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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
)
THE CLEVELAND ELECTRIC) Docket Nos. 50-440
ILLUMINATING COMPANY, ET AL.) 50-441
)
(Perry Nuclear Power Plant,)
Units 1 and 2))

APPLICANTS' MOTION FOR PARTICULARIZATION OF ISSUE NO. 1

Issue No. 1 in this proceeding, as rephrased by the Licensing Board in its Memorandum and Order Concerning the Status of Ashtabula County and Objections to the Special Prehearing Conference Order, LBP-8. -35, 14 N.R.C. 682, 686 (1981), reads as follows:

ISSUE #1: Applicant's emergency evacuation plans do not demonstrate that they provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

The issue was admitted in the Licensing Board's Special Prehearing Conference Memorandum and Order Concerning Party Status, Motions to Dismiss and to Stay, the Admissibility of Contentions, and the Adoption of Special Discovery Procedures, LBP-81-24, 14 N.R.C. 175, 189 (1981).^{1/}

1/ As originally admitted, the contention stated:

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In explaining its reasons for admitting the emergency planning issue, the Licensing Board called on the parties to narrow the issue prior to any evidentiary hearings. Responding to Applicants' objection that the issue was too broad, the Licensing Board stated:

As discovery proceeds, we will expect intervenors, Staff and Applicant to further refine these issues and, where possible, to eliminate matters by stipulation. . . .

We also wish to clarify some procedural points relating to discovery and admissibility for hearing, both for this issue and for others where we have indicated that intervenors still bear some burden prior to the hearing. First, we urge the parties to meet informally in order to make the discovery process workable. Second, we expect the parties to consider in good faith whether to stipulate that certain facts are genuinely in dispute and should be included in the hearing. Third, if issues where intervenors bear a burden of proof are subject to motions for summary disposition, the responding party will have the burden of going forward to demonstrate that factual issues exist which require a hearing. (To this extent, certain

(Continued)

Applicant's emergency plans do not provide reasonable assurance that appropriate measures can and will be taken in the event of an emergency to protect public health and safety and prevent damage to property.

The wording was modified in LBP-81-35 to reflect the language of 10 CFR Part 50, Appendix E, and to limit the issue to emergency evacuation plans. LBP-81-35, 14 N.R.C. at 686.

contentions may be thought of as 'conditionally' admitted.)

LBP-81-35, 14 N.R.C. at 686. Thus, the Licensing Board has expressly encouraged the parties to refine the specific issues raised within the broader emergency planning issue and, where possible, to eliminate these issues by stipulation.

Offsite evacuation planning for the Perry Nuclear Power Plant ("PNPP") is now well advanced. Emergency plans for Lake, Ashtabula and Geauga counties exist in revised draft form, and have been available in public libraries in their respective counties for as long as a year and a half. See Applicants' Amended and Supplemental Answers to Sunflower's First Round Discovery Requests and Second Set of Interrogatories to Applicants Concerning Issue No. 1, dated June 15, 1984 ("Applicants' Amended and Supplemental Answers"), responses to Interrogatories #1 and #3.^{2/} Further, the Federal Emergency Management Agency ("FEMA") Region V has completed its informal reviews of the county plans and has issued an interim report concluding

2/ Drafts of the Lake and Ashtabula Plans were available to Sunflower as long ago as October 29, 1982. See Response of Sunflower Alliance, Inc. et al. to Applicant's Interrogatories and Request for Production of Documents (Third Set), dated October 29, 1982. A draft of the Geauga Plan was available at least as early as May 12, 1983. See Letter from Michael A. Swiger to Daniel D. Wilt (May 19, 1983), Attachment 4.

that there is reasonable assurance that appropriate protective measures can be taken in the event of a radiological emergency at PNPP. See enclosure to letter from Colleen P. Woodhead, Counsel for NRC Staff, to the Licensing Board (May 9, 1984).^{3/}

In addition, extensive discovery has been conducted on Issue No. 1.^{4/} Discovery has included numerous interrogatories and document requests covering a wide range of emergency planning issues. On February 28, 1984, the Licensing Board reopened discovery on Issue No. 1 to allow for developments in the offsite emergency planning process which have taken place since discovery was closed earlier in the proceeding. See Memorandum and Order (Motion to Reopen Discovery), dated February 28, 1984. Applicants have subsequently filed comprehensive amended and supplemental answers to their previous discovery requests. See Applicants' Amended and Supplemental Answers. These answers addressed, among other things, the current status of offsite evacuation planning for PNPP. See, e.g., Applicants' Amended and Supplemental Answers, response to Interrogatory #3. Intervenors have not initiated any discovery on Issue

3/ The memorandum from FEMA to the NRC Staff containing the interim report was served on all of the parties. See Letter from B. J. Youngblood to Murray R. Edelman (April 20, 1984).

