

394

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

DOCKETED
USNRC

'84 OCT -9 A11:57

In the Matter of)
)
THE CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, et. al.)
)
(Perry Nuclear Power Plant,)
Unites 1 and 2))
)
)

Docket Nos. 50-220 and 50-441

OFFICE OF
REGULATORY & SERVICE
BRANCH

SUNFLOWER ALLIANCE'S REPLY TO APPLICANT'S 'MOTION TO DISMISS'

On September 20, 1984, without leave of the Board, Applicant filed its "Motion to Dismiss Sunflower's Particularized Objections to Proposed Emergency Plans in Support of Issue No. 1." Clearly, the Board intended in its July 26, 1984 "Memorandum and Order" on this subject for Sunflower to substitute detailed objections for the generalized Issue No. 1 in this proceeding:

It is time for the intervenors to state with specificity, and with bases, the particular deficiencies that currently exist in the draft plans.

Slip op. at 3.

Sunflower timely essayed to comply with the Board's directives, filing its "Particularized Objections to Proposed Emergency Plans in Support of Issue No. 1" by the required deadline.

The July 26 "Memorandum and Order" clearly neither granted leave to any party to "plead" to the particularize objections, nor did it set forth any timetable for the particularizations to be subjected to attack via summary disposition.

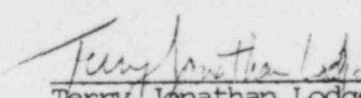
Applicant's "Motion to Dismiss" is clearly a motion for summary disposition of the particularizations. It is most spuriously

8410110230 841004
PDR ADOCK 05000440
G PDR

DS03

brought. Apparently Applicant believed that by captioning the document as a "Motion to Dismiss" that the rudiments attendant upon summary disposition motions per 10 CFR §2.749 could be sidestepped. Thus Applicant did not set forth in its motion a "separate, short and concise statement of the material facts." Id. Nor did Applicant attach affidavits in support of its motion, as is allowable in summary disposition procedures. Applicant evidently hoped that this Board would allow it a substantive attack via innuendo and unsworn, ipse dixit conclusions, upon the particularizations, which are in effect merely the elaboration upon the former single sentence wording of Issue No. 1. This Board has not previously dismissed admitted contentions based upon procedurally faulty trick motions, and Sunflower certainly asks that it not countenance that precedent here.

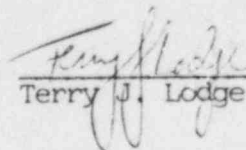
WHEREFORE, Sunflower Alliance prays the Board to dismiss Applicant's "Motion to Dismiss." Further, based upon the recognized competence of Applicant's respective counsel, and given the frivolousness of the bringing of the Motion, Sunflower prays the Board to award it attorney fees incurred in defending against such speciousness.


Terry Jonathan Lodge
518 N. Michigan St., Suite 105
Toledo, Ohio 43624
(419) 255-7552

Counsel for Sunflower Alliance

Certification of Service

I hereby certify that a copy of the foregoing "Reply" was sent by me this 4th day of October, 1984 to the parties on the accompanying "Service List" via regular U.S. Mail, postage prepaid.


Terry J. Lodge

SERVICE LIST

Peter B. Bloch, Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Jerry R. Kline
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Glenn O. Bright
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Colleen P. Woodhead, Esq.
Office of the Executive
Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jay Silberg, Esq.
1800 M Street, N.W.
Washington, D.C. 20036

Atomic Safety and Licensing Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Susan L. Hiatt
8275 Munson Road
Mentor, Ohio 44060

Christine N. Kohl, Chairman
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. John H. Buck
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Gary J. Edles, Esquire
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555