

April 27, 1983

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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))	

APPLICANTS' ANSWER TO OCRE MOTION
TO HOLD RECORD OPEN ON
QUALITY ASSURANCE ISSUE

By motion of April 18, 1983, Intervenor Ohio Citizens for Responsible Energy ("OCRE") requests the Licensing Board for the following relief with respect to the quality assurance issue (Issue No. 3), which is scheduled for hearing beginning May 23, 1983:

OCRE moves that the Board hold the record open on this issue and accept the testimony of any late witnesses who may become available during the pendency of this proceeding. OCRE would also request the right to file late documentary evidence containing the statements of such persons or otherwise having significance with respect to Issue #3.

Motion To Hold Record Open on Quality Assurance Issue, dated April 18, 1983 ("OCRE Motion"), at 1. OCRE's motion is entirely unnecessary and should be denied.

OCRE's stated justification for its motion is that

OCRE . . . ha[s] information about persons having first-hand knowledge about QA at Perry, who may later come forward with allegations concerning the quality of construction at PNPP. These persons choose not to be known at this time because of fears of harassment and reprisal.

Id. (emphasis added).^{1/} OCRE provides no factual basis for its claim that it has potential witnesses on Issue No. 3. Neither has it supported its claim that such persons will not come forward at the hearing because of "fears of harassment and reprisal."^{2/}

OCRE's motion is based upon mere speculation that intervenor witnesses "may become available" and "may later come forward" to testify. OCRE Motion at 1. The Commission's Rules of Practice make no provision for a licensing board to hold open the evidentiary record on an issue on the ground that additional evidence might become available.

Indeed, as OCRE readily admits, the rules expressly provide a procedure which authorizes the Licensing Board to reopen the proceeding in order to receive additional evidence at any time prior to the initial decision. 10 C.F.R. § 2.718(j). The

1/ OCRE does not even attempt to justify its broader request for the "right to file late documentary evidence . . . otherwise having significance with respect to Issue #3" (emphasis added).

2/ See Houston Lighting and Power Company (South Texas Project, Units 1 and 2), LBP-80-11, 11 N.R.C. 477, 480 (1980) (where revealing name of proposed witness would allegedly expose person to harm or reprisal, party should request protective order limiting disclosure of person's name to extent believed necessary and should set forth relevant facts in support of request).

standard for invoking this procedure has been extensively addressed by the Appeal Board. E.g., Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit 1) ALAB-462, 7 N.R.C. 320, 338 (1978).

In short, OCRE's motion to hold the record open on Issue No. 3 is both premature and superfluous. The motion is premature because apparently OCRE has no witnesses to put forward at this time. It is superfluous because, if OCRE is able to identify witnesses in the future, it may move to reopen the proceedings under 10 C.F.R. § 2.718(j). OCRE makes no claim that the procedure to reopen the record is in any way inadequate for this purpose.^{3/}

OCRE nevertheless insists that "OCRE must have assurance" that future evidence will be considered by the Licensing Board. OCRE Motion at 1. The Licensing Board not long ago rejected a similar attempt by OCRE with respect to the psychological stress contention to circumvent the standard for motions to reopen the record. Memorandum and Order (Reconsideration: Psychological Stress), dated January 24, 1983. In denying OCRE's motion, the Board stated:

Although we understand OCRE's concern, we do not think it appropriate to act at this time on the hypothetical circumstances that OCRE envisions

^{3/} OCRE also cites 10 C.F.R. § 2.756 which, among other things, requires the preservation of a record suitable for review. However, OCRE does not explain why reopening the record pursuant to 10 C.F.R. § 2.718(j) would not serve this purpose.

We believe that OCRE should count on this Atomic Safety and Licensing Board to do what is fair and correct in any future circumstance. But the Board will not begin addressing contingent circumstances until they occur. There is enough for the Board to do without entering the world of imagination.

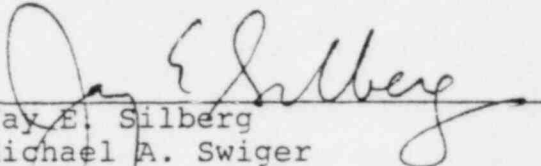
Id. at 2. Precisely the same reasoning applies to OCRE's present motion.

Finally, Applicants wish to point out that Intervenor Sunflower Alliance Inc., et al. ("Sunflower"), not OCRE, has been designated lead intervenor on the quality assurance issue. Memorandum and Order Concerning Redesignation of Lead Intervenor, dated October 13, 1981. OCRE's request to file late testimony or documentary evidence on Issue No. 3 would seem to violate at least the intent, if not the letter, of the lead intervenor procedures. See Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-35, 14 N.R.C. 682, 687 (1981); LBP-81-24, 14 N.R.C. 175, 231 (1981). See also Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 N.R.C. 452, 455 (1981).

For all of the above reasons, Applicants respectfully request that OCRE's motion to hold the record open on the quality assurance issue be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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DATED: April 27, 1983

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Answer to OCRE Motion to Hold Record Open on Quality Assurance Issue" were served by deposit in the United States Mail, First Class, postage prepaid, this 27th day of April, 1983, to all those on the attached Service List.

Michael A. Swiger
Michael A. Swiger

DATED: April 27, 1983

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