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July 23, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

Docket Nos. 50-440
50-441

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APPLICANTS' REPLY TO INTERVENORS' ANSWERS
TO APPLICANTS' MOTION FOR PARTICULARIZATION

Applicants' June 26, 1984 motion requested that the Licensing Board establish a procedure to particularize Issue No. 1. Both Ohio Citizens for Responsible Energy ("OCRE") and Sunflower Alliance opposed the motion. The NRC staff supported it.

Because of the new (and erroneous) arguments raised by Intervenor's pleadings, Applicants wish to present the following comments to the Licensing Board.

I. OCRE's Arguments^{1/}

OCRE claims that particularization of Issue No. 1 is

^{1/} OCRE opposed the motion even though Applicants sought particularization only from Sunflower Alliance. Applicants' Motion at 6. OCRE's emergency planning issue relates only to the use of potassium iodide. Special Prehearing Conference Memorandum and Order, LBP-81-24, 14 N.R.C. 175, 186, 190-91 (1981).

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inappropriate because of the May 25, 1984 decision by the U.S. Court of Appeals for the D. C. Circuit in Union of Concerned Scientists v. NRC, No. 82-2053.^{2/} OCRE completely misunderstands this decision. OCRE argues that the Court of Appeals "appears to require that particularization be delayed until after the emergency planning exercise for the Perry plant." In fact, the Court of Appeals contemplated exactly the opposite, noting that the NRC could hold a special hearing limited to issues arising from the full-scale exercise after a hearing on other emergency planning issues.

[W]e see nothing to prevent the Commission from holding a special supplementary hearing solely on issues raised by the emergency exercises closer to the date of full power operation.

Slip op. at 23. Thus, the current schedule for an emergency planning exercise (November 1984) is simply irrelevant with respect to litigation of the adequacy of offsite emergency plans. If, as OCRE fears, the exercise will raise deficiencies which would not otherwise be revealed, OCRE can seek to raise these issues at the appropriate time.

^{2/} The UCS decision has not yet become effective. On July 9, 1984, the Commission filed a petition for rehearing with the Court of Appeals, the effect of which is to stay the issuance of the Court's mandate. Fed.R. App.P. 41(a).

II. Sunflower Alliance's Arguments

Sunflower Alliance's primary opposition to particularization is that the State of Ohio's emergency plans are "not complete," "are not finally approved," and are "undergoing public comment." Sunflower's allegations evidence a misunderstanding of the emergency planning process, the interrelationship between the independent responsibilities of NRC and the Federal Emergency Management Agency, ("FEMA") and Commission practice.

The emergency planning process is a continuing one. Emergency plans are never "final," since they must be reviewed, updated and amended as necessary at least on an annual basis. 10 C.F.R. §50.47(b)(4); 10 C.F.R. Part 50, App. E §IV.G; NUREG-0654, Criterion P.4. Indeed, offsite emergency plans need not even be "finalized" at the time of the evidentiary hearing. Kansas Gas and Electric Co. (Wolf Creek Generating Station Unit No. 1), Initial Decision, LBP-81-_____, 20 N.R.C. _____ (July 2, 1982), slip op. at 13.

Sunflower's argument also assumes that because the Ohio plans have been submitted to FEMA's Regional Assistance Committee for their review (see Attachment A to Sunflower's answer) that they are too tentative to support particularization. The FEMA review process (as outlined in 44

C.F.R. Part 350) is totally separate from the NRC emergency preparedness review process. Cf. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-717, 17 N.R.C. 346, 379-80 (1983). FEMA has already performed a review of the offsite plans for Perry and prepared its Interim Report on Offsite Preparedness. See letter from B.J. Youngblood, NRC, to Murray R. Edelman, CEI, dated April 20, 1984 and attachments thereto (copies of which were served on both intervenors). Indeed, "final approval" of offsite emergency plans in the formal FEMA Part 350 review typically does not occur until after NRC hearings and after the full-scale exercise. Neither of these processes are necessary for litigating the plans pursuant to NRC's "reasonable assurance" standard. Kansas Gas and Electric Co., supra.

Finally, Sunflower's position is in direct conflict with established NRC practice. The Commission has set forth explicit guidelines for dealing with changes in publicly available documents. In the context of late-filed contentions, the Commission has held that intervenors must "diligently uncover and apply all publicly available information to the prompt formulation of contentions." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041, 1048 (1983). To the extent that subsequent issuance of new or

modified documents requires a change in those contentions, "those changes can be dealt with by either modifying or disposing of the superceded contentions." Id. at 1050. In short, Sunflower cannot seek to postpone particularizing Issue No. 1 by holding out the possibility that future revisions to offsite emergency plans may occur.

Emergency plans of the State of Ohio and the three counties within the plume exposure pathway emergency planning zone have been available to Intervenor for many months -- if not years. Other than Intervenor's desire to delay, there is no justification to further postpone specification of the emergency planning issue.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

BY: 

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July 23, 1984

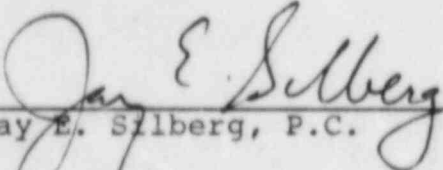
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing
"Applicants' Reply to Intervenor's Answers to Applicants'
Motion for Particularization" were served by deposit in the
United States Mail, First Class, Postage Prepaid, this 23rd day
of July, 1984, to all those on the attached Service List.



Jay E. Silberg, P.C.

Dated: July 23, 1984.

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