

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of

CLEVELAND ELECTRIC ILLUMINATING
COMPANY, et al.

DOCKETED
Docket Nos. 50-440-OL
50-441-OL

(Perry Nuclear Power Plant, Units
1 and 2)

SUNFLOWER BRIEF IN OPPOSITION TO APPLICANT'S
MOTION FOR RECONSIDERATION

The essential argument raised by Applicant is that this Board lacks the authority to define the issues of this proceeding. That simply is not true. This Board has the power under 10 CFR 2.721(b) to perform all acts specified by 10 CFR 2.718. Thus, this Board has the power to conduct a fair and impartial hearing. It has the power to regulate the course of the hearing. Further, this Board is required by 10 CFR 50.40 to determine that the facility and equipment will comply with all of the regulations of the NRC. 10 CFR 50.50 further requires that the Board determine that all standards of the Atomic Energy Act and these regulations have been met.

Appendix B, Part 50, 10 CFR imposes on the Applicant certain quality assurance criteria. Thus, before a license can be granted under 10 CFR 50.40 and 10 CFR 50.50, the quality assurance criteria of Appendix B must be met. It is the duty of this Board to determine whether or not these standards have been met.

In fulfilling its responsibilities under the Atomic Energy Act and the Regulations issued pursuant thereto, this Board is more than a mere referee. "The Licensing Board exists for the very purpose of compiling a factual record in a particular proceeding, analyzing the record and

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making a determination based on the record". In the Matter of Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3&5), CCH Nuclear Regulation Reporter 30170 (1977). The Appeal Board has stated:

...This argument is based on a misconception of a licensing board's role in the hearing process. Its function as the arbiter of important safety and environmental questions 'does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it';... If it believes that circumstances warrant a re-opening of the record for the receipt of additional evidence, it has discretion to take that course of action...That the reason for doing so here stemmed from the Licensing Board's reading of a document which had not theretofore been introduced did not vitiate its authority to take that step... In the Matter of Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, CCH Nuclear Regulation Reporter 30246 (1977).

Finally, the Appeal Board has clearly stated that a licensing board has the authority to define issues for trial. In the Matter of Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-334 CCH Nuclear Regulation Reporter 30082 (1976).

Sunflower asserted in its Answer to Staff's Motion for Summary Disposition facts backed up, not by affidavits, but by official NRC documents. The Board, in a Motion for Summary Disposition, must consider the filings that have been made in the proceeding as well as the other items set forth in 10 CFR 2.749. See 10 CFR 2.749(d). The NRC documents attached to Sunflower's Answer are evidence. See 10 CFR 2.743 (h). The Board is clearly authorized to consider these documents. Sunflower clearly cited the facts backed up by the documents in its Answer. Clearly, as the Board implicitly found, Sunflower complied with 10 CFR 2.749.


Applicant forgets that a movant for summary disposition has the burden to show that he is entitled to judgment as a matter of law. It is not up to the respondent in a motion for summary disposition to disprove anything. In the Matter of Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, CCH Nuclear Regulation Reporter 30246 (1977). Staff simply failed to carry its burden.

Issue Three has from the beginning been couched in terms of the February, 1978 Stop Work Order. Sunflower demonstrated that the Stop Work Order and the proceedings that followed created the entire quality assurance program now being allegedly followed by Applicant. Thus, Sunflower has established the nexus between the Stop Work Order and current quality assurance problems at Perry. This is what Sunflower has been required to do by this Board. Quality assurance is an important consideration that must be reviewed before this Board may recommend the granting of a license to operate. Sunflower only has to restate the conclusion reached by Region III of the NRC:

...However, it was and still is our opinion that the multitude of problems identified in the electrical area could be systemic warranting an assessment of other contractor activities. We believe you also recognized this potential when you outlined your corrective action program for the problems in the electrical area and included a reassessment of management controls over other contractors. We believe the words '...management control systems were not totally effective...' put our concerns in the right perspectives... Letter dated July 13, 1982 from James G. Keppler.

Under the regulations and the law, Applicant must build a plant that complies with Appendix B, Part 50, 10 CFR. That burden does not shift to Sunflower. This Licensing Board recognizes this essential responsibility of Applicant. Therefore, Applicant's Motion must be denied.

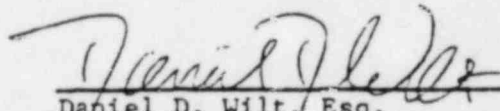
Respectfully submitted,



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PROOF OF SERVICE

The undersigned certifies that a copy of this Brief has been sent to
all persons on the Service List on this 21st day of January, 1983.



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