

12712

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'92 MAR 19 P2:31

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

| | | |
|---|---|---|
| In the Matter of |) | |
| |) | |
| OHIO EDISON COMPANY |) | Docket No. 50-440-A |
| |) | 50-346-A |
| (Perry Nuclear Power Plant, Unit 1, Facility Operating License No. NPF-58) |) | (Suspension of Antitrust Conditions) |
| THE CLEVELAND ELECTRIC ILLUMINATING COMPANY |) | |
| THE TOLEDO EDISON COMPANY |) | ASLBP No. 91-644-01-A |
| |) | |
| (Perry Nuclear Power Plant, Unit 1, Facility Operating License No. NPF-58) |) | |
| (Davis-Besse Nuclear Power Station, Unit 1, Facility Operating License No. NPF-3) |) | |

APPLICANTS' MOTION TO AMEND THE SUMMARY DISPOSITION SCHEDULE

On March 9, 1992, five briefs^{1/} were filed in opposition to the single Motion for Summary Disposition filed jointly by

^{1/} See NRC Staff's Answer in Opposition to Applicant's Motion for Summary Disposition and NRC Staff's Cross-Motion for Summary Disposition ("NRC Staff's Opposition"); Response of the Department of Justice to Applicant's Motion for Summary Disposition ("DOJ Response"); Motion for Summary Disposition of Intervenor, City of Cleveland, Ohio, and Answer in Opposition to Applicants' Motion for Summary Disposition ("Cleveland's Opposition"); Brief of American Municipal Power-Ohio, Inc. in Opposition to Applicants' Motion for Summary Disposition and Cross-Motion for Summary Disposition ("AMP-O's Opposition"); and Alabama Electric Cooperative's Combined Cross-Motion for Summary Disposition and Response to Applicants' Motion for Summary Disposition ("Alabama's Response").

D508

Applicants Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company. Under the present schedule, Applicants' joint reply to these filings is due by April 27, 1992, as is any non-Applicant party's response to any other non-Applicant party's cross-motion for summary disposition. See Order of November 14, 1991 (Schedule for Summary Disposition Motions) and Order of February 7, 1992 (Ruling on City of Cleveland Motion to Amend Summary Disposition Schedule). Applicants respectfully request that the April 27, 1992 filing date be amended to May 18, 1992. Applicants have obtained the consent of the other parties (NRC Staff, DOJ, City of Cleveland, AMP-O and Alabama Electric Cooperative) to this request. This modified schedule would still permit the Board to schedule an oral argument in June, if it so chooses, as suggested in its February 7, 1992 Order.^{2/}

Applicants are aware of the Board's preference to maintain the schedule it has adopted, and, accordingly, Applicants have worked hard to avoid any requests for more time. However, at the present juncture, we are faced with five substantial briefs which have been effectively coordinated, see Alabama's Response at 12,

^{2/} Applicants were going to request a corresponding change to June 2, 1992 of the current date of May 12 by which Cleveland would file its reply to any responses to its cross-motion on the issues of res judicata, collateral estoppel, laches and law of the case. However, the City of Cleveland has asked us to request, on its behalf, a filing date of June 15 for its reply.

n.12, and which cover a wide range of issues, some of which are being raised for the first time. We are anxious to have the time to properly address the many arguments raised by all the other parties. As we are sure the Board is aware from its own experience, it takes more time to coordinate a single response among several parties and their counsel, which is what Applicants have been asked to do, than to file separate responses. In addition, the present schedule for Applicants' reply encompasses the ten day period (Friday, April 17 through Sunday April 27) that is the religious observance of Passover, during which the undersigned counsel will be unable to work to any substantial degree.

For the reasons stated above, Applicants respectfully request that this Motion to Amend the Summary Disposition Schedule be granted.

Respectfully submitted,

James P. Murphy
Colleen Conry

SQUIRE, SANDERS & DEMPSEY
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 626-6600

Counsel for The Cleveland
Electric Illuminating Company
and The Toledo Edison Company

Deborah B. Charnoff / RMS
Gerald Charnoff
Deborah B. Charnoff

SHAW, PITTMAN, POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

Counsel for Ohio Edison Company

Dated: March 18, 1992

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'92 MAR 19 P2:31

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

OHIO EDISON COMPANY)

(Perry Nuclear Power Plant, Unit 1,
Facility Operating License
No. NPF-58))

THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY)

THE TOLEDO EDISON COMPANY)

(Perry Nuclear Power Plant, Unit 1,
Facility Operating License
No. NPF-58))

(Davis-Besse Nuclear Power Station,
Unit 1, Facility Operating License
No. NPF-3))

Docket No. 50-440-A
50-346-A

(Suspension of
Antitrust Conditions)

ASLBP No. 91-644-01-A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March, 1992, a copy of the foregoing Applicants' Motion to Amend the Summary Disposition Schedule was served by Federal Express on each of the following:

Charles Bechhoefer
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
4350 East West Highway, 4th Floor
Bethesda, Maryland 20814

G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
4350 East West Highway, 4th Floor
Bethesda, Maryland 20814

1

Marshall E. Miller, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
1920 South Creek Boulevard
Spruce Creek Fly-In
Daytona Beach, Florida 32124

In addition, a copy of the foregoing Applicants' Motion to Amend the Summary Disposition Schedule was served by first-class mail on each of the following:

Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Joseph Rutberg, Esq.
Sherwin E. Turk, Esq.
Steven R. Hom, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Mark C. Schechter, Esq.,
Janet Urban, Esq.
Transportation, Energy and
Agriculture Section
Antitrust Division
Department of Justice
Judiciary Center Building
555 Fourth Street, N.W.
Washington, D.C. 20001

June W. Weiner, Esq.,
Chief Assistant Director of Law
William M. Ondrey Gruber, Esq.,
Assistant Director of Law
William T. Zigli, Esq.
Assistant Director of Law
City Hall, Room 106
601 Lakeside Avenue
Cleveland, Ohio 44114

Reuben Goldberg, Esq.
Channing D. Strother, Jr., Esq.
Goldberg, Fieldman & Letham, P.C.
1100 Fifteenth Street, N.W.
Washington, D.C. 20005

D. Biard MacGuineas, Esq.
Volpe, Boskey and Lyons
918 Sixteenth Street, N.W.
Washington, D.C. 20006

Philip N. Overholt
Office of Nuclear Plant Performance
Office of Nuclear Energy
U.S. Department of Energy, NE-44
19901 Germantown Road, Room E-478
Germantown, Maryland 20585

Kenneth L. Hegemann, P.E.
President
American Municipal Power-Ohio, Inc.
601 Dempsey Road
P.O. Box 549
Westerville, Ohio 43081

David R. Straus, Esq.
Spiegel & McDiarmid
1350 New York Avenue, N.W.
Suite 1100
Washington, D.C. 20005-4798

Anthony J. Alexander, Esq.
Vice President and General Counsel
Ohio Edison Company
75 South Main Street
Akron, Ohio 44308

Rosa Stewart

SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000