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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
Before the Atomic Safety and Licensing Board

'83 DEC 12 A11:47

In the Matter of )

Docket Nos.

OFFICE OF SECRETARY  
50-440-OL & SERVICE  
50-441-OL BRANCH

CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, et. al.

(Perry Nuclear Power Plant,  
Units 1 and 2)

SUNFLOWER'S MEMORANDUM IN SUPPORT  
OF 'MOTION TO REOPEN THE RECORD ON COMSTOCK ISSUES'

Now comes intervenor Sunflower Alliance, by and through counsel, and enters its support and affirmation of the "Motion to Reopen the Record on Comstock Issues" filed by intervenor Ohio Citizens for Responsible Energy ("OCRE") on November 25, 1983.

Matters to be considered in determining whether to reopen an evidentiary record at the request of a party are: (1) whether the matters sought to be addressed on the reopened record could have been raised earlier; (2) whether such matters require further evidence for their resolution; and (3) the seriousness or gravity of such matters. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520 (1973); Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), LBP-78-2, 7 NRC 83 (1978). Certainly OCRE could not have addressed the matter earlier, since the revelations of these "whistleblowers" only just came to light. The quality assurance adjudication raised evidence to which the apparent whistleblowers' evidence runs quite counter. OCRE's revelations clearly tend to impeach the veracity of Applicant and Staff witnesses in the QA record. The gravity of the matters should be obvious.

In certain instances a record may be reopened, even though the new evidence to be received might not be so significant as to alter the original findings or conclusions, where the new evidence

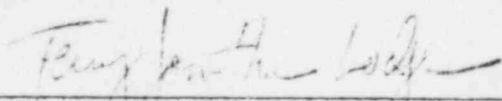
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can be received with little or no burden upon the parties. Carolina Power & Light Co., supra at 85. If the Board were to refuse to accord what Sunflower believes to be a high degree of significance to OCRE's revelations, Sunflower asks that the Board receive proffer of the news articles attached to OCRE's motion so that the intervenors can take the record to a forum which will deal with these highly suspect circumstances.


Reopening has also been ordered where the changed circumstances involved a hotly contested issue. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), CLI-74-39, 8 AEC 631 (1974). Indeed, fundamental fairness and the confrontation right in adversary proceedings dictates that the hearings on QA be reopened presently. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-249, 8 AEC 980 (1974).

Procedurally, OCRE has a heavy burden to bear in moving to reopen. Kansas Gas & Electric Company, et. al. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978). But OCRE has proffered damning evidence suggestive of negligence, recklessness and carelessness which are wholly imputable to Applicant. The proffered evidence raises even more questions about the glitteringly general testimony of Applicant at the QA trial. For all of the foregoing reasons, Sunflower prays the Board reopen the evidentiary record on quality assurance as it pertains to Comstock.

  
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et. al.  
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CERTIFICATION

I hereby certify that a copy of the foregoing "Sunflower's Memorandum in Support" was sent by me via regular U.S. Mail, postage prepaid, this 8 day of December 1983, to the parties appearing on the attached Service List.

  
Terry Jonathan Lodge

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