

March 11, 1985

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

Docket Nos. 50-440 OL  
50-441 OL

APPLICANTS' ANSWER TO OCRE MOTION FOR LEAVE  
TO RESPOND TO APPLICANTS' ANSWER TO OCRE'S  
MOTION FOR THE APPOINTMENT OF BOARD WITNESS

On March 4, 1985, Ohio Citizens for Responsible Energy ("OCRE") filed a motion requesting that the Licensing Board allow it to respond to Applicants' Answer to OCRE's Motion for the Appointment of Board Witness which Applicants filed on February 26, 1985. OCRE's Motion is accompanied by its proposed Response. OCRE's request is based on the assertion that "Applicants have raised new arguments and cited cases which were not addressed in OCRE's Motion." Applicants oppose OCRE's Motion and request that it be denied.

Section 2.730(c) of the NRC Rules of Practice provides as follows:

Within ten (10) days after service of a written motion, or such other period as the Secretary or the Assistant Secretary or presiding officer may prescribe, a party

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may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. However, the staff may file such an answer within fifteen (15) days after service of a written motion. The moving party shall have no right to reply, except as permitted by the presiding officer or the Secretary or the Assistant Secretary (emphasis added).

Thus, as the moving party, OCRE has no right of reply under the NRC Rules of Practice.

By Order of August 4, 1981, the Licensing Board required that any intervenor in this proceeding who moves to add a late contention must reply to Applicants' and the NRC staff's responses.<sup>1/</sup> No similar requirement has been issued by the Board as to any other type of motion.

It was, therefore, incumbent upon OCRE to make its best argument in its Motion. OCRE knew it had no right of reply following Applicants' and the NRC staff's Responses concerning a contention which has already been admitted. In any event, OCRE's Response does not add to the arguments or applicable precedent before the Licensing Board. Nor does OCRE present any new information or arguments that could not have been made in its initial filing.

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<sup>1/</sup> In its Memorandum and Order of October 6, 1982, LBP-82-89, 16 NRC 1355 (1982), the Board then stated that it would permit Applicants to respond when an intervenor made new factual or legal arguments in their response to Applicants' or the NRC staff's answer to a proposed late-filed contention.

If the Licensing Board grants OCRE leave to respond, then both the Applicants and the NRC staff may, in turn, seek leave to respond to OCRE's response. The initiation of any further filings will only dilute the relevant issues and make the entire process more cumbersome for both the Board and the parties involved.<sup>2/</sup> Applicants, therefore, respectfully request that the Board deny OCRE's Motion for Leave to Respond.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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DATED: March 11, 1985

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<sup>2/</sup> The "NRC Staff Response in Opposition to OCRE Motion for Appointment of Board Witness on Issue 16" was filed on the same date as OCRE's Motion for Leave to Respond. There is, therefore, the possibility that OCRE will be filing yet another motion for leave to respond to the NRC staff's Response on this issue.

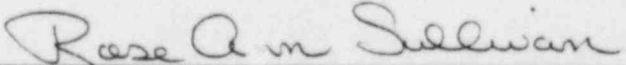
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ILLUMINATING COMPANY, <u>ET AL.</u>	)	50-441
	)	
(Perry Nuclear Power Plant,	)	
Units 1 and 2)	)	

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing APPLICANTS' ANSWER TO OCRE MOTION FOR LEAVE TO RESPOND TO APPLICANTS' ANSWER TO OCRE'S MOTION FOR THE APPOINTMENT OF BOARD WITNESS was served by deposit in the United States Mail, first class, postage prepaid, this 11th day of March, 1985, to all those on the attached Service List.

  
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Rose Ann Sullivan

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