

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Peter B. Bloch, Chairman
Dr. Jerry R. Kiene
Mr. Frederick J. Shon

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In the Matter of

Docket Nos. 50-440-OL
50-441-OL

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, et al.

(Perry Nuclear Power Plant, Units 1 & 2)

September 16, 1982

MEMORANDUM AND ORDER
(Concerning Scheduling)

In the interest of efficient management of this proceeding, the Board invited the partys' suggestions for scheduling. Ohio Citizens for Responsible Energy (OCRE), Sunflower Alliance Inc., et al., Cleveland Electric Illuminating Company, et al. (applicant), and the Staff of the Nuclear Regulatory Commission (staff) have each filed their suggestions. Applicant favored commencement of the evidentiary hearing on December 1, 1982 and allowed no time for the filing of motions for summary disposition. Intervenors, who provide time for the filing of motions for summary disposition, both suggested that the hearing begin in May 1983.

Staff's proposal, which we have adopted with modifications, is a compromise between applicant and intervenors. It provides for motions for summary disposition but takes an optimistic view concerning completion of discovery. In adopting this proposal, we recognize that we are merely adopting targets that may help to focus our efforts. Should intervening circumstances require, these targets may be adjusted, by motion.

We adopt the following schedule:

EVENT	TARGET DATE
Complete discovery on Issues 3-7	September 30, 1982
Complete discovery on Issues 9, 11	October 15, 1982
Complete discovery response on 3-7	October 29, 1982
Complete discovery response on 9, 11	November 15, 1982
Motions for summary disposition on 3-7	November 15, 1982
Motion for litigable issues, QA	November 15, 1982
Motions for summary disposition on 9, 11	December 1, 1982
Answers to summary disposition on 3-7	December 10, 1982
Answer to motion for litigable issues, QA	December 10, 1982
Answers to summary disposition on 9, 11	December 27, 1982
Board ruling on summary disposition	January 17, 1983
Direct testimony filed	January 31, 1983
Commencement of hearing	February 15, 1983

The adopted schedule does not provide for a prehearing conference, despite OCRE's suggestion that one be held. However, the schedule may be modified if a party moves, prior to December 27, 1982, to hold such a conference and buttresses its motion with suggestions for the objectives of the conference.

FORM OF FILINGS

The Board urges the parties to consider how to make summary disposition motions, motions concerning litigable issues, and post-hearing filings most useful as instruments to persuade and assist the Board.

It is our job to examine each admitted contention or each admitted genuine issue of fact that survives summary disposition in light of the applicable law, including statutes and regulations and the applicable regulatory materials, including guides and NUREG's. Next, we must analyze the facts of record in light of those materials and the relevant arguments of the parties. At the summary disposition stage, we must determine whether genuine issues of fact exist. At the initial decision stage, we must determine whether applicant has met the burden of proof with respect to each of the issues admitted into the proceeding.

We urge the parties to make clear, thoughtful filings that comply with the regulations and demonstrate the logical process the party hopes the Board will adopt. This requires careful attention to each fact of record, including providing assistance to the Board in considering facts that appear to be adverse to the party's position. Consideration should be given to conceding, where appropriate, that the facts do not support the party. Arguments that ignore some of the facts will lack persuasiveness or, if they lead the Board into error, will expose the party to reversal on appeal.

Subsequent to trial, findings and conclusions should not be submitted in numbered form. The Board prefers writing decisions (and receiving findings and conclusions) organized in outline form, discussing the contentions, the law, the positions of the parties, the relevant facts and the conclusions, including license conditions that may have been shown to be necessary. You may suggest one or more consistent lines of reasoning by which the conclusion you favor may be reached. You may also refute the other party's suggested lines of reasoning. You may also suggest specific license conditions or argue against conditions you oppose.

Citations to cases should analyze the relevance of the cases. Reliance on dictum should be disclosed clearly. If a case is relied on for a holding, discuss the facts of the case and how the principle you distill from the case was relevant to the issues pending before the court. Only cite strings of cases if each is relevant. The Board may disregard string citations if early cases in the string are not relevant.

Findings on different contentions will be simultaneously filed pursuant to a phased schedule that will be adopted after the Board has been advised by the parties of their preferences. The phased schedule will provide for one or two of the sets of simultaneous filings to precede the schedule suggested in the regulations. Other filings will exceed the suggested time schedule, thus allowing greater care in preparation. Every party may respond to the filings of the others, within 10 days of filing of the findings of the other party.

We urge the parties to exercise self-discipline. Motions for summary disposition should be filed only with respect to issues or parts of issues that the movant believes are not in genuine dispute. Similarly, motions for litigable issues should be filed only if the movant believes that there is a genuine issue of fact with respect to each such issue. (The motion for litigable issues is analogous to the answer to a motion for summary disposition and shall be treated as such under the regulations. The response to such a motion is in the nature of a motion for summary disposition, and shall be treated as such; however, the response need only address the issues raised in the motion for litigable issues.) Issues thought not to be in genuine contention should be clearly set forth, together with the basis supporting the statement that there is no genuine issue. Opposition to such motions also should be made on a clear, point-by-point basis, stating each genuine fact and its record support. At this stage, genuine facts must be evidentiary--in a form that is admissible at trial.

We also urge the parties to continue and improve upon their efforts at constructive cooperation. It is understandable that advocates will on occasion be unable to reach compromises; but compromise can help to narrow the issues and assist the Board and the parties to concentrate on truly important issues rather than spreading their efforts thinly over many issues that no one considers truly important. If the parties wish, the Board would attempt to assist in discussions aimed at narrowing or eliminating issues.

NOTICE

The Board wishes to call to the attention of the parties the following recently published article: Thomas H. Pigford, "The Diagnostics of Nuclear Safety", 25 Nuclear News 54 (September 1982).

ORDER

For all the foregoing reasons and based on consideration of the

entire record in this matter, it is this 16th day of September, 1982,

ORDERED

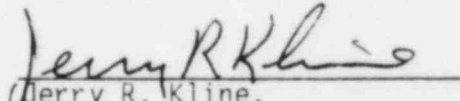
(1) The Board adopts the schedule set forth in the accompanying memorandum;

(2) The Board adopts the procedural guidance given to the parties in the accompanying memorandum.

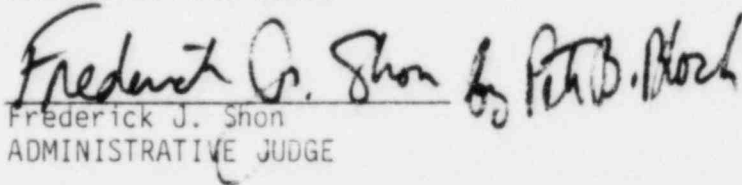
FOR THE
ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE



Jerry R. Kline,
ADMINISTRATIVE JUDGE



Frederick J. Shon
ADMINISTRATIVE JUDGE

Bethesda, Maryland