

14882

DOCKETED
APR 14 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'94 APR 12 P3:43

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
THE CLEVELAND ELECTRIC)	Docket No. 50-440-OLA-3
ILLUMINATING COMPANY)	
)	(Material Withdrawal Schedule)
(Perry Nuclear Power Plant,)	
Unit 1))	

NRC STAFF'S ANSWER TO LICENSEES'
CROSS MOTION FOR SUMMARY DISPOSITION

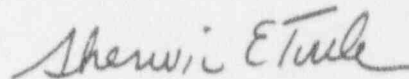
On March 21, 1994, the Licensees for the Perry Nuclear Power Plant submitted a "Cross Motion for Summary Disposition" ("Motion"),¹ in which they requested that the Licensing Board resolve the Intervenor's sole contention in Licensees' favor (Motion at 1), and responded to the Intervenor's prior filing of a motion for summary disposition.²

¹ "Licensees' Cross Motion for Summary Disposition and Answer to Ohio Citizens for Responsible Energy, Inc. and Susan L. Hiatt Motion for Summary Disposition," dated March 21, 1994.

² See "Motion for Summary Disposition," dated February 7, 1994. The Staff filed its response to Intervenor's Motion prior to the filing of Licensees' Cross Motion. See "NRC Staff Response to Intervenor's Motion for Summary Disposition," dated March 7, 1994.

For the reasons set forth in the Licensees' Motion and in the "NRC Staff Response to Intervenors' Motion for Summary Disposition" ("Staff Response") dated March 7, 1994,³ the NRC Staff supports the Licensees' Motion and recommends that it be granted.⁴

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 11th day of April, 1994

³ The Staff notes that the Licensees' Motion is generally consistent with the positions expressed in the Staff's response. To the extent there may be any minor inconsistencies between the Staff's and Licensees' positions, the Staff relies upon the positions expressed in the Staff's Response. *Compare* Licensees' Cross Motion at 12 and n.4 with Staff Response at 21-23; and *compare* Licensees' Cross Motion at 16 with Staff Response at 27 n.33.

⁴ On April 5, 1994, the Intervenors filed "Intervenors' Answer to NRC Staff Response to Intervenors' Motion for Summary Disposition and Licensees' Cross Motion for Summary Disposition." Therein, *inter alia*, they "urge the Licensing Board to reject" the Staff's Response of March 7, 1994, on the grounds that the Staff did not attach a "Statement of Material Facts As to Which There Is a Genuine Issue to Be Heard." *Id.* at 2. Although the Board's scheduling Orders and 10 C.F.R. § 2.749 do not provide an opportunity to respond to Intervenors' Answer, the Staff notes that the Intervenors' argument is in the nature of a motion to strike, to which a response would be permitted. Accordingly, the Staff responds by noting that Intervenors' argument is without merit, in that (1) by Intervenors' own admission, their contention raises only an issue of law, and accordingly there are no fact issues to be heard in this proceeding, and (2) in any event, the Staff has already indicated it does not oppose Intervenors' "Statement of Material Facts" to the extent that their Statement makes factual assertions in Paragraphs 1, 2 and 3; rather, the Staff opposes Paragraphs 4 and 5 of their Statement, on legal grounds, in that those paragraphs make legal rather than factual assertions. *See* Staff Response at 5 n.12.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

⁰⁴ APR 12 P3:43

In the Matter of)
)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)
)
(Perry Nuclear Power Plant,)
Unit 1))

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
Docket No. 50-440-OLA-3
(Material Withdrawal Schedule)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S ANSWER TO LICENSEES' CROSS MOTION FOR SUMMARY DISPOSITION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of April, 1994.

Thomas S. Moore, Esq.*
Chairman
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C.

Dr. Charles N. Kelber*
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Richard F. Cole*
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Jay Silberg, Esq.
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

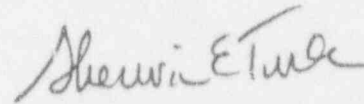
Ms. Susan Hiatt
8275 Munson Road
Mentor, OH 44060

Office of the Commission Appellate
Adjudication*
Mail Stop: 16-G-15 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the Secretary* (2)
ATTN: Docketing and Service
Mail Stop: 16-G-15 OWFN
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Board
Panel*
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Adjudicatory File (2)*
Atomic Safety and Licensing Board
Mail Stop: EW-439
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Sherwin E. Turk
Counsel for the NRC Staff