August 20, 1984

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

RELATED CORRESPONDENCE

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

4 AGO 23 P4:56

In the Matter of
CLEVELAND ELECTRIC ILLUMINATING

COMPANY, ET AL.

(Perry Nuclear Power Plant, Units 1 and 2) Docket No. 50-440 OL 50-441 OL

NRC STAFF RESPONSE TO OCRE MOTION TO REOPEN DISCOVERY ON ISSUE #8

I. INTRODUCTION

By motion dated July 30, 1984 the intervenor Ohio Citizens for Responsible Energy (OCRE) requested reopening of discovery on Issue #8 because of two documents provided by Applicants in supplemental responses to interrogatories in May, 1984 and because of new information provided by Applicants to the NRC Staff in June 1984 as supplementary information for their operating license application. The Staff views these documents as those generally to be provided in accord with 10 CFR § 2.740(e), and does not support a reopening of discovery, particularly in light of Applicants' recent response indicating a scheduled meeting to voluntarily discuss OCRE's discovery requests.

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II. DISCUSSION

The Commission's rules of practice provide a duty to submit supplementary responses to discovery requests when new information is obtained concerning persons having knowledge of discoverable matters, the identity of persons expected to be called as expert witnesses at hearing and the

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substance of their testimony, and when a previous response, though correct when made, is no longer true and a failure to amend is in substance a knowing concealment. 10 CFR § 2.740(e)(1) and (2). Staffbelieves the new information recently provided by Applicants, and described by OCRE as a basis for reopening discovery, is information provided by Applicants pursuant to § 2.740(e) as a supplemental response to earlier discovery. In the Staff's view, the substance of that information does not provide good cause for reopening of discovery. Indeed, OCRE has not even attempted to explain why the substance of the new information warrants reopening discovery. Nevertheless, by response dated August 14, 1984, Applicants have advised the Board that they agree to OCRE's request that Applicants provide copies of submittals to NRC on issue #8 to OCRE and that a meeting has been scheduled with the OCRE representative to discuss the interrogatories attached to the OCRE motion and OCRE's discovery needs. For these reasons, Staff believes that a formal reopening of discovery is not justified at this time.

III. CONCLUSION

For the reasons stated, the Staff believes that OCRE's motion for reopening discovery on Issue #8 should be denied in light of the Applicants' duty to supplement responses to discovery requests provided by the Commission's rules of practice, and Applicants' voluntary discussions with OCRE concerning discovery requests.

Respectfully submitted,

Colleen P. Woodhead Counsel for NRC Staff

Dated at Bethesda, Maryland this 20th day of August, 1984

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO OCRE MOTION TO REOPEN DISCOVERY ON ISSUE #8" 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, by deposit in the Nuclear Regulatory Commission's internal mail system, this 20th day of August, 1984:

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