

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

Before Administrative Judges:

Peter B. Bloch, Chairman  
Dr. Jerry R. Kline  
Mr. Frederick J. Shon

DOCKETED  
USNRC

'82 SEP 15 P1:58

OFFICE OF SECRETARY  
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SERVED SEP 15 1982

In the Matter of

Packet Nos. 50-440-OL  
50-441-OL

CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, et al.

(Perry Nuclear Power Plant, Units 1 & 2)

September 15, 1982

MEMORANDUM AND ORDER  
(Concerning Sunflower's Late-Filed Radiation-Dose Contention)

On July 13, 1982, Sunflower Alliance Inc., et al. (Sunflower), filed a contention alleging that the Staff of the Nuclear Regulatory Commission (staff) "has not correctly calculated the dose levels to real human beings from routine emissions from the Perry Nuclear Power Plant." Sunflower stated that it had good cause for late filing because the contention was based on the Draft Environmental Statement for Perry Nuclear Power Plant, NUREG-0884 (March 1982)(DES) and on Natural Resources Defense Council, Inc. v United States Nuclear Regulatory Commission, No. 74-1586 (D.C. Cir., April 27, 1982)(Table S-3 Decision).

Based on arguments that Cleveland Electric Illuminating Company, et al. (applicant) and staff presented in their responses to this contention and that Sunflower did not address directly in its required reply, we find that this contention should not be admitted because Sunflower lacked good cause for late filing. Sunflower should have known how the Commission calculates dose levels well before the DES was issued. Furthermore, the Table S-3 Decision is irrelevant to the calculation of radiation doses emanating

directly from Perry; it was concerned with proper treatment of the uranium fuel cycle, including waste disposal.

## I GOOD CAUSE FOR LATE FILING

### A. Unrefuted Statements About the DES

Applicant, in its July 28, 1982, filing stated that virtually all the disagreements Sunflower has with how the staff computes dose levels to humans from routine reactor emissions can be traced to its disagreements with Regulatory Guide 1.109, "Calculations of Annual Doses to Man From Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance With 10 C.F.R. 50, Appendix I," October 1979 (Rev. 1) and with NUREG-0016, "Calculation of Releases of Radioactive Materials in Gaseous and Liquid Effluents From Boiling Water Reactors (BWR-GALE Code)," January 1979 (Rev. 1).

Both applicant and staff indicated that these documents were referenced in applicant's Final Safety Analysis Report (FSAR) in several sections, including §§ 11.2.3.4, 11.3.3.3, 12.4.4.4, 3.5.2.4, 3.5.2.5 and 3.4.3.3. Consequently, the DES did not provide Sunflower with any new information about how radiation doses would be calculated in this proceeding. See Wisconsin Electric Power Co. (Koshkonong Nuclear Plant, Units 1 and 2), CLI -74-45, 8 A.E.C. 928 (1974)(contentions should be filed based on the information available prior to issuance of a DES and SER).

Nevertheless, Sunflower's replies do not in any way clarify how the DES provided it with new information. Indeed, Sunflower's Response to Applicant's Answer, September 3, 1982, agrees that "the draft environmental statement does not contain any new information."

Under the circumstances, we have no choice but to agree with all the parties that the DES contains no new information relevant to this contention and that it therefore does not contain good cause for late filing.

### B. Table S-3 Case

Applicant stated that it was at a complete loss to understand how

the Table S-3 Case was at all relevant to Sunflower's contention. Staff seems to have been so much at a loss that it did not discuss this alleged ground for late filing at all. Nevertheless, Sunflower's reply did not address this point. Consequently, we agree with applicant (and, implicitly, staff) that this legal decision did not provide any cause for late filing.

C. Surprise Statements of Cause for Late Filing

In its Response to NRC Staff (August 30, 1982), Sunflower alleged (for the first time) that it had good cause for late filing because of "the Savannah River Plant Study" and "the study by Alice Stewart (British Journal of Epidemiology and Community Health)." However, Sunflower does not explain what may be found in these articles that could not be found previously in other articles, and the Sunflower Response to Applicant's Answer merely characterizes at least one of these studies, without further explanation, as confirming the earlier conclusions of Ernest Sternglass. Consequently, we conclude that Sunflower has not shown that these new studies establish good cause for late filing.

D. Other Factors

While we have previously found that Sunflower's participation with respect to other contentions may reasonably be expected to assist in developing a sound record, we cannot do so with respect to this contention. None of the Sunflower filings even cited the applicable regulatory guide, NUREG or previous cases, even after attention was called to these materials by the other parties. Furthermore, Sunflower failed to reply to applicant's charges that it had made several serious misstatements, including apparent failure to understand that linearity of dose-effect is a basic concept of the applicable NRC regulations and that all detectable emitted radionuclide materials are considered in the dose commitment calculations. Applicant's Response at 21, 24; see also id. at 27-32.

#### D. Conclusion

Based on our review of each of Sunflower's arguments, we conclude that it has not shown good cause for late filing of this contention. It also has not show that its contribution would assist in developing a sound record. Were we to have found lack of good cause alone, with other factors for admission of late contentions in balance, we would have excluded this contention. Consequently, given the additional negative factor related to Sunflower's potential contribution, upon balancing the factors necessary for accepting a late contention, we conclude that good cause for late filing has not been shown and that this contention may not be admitted as an issue in this proceeding. 10 CFR §2.714(a)(1).

#### II. POTENTIAL SUA SPONTE ISSUE

Since the Board has the prerogative, under the regulations, to consider raising serious issues sua sponte, it has the responsibility of reviewing materials filed before it to determine whether the parties have brought such an issue before it. 10 CFR §2.760a. This is particularly necessary when an issue is excluded from the proceeding because it has not been properly raised rather than because it has been rejected on its merits.

In this instance, however, Sunflower has not brought to our attention anything that has not been repeatedly considered by the Commission. Trustees of Columbia University in the City of New York, ALAB-50, 4 A.E.C. 849(1972); Report of the Advisory Committee on the Biological Effect of Ionizing Radiation, "The Effects on Populations of Exposure to Low Levels of Ionizing Radiation," ("BEIR I", 1972) at 178-79; Metropolitan Edison Co. (Three Mile Island, Unit 2), CLI-80-3, 11 N.R.C. 519, 531-32; NUREG-0668, "Staff Review of 'Radioecological Assessment of the Whyl Nuclear Power Plant" (June 1980).

Our review persuades us that we have no basis to declare this to be an important safety issue.

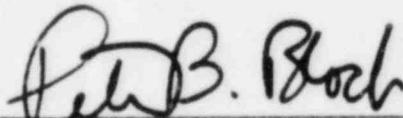
O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 15th day of September, 1982,

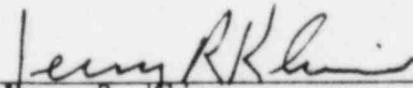
ORDERED

Sunflower Alliance Inc., et al.'s Motion for Leave to Submit Additional Contention, filed July 13, 1982, is denied.

FOR THE  
ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch, Chairman  
ADMINISTRATIVE JUDGE



Jerry R. Kline,  
ADMINISTRATIVE JUDGE



Frederick J. Shon  
ADMINISTRATIVE JUDGE

Bethesda, Maryland