4/ See Attachment A.

No. 1 to Applicants or the NRC Staff since discovery was reopened.

In short, Issue No. 1 is ripe for particularization. Intervenorors have ample information by which to identify their specific concerns and have had such information available to them for quite some time. Unless Issue No. 1 is formally particularized, summary disposition of specific emergency planning issues will be impossible; and the Licensing Board and the parties will likely be faced with an unmanageable issue for evidentiary hearing. Further, the issue must be particularized well in advance of a scheduled hearing date, to allow time to address any concerns Sunflower may raise and to prepare motions for summary disposition and testimony.

On May 4, 1984, Applicants' counsel, Jay E. Silberg, conferred by telephone with Terry Lodge, counsel for Intervenor Sunflower Alliance, Inc. et al. ("Sunflower"),^{5/} in order to initiate discussions concerning particularization of Issue No. 1, including possible stipulation of emergency planning issues. Mr. Silberg spoke with Mr. Lodge about particularization again on June 4 and June 20. Mr. Lodge has to date declined to take a position on particularization of Issue No. 1 or stipulation of emergency planning issues.

5/ Sunflower is lead intervenor on Issue No. 1. See Memorandum and Order Concerning Redesignation of Lead Intervenor, dated October 13, 1981.

In view of the fact that the parties have been unable to reach an agreement on narrowing the scope of Issue No. 1 prior to hearing, Applicants respectfully request that the Licensing Board establish a reasonable deadline for Intervenor's to identify their specific concerns relating to Issue No. 1 and set forth the standards for such particularization. Applicants move that the Licensing Board order Sunflower:

1. Within 15 days of Licensing Board's order, to set forth the particular aspects of emergency evacuation planning for the Perry Nuclear Power Plant plume exposure pathway EPZ which Sunflower alleges to be inadequate;
2. As part of its particularization, to
 - a. describe in detail the nature of the specific inadequacy;
 - b. identify the specific portion of any emergency plan which is in question (i.e., section, subsection, and page) for each claimed inadequacy;
 - c. state the basis for each claimed inadequacy, (e.g., any document showing that the specific provision of an emergency plan is inadequate);
 - d. detail the steps which in Sunflower's judgment are needed to redress the specific inadequacy, including the basis for Sunflower's proposed remedy.

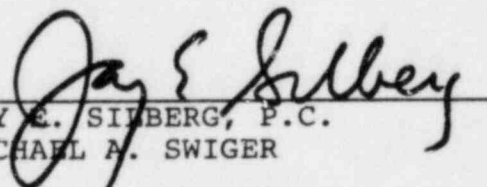
Particularization along the lines set forth above will enable Applicants, the Staff and FEMA to properly address Sunflower's areas of concern and to prepare for summary disposition and

evidentiary hearings. Such particularization will also permit the Licensing Board to properly focus on the issues deemed to be important by Sunflower and avoid considerable wasted efforts on the part of the Board and all the parties.

For all of the above reasons, Applicants' motion for particularization of Issue No. 1 should be granted.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: 
JAY E. SILBERG, P.C.
MICHAEL A. SWIGER

Counsel for Applicants
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DATED: June 26, 1984

ATTACHMENT A

DISCOVERY ON ISSUE NO.1

1. Applicants' Interrogatories and Request for Production of Documents to Intervenor Sunflower Alliance, Inc., et al. (First Set), dated October 15, 1981.
2. Applicants' Interrogatories and Request for Production of Documents to Intervenor Ohio Citizens for Responsible Energy (First Set), dated October 15, 1981.
3. Response of [sic] Applicant's Interrogatories by Sunflower et al., dated November 19, 1981.
4. OCRE Response to "Applicants' Interrogatories and Request for Production of Documents to Intervenor Ohio Citizens for Responsible Energy (First Set)," dated November 30, 1981.
5. Sunflower Alliance, Inc. et al. First Set of Interrogatories to Applicants, dated December 2, 1981.
6. Sunflower Alliances' Interrogatories to Nuclear Regulatory Commission Staff (First Set), dated December 18, 1981.
7. Sunflower Alliance Interrogatories and Request for Production of Documents to Lake County Commissioners and Lake County Disaster Services Agency, dated December 18, 1981.
8. OCRE Supplemental Response to Applicant Interrogatory #3 (1st Set), dated January 28, 1982.
9. Applicants' Answers to Sunflower Alliance, Inc. First Round Discovery Requests, dated February 5, 1982.
10. Sunflower Alliance, Inc., et al. Second Set of Interrogatories to Lake County Commissioners and Lake County Disaster Service Agency (hereinafter called County), dated February 24, 1982.
11. Intervenor's [Sunflower Alliance, Inc., et al.'s] Request for Production of Documents to Applicant, dated February 24, 1982.

