

November 29, 1982

Peter B. Bloch, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. Frederick J. Shon
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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

Dear Licensing Board Members:

On November 23rd a telephone conference call involving the Licensing Board Chairman and representatives of Sunflower, OCRE, Applicants and the Staff was held to discuss several pending motions. Staff counsel was asked to draft, based on the discussion that took place, a memorandum and order denying Sunflower's motion for an order requiring the Staff to respond to Sunflower's third set of interrogatories (with requests for production of documents). A copy of such an order is enclosed for the Board's consideration.

Sincerely,

James M. Cutchin IV
Counsel for NRC Staff

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PDR ADDCK 05000440
G PDR

Enclosure: As stated

cc w/ encl.: Service List

0507 pl

OFC	:OELD	:OELD	:	:	:	:	:
NAME	:JCutchin:pl	:JGray	:	:	:	:	:
DATE	:11/29/82	:11/29/82	:	:	:	:	:

(DRAFT PREPARED BY COUNSEL FOR STAFF)

MEMORANDUM AND ORDER

(Concerning a Motion to Require Staff Responses to
Discovery About Quality Assurance)

On November 10, 1982 Sunflower Alliance Inc., et al., (Sunflower) filed a motion seeking to have this Licensing Board order the NRC Staff to provide responses to Sunflower's third set of interrogatories (with requests for production of documents). These discovery requests were filed on September 30, 1982 and are addressed to quality assurance matters. Sunflower alleges that it seeks an order because the Staff did not voluntarily respond to its discovery requests and that Sunflower is entitled to responses to those discovery requests under the Commission's Rules of Practice.

Sunflower's motion was discussed in a telephone conference call involving the Chairman of this Licensing Board and representatives of Sunflower, Ohio Citizens for Responsible Energy, Applicants and the NRC Staff on November 23, 1982.

Staff Counsel stated that the Staff had voluntarily responded to the only one of the thirty-five requests set forth in Sunflower's third set that is viewed by the Staff to be within the scope of the quality assurance contention admitted to litigation in this proceeding. He pointed to language in Sunflower's motion which states Sunflower's belief that "[t]he scope of discovery has been broadened to cover all

aspects of the Applicant's Quality Assurance Program;" to language in our Memorandum and Order dealing with objections to our special prehearing conference order which states that "[Sunflower's] license to explore is limited to the [February 1978] stop work order, steps taken to remedy [the] deficiencies that led to that order, and residual deficiencies related thereto" (LBP-81-35, 14 NRC 682, 687 (1981)); and to language in a recent decision of the Appeal Board which states that "the Rules of Practice [do not] permit the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff" and "discovery on the subject matter of a contention [can] be obtained only after the contention [has] been admitted to the proceeding" (Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC ____ (October 1, 1982) (Slip opinion at 32)) to support the Staff's position that the additional discovery sought by Sunflower is not proper and that the Licensing Board should decline to direct the Staff to respond to it.

Counsel for Sunflower stated Sunflower's view that our Memorandum and Order dealing with a motion to enlarge the quality assurance contention (See LBP-82-15, 15 NRC 555, 564 (1982)) had led it to believe that the scope of discovery had been broadened to cover all aspects of quality assurance, but was unable to identify specific language that supports that view. He also was unable to identify any of Sunflower's discovery requests other than the one voluntarily answered by the Staff that would in Sunflower's view be proper under the correct interpretation of our discovery rulings on quality assurance matters. Thus, Sunflower has not demonstrated the relevance of its unanswered

discovery requests to the admitted contention. We are unable to find that the answers to those discovery requests are necessary to a proper decision in this proceeding, and we need not decide whether the answers are reasonably obtainable from other sources. See 10 CFR 2.720(h)(2)(11).

ORDER

For all of the reasons above and based on consideration of the entire record in this matter, it is this ____ day of December, 1982

ORDERED

Sunflower's motion for an order requiring the Staff to answer its third set of interrogatories (with requests for production of documents) 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