevant to its ability to withstand the pressures resulting from the combustion of hydrogen gas. It is OCRE's position that if Applicants can answer any of the interrogatories in OCRE's 13th set, they can answer all of them.

Applicants also complain about the burden of answering the interrogatories, and that a blanket reopening of discovery "would make even greater demands on Applicants' resources and might interfere with Applicants' current projected fuel load date."^{1/} Further Answer at 4. Suffice it to say that the Commission has plainly stated that all parties must meet their hearing obligations, regardless of their resources or other obligations.^{2/} It is certainly not unreasonable to expect a consortium of 5 utilities (represented by a large law firm) which is seeking an operating license from which it will profit, to meet its hearing obligations as a requisite to obtaining said license. This bizarre argument should fall on deaf ears.

^{1/} Applicants project fuel loading for Unit 1 in mid-1985. The NRC's Caseload Forecast Panel has found that late 1985 is a more appropriate goal. In any event, this proceeding must be completed before fuel loading can begin. The quality of this proceeding must not be compromised to please Applicants. This proceeding is (continued)

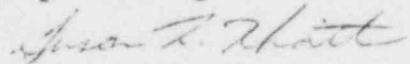
Applicants then go on to quote from various Licensing Board Orders in an attempt to buttress their position against the reopening of discovery. However, it is important to recognize that the Licensing Board has in fact granted a blanket reopening of discovery, which Applicants so vehemently oppose. Much of the reasoning in the Board's February 28, 1984 Memorandum and Order (Motion to Reopen Discovery) could apply here as well:

it is clear that many of the facts that Sunflower will need to litigate its contention are not yet available to it . . . we recognize the inevitable complexity of emergency management concerns . . . we do not think it productive to perpetrate an adversary relationship with respect to the receipt of information. . . . Memorandum and Order at 2.

Many of the facts OCRE will need to litigate Issue #8 are not yet available; for example, experiments on hydrogen combustion in a 1/4 scale model of a Mark III containment will be conducted early next year. OCRE believes that Issue #8 is no less complex than the emergency planning issue. Adversarial bickering no more has a place here than in Issue #1.

OCRE finds that it is imperative (and consistent with the Board's previous rulings) that discovery be reopened on Issue #8 as requested in its July 30, 1984 Motion. OCRE prays that the Board is so moved.

Respectfully submitted,


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1/ Continued. not a Procrustean bed, the length of which is dictated by Applicants, which the issues must be made to fit regardless of justice and fairness.

2/ CLI-81-8, May 20, 1981, 13 NRC 452, 454.

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CERTIFICATE OF SERVICE

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This is to certify that copies of the foregoing were served by deposit in the U.S. Mail, first class, postage prepaid, this 26th day of September, 1984 to those on the service list below.

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