12. [Sunflower Alliance, Inc., et al.'s] Request for Production of Documents to NRC, dated February 24, 1982.
13. NRC Staff Answer to First Set of Interrogatories to Staff by the Sunflower Alliance, dated March 3, 1982.
14. Sunflower Alliance, Inc., et al. Second Set of Interrogatories to NRC Staff, dated April 30, 1984.
15. Applicants' Answer to Sunflower's Request for Production of Documents, dated May 28, 1981.
16. [Sunflower Alliance, Inc., et al.] Third Request for Production of Documents to Nuclear Regulatory Commission to Executive Director for Operations, Nuclear Regulatory Commission, Washington, D.C. 20555, dated June 30, 1982.
17. Letter from James H. Thessin to Daniel D. Wilt (July 9, 1982).
18. (First Set) Responses [of Lake County] to Interrogatories Filed by Sunflower Alliance Pursuant to Previous Orders of the Atomic Safety and Licensing Board and 10 CFR 2.70b (undated).
19. (Second Set) Responses [of Lake County] to Interrogatories Filed by Sunflower Alliance Pursuant to Previous Orders of the Atomic Safety and Licensing Board and 10 CFR 2.70b (undated).
20. Letter from Nathene A. Wright to Daniel D. Wilt (July 26, 1982).
21. Applicants' Additional Answers to Sunflower Alliance, Inc. First Round Discovery Requests, dated July 27, 1982.
22. NRC Staff Partial Answer to Second Set of Interrogatories to NRC Staff by the Sunflower Alliance, dated August 2, 1982.
23. Applicants' Answer to Sunflower Alliance, Inc. et al. Second Set of Interrogatories to Applicants, dated August 11, 1982.
24. Applicants' Supplemental Answer to Sunflower Alliance, Inc. et al. Second Set of Interrogatories to Applicants, dated September 3, 1982.

25. NRC Staff Further Partial Response to Second Set of Interrogatories to NRC Staff by the Sunflower Alliance, dated September 8, 1982.
26. Applicants' Supplemental Answers Pursuant to Order of August 18, 1982 (Concerning a Motion to Compel), dated September 17, 1982.
27. Sunflower Alliance, Inc. Fourth Request for Production of Documents to Nuclear Regulatory Commission in care of Executive Director of Operations, Nuclear Regulatory Commission, Washington, D.C. 20555.
28. Applicants' Interrogatories and Request for Production of Documents to Sunflower Alliance, Inc., et al. (Third Set), dated September 30, 1982.
29. Letter from James M. Cutchin, IV to Daniel D. Wilt (October 13, 1982).
30. Applicants' Supplemental Answers to Sunflower Alliance, Inc. et al. Second Set of Interrogatories to Applicants, dated October 20, 1982.
31. Response of Sunflower Alliance, Inc., et al., to Applicants' Interrogatories and Request for Production of Documents (Third Set), dated October 29, 1982.
32. Applicants' Supplemental Answer Pursuant to Order of October 19, 1982 (Concerning a Motion to Compel Answers About Emergency Planning), dated November 1, 1982.
33. Lake County Commissioners and Lake County Disaster Services Agency's Answers to Sunflower's Appliances [sic], Inc., et al. Two Sets of Interrogatories and Request for the Production of Documents, dated November 8, 1982.
34. Sunflower Alliance, Inc. Supplemental Answers to Applicant's Third Set of Interrogatories and Request for Production of Documents, dated January 3, 1983.
35. Letter from Michael A. Swiger to Daniel D. Wilt (May 19, 1983).
36. Sunflower Alliance's Supplemental Discovery Response, dated December 1, 1983.

37. Applicants' Amended and Supplemental Answers to Sunflower's First Round Discovery Requests and Second Set of Interrogatories to Applicants Concerning Issue No. 1, dated June 15, 1984.

June 26, 1984

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NUCLEAR REGULATORY COMMISSION

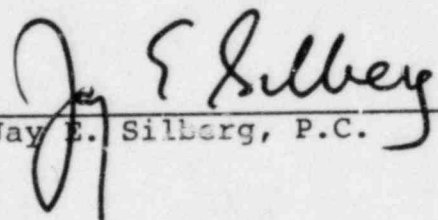
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing
"Applicants' Motion for Particularization of Issue No. 1"
were served by deposit in the United States Mail, First
Class, postage prepaid, this 26th day of June, 1984, to all
those on the attached Service List.

Dated: June 26, 1984



Jay E. Silberg, P.C.

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