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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
THE CLEVELAND ELECTRIC)	Docket Nos. 50-440
ILLUMINATING COMPANY, <u>ET AL.</u>)	50-441
)	
(Perry Nuclear Power Plant,)	
Units 1 and 2))	

MOTION TO AMEND MEMORANDUM AND ORDER
(CONCERNING SCHEDULING) OF SEPTEMBER 16, 1982

By Memorandum and Order of September 16, 1982, the Licensing Board adopted a schedule for litigation of Issues 3-7, 9 and 11. The schedule makes no reference to Issues 1 and 8. Applicants hereby request the Licensing Board to amend the schedule to include discovery cut-off dates for Issues 1 and 8, and to extend the period between the filing of the direct testimony and the commencement of the hearing from two to three weeks.

Issues 1 and 8 Discovery Cut-off Dates

During the Prehearing Telephone Conference of August 13, 1982, the Licensing Board established the following discovery cut-off dates for the admitted Issues: for all contentions other than 9 and 11, September 30, 1982, and for contentions 9 and 11, October

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15, 1982. Tr. at 753-54. At the conclusion of the hearing, Applicants raised the scheduling of the hearing date. Because the parties could not agree among themselves as to the hearing date, the Licensing Board asked the parties to submit written proposals. Tr. at 757-58. The proposal submitted by the NRC Staff included a schedule for litigation of Issues 3-7, 9 and 11. Although the Licensing Board had not requested any of the parties to do so, the Staff's proposed schedule also listed discovery cut-off dates for Issues 3-7, 9 and 11. This schedule, with slight modifications, was adopted by the Licensing Board.

Apparently because it was only addressing the Issues which were being considered for the first phase hearing date, the NRC Staff inadvertently made no reference to discovery cut-off dates for Issues 1 and 8.^{*/} The Licensing Board adopted the Staff's proposal without correcting this oversight. Applicants request that the Licensing Board amend its Memorandum and Order of September 16, 1982, to make its Order consistent with its oral ruling made during the Prehearing Telephone Conference of August 13, 1982. Specifically, Applicants request that the schedule set forth on page two of the Order be modified to reflect the Licensing Board's

^{*/} The fact that the Staff's oversight was inadvertent is plain from the transcript of the Prehearing Telephone Conference, in which the Staff asked for September 30, 1982 as the cut-off date "for all discovery on all of the issues." Tr. at 751

earlier order that discovery on Issues 1 and 8 be completed by September 30, 1982.^{*/}

Extension of Period Between Filing of Direct
Testimony and Commencement of Hearing

The Licensing Board's litigation schedule presently provides for only fifteen days (January 31, 1983 to February 15, 1983) between the filing of the testimony by the parties and the commencement of the hearing. Applicants do not believe this is sufficient time for preparation, particularly in that several days of that fifteen day period will be lost to the mailing of the filed testimony.^{**/} Applicants request that the Licensing Board extend that fifteen day period by requiring that the testimony be filed on January 24, 1983, or, in the alternative, delay the hearing commencement date to February 22, 1983.^{***/} Applicants do not

*/ In this regard, Applicants note that the intervenors still could obtain discovery as to those matters that were not known at the time of the discovery cut-off date. See Tr. at 737-38. As the Staff noted during the Prehearing Telephone Conference, that good cause standard would have to be applied liberally as to Issue 1. Tr. at 738. A discovery cut-off date, however, at least would require intervenors to complete their discovery as to those matters available before the cut-off date.

**/ Some of the pleadings filed by intervenors have not reached Applicants' counsel until five to six days after the date of filing.

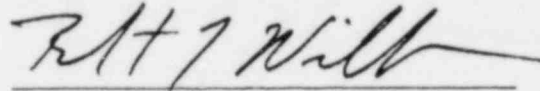
***/ Washington's Birthday will be observed on February 21, 1983.

believe that any of the parties would be prejudiced by such an amendment of the Licensing Board's schedule.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By:



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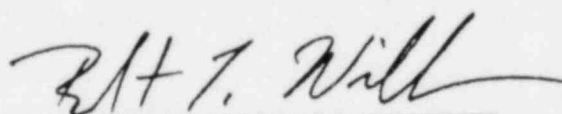
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Motion To Amend Memorandum and Order (Concerning Scheduling) Of September 16, 1982," were served by deposit in the U.S. Mail, First Class, postage prepaid, this 21st day of September 1982, to all those on the attached Service List.


Robert L. Willmore

Dated: September 21, 1982

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