

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF:

CLEVELAND ELECTRIC ILLUMINATING CO  
ET AL.

(PERRY NUCLEAR POWER PLANT, UNITS  
ONE AND TWO)

DOCKET NOS 50-440-OL  
50-441-OL

May 22, 1981

SPECIAL PREHEARING CONFERENCE BRIEF  
OF INTERVENORS

Your intervenors, in response to this Board's order of April 9, 1981, file this brief, to the extent and only to the extent, that the order of April 9th can be followed. Your intervenors reserve unto themselves and any proposed intervenors to file amendments if and when the Final Environment Impact Statement is filed by the NRC staff and if and when the Applicant files its own environmental impact statement. Further, your intervenors and proposed intervenors reserve unto themselves the right to further amend their petition in the event new information is learned from whatever source which would affect these proceedings. Finally, to the extent that legal issues are raised elsewhere but which would affect these proceedings, your intervenors reserve unto themselves and the proposed intervenors the right to amend their petitions.

This brief is being filed on behalf of the following admitted intervenors: Evelyn Stebbins, Richard Sering, David Nash, Gail Caduff Nash, Linda Qualls, David Qualls, Wes Gerlosky, Margaret Gerlosky and William Brotzman and on behalf of the following proposed intervenors: James McIntyre of the Sunflower Alliance, Christopher F. Hagan of the North Shore Alert, and Thomas Kim Hill of Citizens for Safe Energy.

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The preliminary contentions raised by intervenors with the construction, safety, financial and emergency aspects of the PNPP. Environmental concerns will be raised after the filing of the EIS. This board is required by the Commissions rules to make the following findings:

- (1) That construction of the facility has been substantially completed, in conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission;
- (2) That the facility will operate in conformity with the application as amended, the provisions of the Act, and the rules and regulations of the Commission;
- (3) There is reasonable assurance (i) that the activities authorized by the license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations;
- (4) That the applicant is technically and financially qualified to engage in the activities authorized by the operating license;
- (5) That the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public;
- (6) That the Commission has jurisdiction to issue the operating license at all;

The legal authority for items (1) through (5) is found in 10 CFR Section 50.57 and the authority for item (6) is 42 USC 2133(d). Each of the contentions raised to date are supported by 10 CFR Section 50.57 and thus must be considered at the hearing which is to be held.

Your intervenors and proposed intervenors will engage in discovery to obtain information relevant to each of the contentions raised. Further, your intervenors and proposed intervenors reserve unto themselves the right to conduct further discovery after the EIS has been filed. The exact nature of the material to be requested will be determined at a later date.

Your intervenors and proposed intervenors intend to file a series of interrogatories; requests for admissions; and to file a request for production of documents. The timing of discovery is difficult to assess at this time due to the fact that the EIS has not been filed nor for that matter have the Intervenor's been finally determined. A decision as to the taking of depositions will be made after the material produced in accordance with the above has been evaluated. The Board should also take into consideration the delay that may be caused by any legal challenges to discovery.

The undersigned would not agree to consolidating his case with that of any other intervenors. Mr. Kenney, who is a party to this proceeding, is not represented by counsel. Proposed intervenor, Ohio Citizens for Responsible Energy, is likewise not represented by counsel. Thus, the Commission must take additional steps to preserve their rights and respect their desire to remain independent intervenors. At the time of the Special Prehearing Conference, all parties can discuss, with the Board, any methods which would assist in the coordination of the cases.

The undersigned offers the following general plan to resolve and present the various issues in this case:

(1) The proceedings should be stayed until the EIS is filed. It seems absurd to proceed without the EIS being filed as individuals could intervene when the EIS is filed. The PNPP is no where near completion and thus any delay will not prejudice the Applicant. Compliance with this Board's April 9th order cannot be reasonably expected until after the EIS is in fact filed.

(2) The Commission will have to determine whether it has jurisdiction under 42 USC 2133(d) to issue a class 103 license to Applicant in view of the fact that not all of Applicant's activities will be under of within the jurisdiction of the United States.

(3) After the EIS is filed and a determination made whether the Commission has jurisdiction under 42 USC 2133(d) to proceed, another Special Prehearing Conference can be called to review all of the issues and a discovery schedule agreed to.

(4) After discovery has been completed, the issues can be narrowed, if warranted, and the hearing may start.

Respectfully submitted,

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#### PROOF OF SERVICE

The undersigned certifies that he has sent a true copy of the Special Prehearing Conference Brief to everyone on the attached service list by regular United States Mail on this \_\_\_\_\_ day of May, 1981.

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Daniel D. Wilt, Esq.  
Attorney for Sunflower Alliance et al

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