

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)

(Perry Nuclear Power Plant,)
Units 1 and 2))

) Docket Nos. 50-440 and 50-441

* * *

SUNFLOWER'S MEMORANDUM IN OPPOSITION
TO SUMMARY DISPOSITION OF CONTENTION J

By 10 CFR Section 2.749 (d), Applicant must show that there is no genuine issue as to any material fact and that it is entitled to a decision as a matter of law. The record is to be viewed in the light most favorable to the party opposing the motion. Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1962); Pennsylvania Power & Light Co. and Allegheny Electric Cooperative, Inc. (Susquehanna Steam Electric Station, Units 1 and 2), LBP-81-8, 13 NRC 335, 337 (1981).

To this point in this proceeding, Applicant has failed by its own admission to supply 13 individual Emergency Action Level (EAL) indications. Hulbert Affidavit, para. 4. Sunflower, and presumably the public, must be content with Applicant's bland assurances that "the 'missing' values will be included in the PNPP Emergency Plan prior to fuel load." Hulbert Affidavit, para. 7.

Pertinent regulatory guidance mandatorily requires completed EALs. See 10 CFR Part 50, App. E. Sect IV (C); See also Nureg-0654, Criterion D.1, Criterion D.2.

Applicant's "trust me" approach is baffling. Either the PNPP Plan