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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
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Before the Atomic Safety and Licensing Board

In the Matter of)
)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY, ET AL.)
)
(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-440
50-441 /ol

APPLICANTS' FURTHER ANSWER TO OHIO
CITIZENS FOR RESPONSIBLE ENERGY ACTION
TO REOPEN DISCOVERY ON ISSUE NO. 8

On July 30, 1984, Intervenor Ohio Citizens for Responsible Energy ("OCRE") filed its Motion to Reopen Discovery on Issue #8 ("Motion to Reopen"), concerning hydrogen control. Along with the Motion, OCRE filed its Thirteenth Set of Interrogatories to Applicants, relating to Issue No. 8.

OCRE's Motion asked the Licensing Board for a blanket reopening of discovery on Issue No. 8 until December 31, 1984, with further discovery subject to a showing of good cause. Motion to Reopen at 1. OCRE also requested that Applicants be required to serve on OCRE copies of all of their future submittals to the NRC Staff on hydrogen control. Id. In addition to the blanket reopening, OCRE argued that it had good cause for late filing of its Thirteenth Set of Interrogatories to Applicants, based primarily on new information received by OCRE through Applicants' interrogatory updates. Id. at 1-3.

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Applicants in their initial answer to OCRE's Motion to Reopen indicated that they generally were opposed to a blanket reopening of discovery based on the Licensing Board's prior rulings establishing requirements for reopening or extending discovery. See Applicants' Answer to OCRE Motion to Reopen Discovery on Issue No. 8 (August 14, 1984), at 3. Applicants also indicated that they believed at least some of OCRE's Thirteenth Set of Interrogatories to be objectionable on timeliness and other grounds. Id. at 2. However, Applicants informed the Licensing Board that they had initiated negotiations with OCRE Representative Susan Hiatt to discuss Applicants' objections to the interrogatories and to discuss OCRE's discovery needs on this issue. Id. at 2-3. Applicants further agreed to provide OCRE with copies of their future submittals to the Staff relating to Issue No. 8. Id. at 2.

On September 7, 1984, Applicants' counsel informed Ms. Hiatt by telephone that, based on a review of OCRE's Thirteenth Set of Interrogatories, Applicants would answer the following interrogatories: Interrogatories 13-22(G), 13-25, 13-29, 13-32 through 13-35, 13-40, 13-41, 13-44 through 13-48, 13-49 (in part),^{1/} 13-50(B), 13-63 through 13-81, 13-83 through 13-85, 13-102, 13-104, 13-106, 13-107, and 13-111 through 13-113. Applicants also agreed to make available for inspection and

^{1/} Applicants agreed to answer this interrogatory only to the extent that it asks whether deficiencies associated with the inclined fuel line transfer tube and penetration were considered in their Ultimate Structural Capacity Report.

copying the documents requested by OCRE in its Request for Production of Documents. Applicants' counsel told Ms. Hiatt that Applicants would provide the information because the specified interrogatories and document requests arguably were based on new information contained in the two documents cited by OCRE in its Motion to Reopen as good cause for late filing.^{2/} Applicants further indicated that they were willing to discuss with Ms. Hiatt OCRE's reasons for believing that the other interrogatories in OCRE's Thirteenth Set of Interrogatories were based on new information and were not otherwise objectionable.

On September 11, 1984, Applicants met with Ms. Hiatt to discuss Applicants' objections to the interrogatories. Ms. Hiatt, however, did not offer any good cause arguments for the interrogatories in question but simply stated that she "needed the information." Applicants and Ms. Hiatt were unable to reach an agreement on the disputed interrogatories, or on the scope of any further discovery which might take place on Issue No. 8.

According to Applicants' current schedule, fuel loading of Perry Nuclear Power Plant Unit 1 is projected for June 1985. In the interest of facilitating the proceeding, Applicants have agreed to answer a substantial number of OCRE's Thirteenth Set

2/ The two documents are: OPS-38A92, "Containment Pressure and Temperature Response to Hydrogen Combustion for Cleveland Electric Illuminating Company Perry Nuclear Power Plant;" and "Ultimate Structural Capacity of Mark III Containments." The documents were provided pursuant to Applicants' Supplemental Answers to Interrogatories on Issue Nos. 6, 8, and 15 (February 29, 1984).

of Interrogatories despite the fact that answering these Interrogatories will require a considerable amount of time and money on the part of Applicants. Applicants strongly oppose a blanket reopening of discovery on Issue No. 8, which would make even greater demands on Applicants' resources and might interfere with Applicants' current projected fuel load date. The Staff also opposes OCRE's Motion to Reopen. See NRC Staff Response to OCRE Motion to Reopen Discovery on Issue #8 (August 20, 1984).

In denying a similar request by OCRE to reopen discovery on Issue No. 8, the Licensing Board quoted from its earlier denial of a motion by Intervenor Sunflower Alliance, Inc., et al. for a blanket extension of discovery on Issue No. 1:

[T]he purpose of a discovery cut-off date is to require a party to complete as much discovery as is feasible before that date. The fact that Sunflower will obtain additional information in the future will permit it to argue that it has good cause for late-filing of interrogatories with respect to that material, providing that the information was not previously available to it.

We will not deprive Sunflower of its opportunity to seek discovery of matters not previously known to it, but that is not a reason to extend the deadline on matters already known to it.

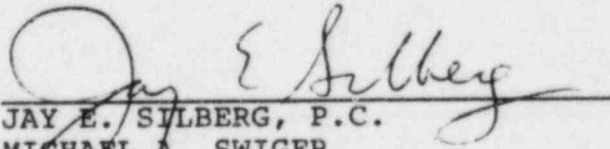
Memorandum and Order (OCRE Motion to Reopen Discovery) (December 20, 1983), slip op. at 2 (quoting Memorandum and Order (Concerning Request to Extend Discovery on Issue #1) (October 8, 1982), slip op. at 1). The Licensing Board also has made clear that, "[i]n general, we will not rule on general

requests to reopen discovery unless they are accompanied by the interrogatories or questions to which answers are sought." Memorandum and Order (Motion to Reopen Discovery) (February 28, 1984), slip op. at 3. OCRE, contrary to these directives by the Licensing Board, is attempting to receive assurance in advance that it may obtain further discovery without having to show good cause or submit specific discovery requests. This it may not do.

For all of the above reasons, Applicants respectfully request that OCRE's motion to reopen discovery on Issue No. 8 until December 31, 1984 be denied. Applicants will submit their answers and objections to OCRE's Thirteenth Set of Interrogatories in a future filing.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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DATED: September 24, 1984

September 24, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

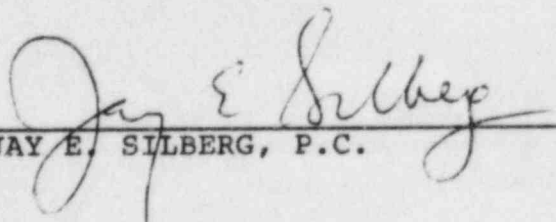
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing
"Applicants' Further Answer to Ohio Citizens for Responsible
Energy Motion to Reopen Discovery on Issue No. 8"
were served by deposit in the United States Mail, First
Class, postage prepaid, this 24th day of September, 1984, to all
those on the attached Service List.

Dated: September 24, 1984


JAY E. SILBERG, P.C.

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