

DOCKETED
USNRC

October 27, 1982
'82 OCT 29 11:06

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before the Atomic Safety and Licensing Board

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

APPLICANTS' REPLY TO OCRE'S MOTION TO STRIKE

On October 25, 1982, Ohio Citizens for Responsible Energy ("OCRE") filed a motion to strike asking the Licensing Board to strike Applicants' Answer to "OCRE Reply to Staff and Applicants' Responses to OCRE's Motion for Leave to File its Contentions 21 through 26", filed October 19, 1982. The motion to strike is frivolous, and must be denied.

Applicants need not respond to OCRE's ad hominem accusations that Applicants, by filing their reply along with their motion for leave to file, are "arrogant", "have usurped the Licensing Board's authority and undermined the conduct of this proceeding", and are "blatantly disregard[ing] the Commission's regulations". Suffice it to say that use of such heated language would seem to be at odds with the Commission's expectation that parties will "conduct themselves with honor, dignity and decorum as they should before a court of law". 10 C.F.R. §2.713(a).

It is virtually universal practice for parties, when requesting leave to file additional papers before a court, to file with their request the papers that they are requesting leave to file. The reason for this practice is two-fold. First, it provides the court with the substantive basis for ruling on the motion. Without the papers before it, the court would be asked to rule in a vacuum. Second, it eliminates delay. By filing the papers along with the motion, the court has before it the relevant papers the moment it rules on the motion. Alternatively, there would be a delay of days and perhaps weeks while the papers are prepared for which leave to file was granted. When the court receives such a motion, it has a simple option. It can grant the motion, in which case it has provided notice that it will consider the submitted papers. Or, it can deny the motion for leave to file, in which case it simply refuses to consider the additional papers.

This procedure is well established under the Federal Rules of Civil Procedure. For example, when filing a motion for leave to file supplemental pleadings pursuant to Fed. R. Civ. P. 15, parties in most instances are now required to file their supplemental pleadings along with their motion for leave to file (although the Rule itself contains no such requirement). See 6 Wright & Miller, Federal Practice and Procedure §1485 (1971). Applicants have diligently searched the NRC Rules of Practice to determine which rule they have "blatantly disregarded". Applicants have not found any basis for OCRE's accusation. The only rule cited by OCRE -- 10 C.F.R. §2.730 -- contains no relevant prohibition.

Moreover, OCRE's motion to strike is without any real purpose. If the Licensing Board denies Applicants' motion for leave to file, it effectively will have struck Applicants' reply. If the Licensing Board grants Applicants' motion for leave to file, OCRE's motion to strike is obviated.


Finally, as for OCRE's assertion that it did not say anything entirely new in its reply, Applicants believe that the papers speak for themselves in this regard.

For the stated reasons, OCRE's motion to strike must be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

BY:



JAY E. SILBERG, P.C.
Counsel for Applicants

1800 M Street, N.W., Suite 900 South
Washington, D.C. 20036
(202) 822-1063

DATED: October 27, 1982

DOCKETED
USNRC

October 27, 1982

'82 OCT 29 AM 10

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

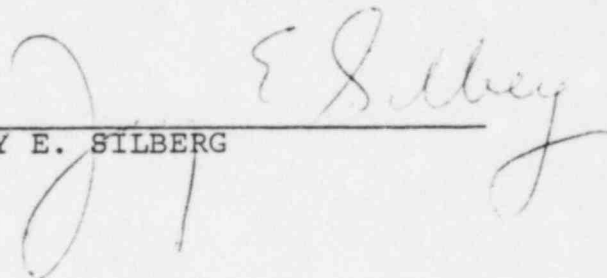
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Reply to OCRE's Motion to Strike" were served by deposit in the U.S. Mail, first class, postage prepaid, this 27th day of October, 1982, to all those on the attached Service List.



JAY E. SILBERG

DATED: October 27, 1982

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) 50-441
)
(Perry Nuclear Power Plant,)
Units 1 and 2))

SERVICE LIST

Peter B. Bloch, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Christine N. Kohl, Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. John H. Buck
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gary J. Edles, Esquire
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

James M. Cutchin, IV, Esquire
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Ms. Sue Hiatt
OCRE Interim Representative
8275 Munson Avenue
Mentor, Ohio 44060

Daniel D. Wilt, Esquire
Post Office Box 08159
Cleveland, Ohio 44108

Donald T. Ezzone, Esquire
Assistant Prosecuting Attorney
Lake County Administration Center
105 Center Street
Painesville, Ohio 44077

John G. Cardinal, Esquire
Prosecuting Attorney
Ashtabula County Courthouse
Jefferson, Ohio 44047

Terry Lodge, Esquire
915 Spitzer Building
Toledo, Ohio 43604