

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

* * *

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

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).

Examination of Applicant's "evidence" is certainly in order. 10 CFR 2.749 (d) requires Affidavits to be made upon "personal" knowledge. Applicant's affiant, Gary Winters, cites numerous statistics regarding available backup power and fuel sources, but in effect quotes statistics as a secondary source. Such information is hearsay, being uncorroborated elsewhere in the record of this proceeding.

Further, Winters attempts to bootstrap one of his own ipse dixit conclusions into evidence where, in para. 4 (d) of his Affidavit, he states in conclusory fashion that " school buses are kept refueled to handle

normal day-to-day workloads." This statement is directly rebutted by the Affidavit of Barbara Niznik which accompanies Sunflower's responses to Applicant's motion for summary disposition of Contention Q, and which is incorporated herein by reference. Affiant Niznik, as a school bus driver for Grand Valley School District, which is within the EPZ, states from personal knowledge that the policy of her district is not to refuel school buses until they register 1/4 or less fuel.

Niznik also has not received any instruction as to specific duties being an evacuation, which presumably would include a lack of instructions as to what she should do were her bus to require refueling in such an emergency.

WHEREFORE, Sunflower prays the Board to find that genuine issues of fact exist as to this contention, and that Applicant's motion be denied.

Respectfully submitted,

By



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