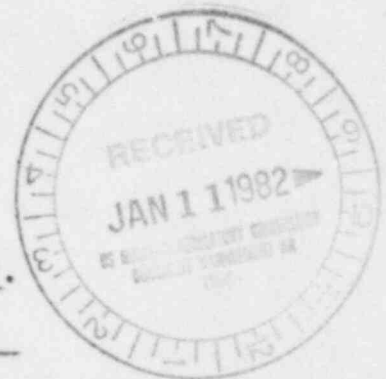


January 7, 1981

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency Management Agency
500 C. Street, S.W.
Washington, DC 20001

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 Mr. Perry:

This letter is to seek your assistance in answering certain interrogatories and document requests addressed by an intervenor group to the NRC Staff. While recognizing that your Agency is not a party to NRC proceedings, we believe that your expertise would be of great assistance in responding to these matters. Such assistance would be consistent with what you have voluntarily agreed to do in the past.

In the ongoing Perry operating license proceeding the presiding Atomic Safety and Licensing Board has admitted the following issue:

Issue #1

Applicants' emergency evacuation plans do not provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

The portions of the Board's Orders of July 28 and September 9, 1981, relevant to this issue, are attached.

We request your assistance in providing responses to the following interrogatories and requests:

Interrogatory 18

NUREG-0654, Rev. 1, at page 2 states:

"FEMA, NRC and other involved Federal agencies intend to use the guidance contained in this document in their individual and joint reviews of State and local government radiological emergency

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response plans and preparedness, and of the plans and preparedness of NRC facility licensees."

Based on this statement, respond to the following:

- a) Identify each and every "other involved Federal agencies" that will review any aspect of radiological emergency response plans and preparedness for the Perry Nuclear Power Plant.
- b) For each such agency named in response to "a" above, demonstrate (by enclosing appropriate copies of correspondence, Federal Register notices, or other appropriate documentation) that each intends to use NUREG-0654, Rev. 1, as guidance for their reviews of radiological emergency response plans and preparedness.
- c) For each agency named in response to "a" above, discuss the technical and legal bases for each such agency to perform its review of radiological emergency response plans and preparedness.

Interrogatory 30

NUREG-0654, Rev. 1, at page 28 states that the inter-relationships between Federal agencies and their roles in radiological emergency response will be defined in a "National Radiological Emergency Preparedness Plan." Fully describe the current status of any such plan, and provide a copy of it. Further, provide for each and every agency included within such a plan a copy of all procedures, manuals, instructions, orders, and any other documentation related to each agency's role and activities under the plan.

Your responses would be of most help if they could be provided to us by close of business on January 15, 1982. If you have any questions, feel free to contact James H. Thessin, Esq., on 492-7443.

Sincerely,

Edward S. Christenbury
Chief Hearing Counsel

Attachments: As Stated

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NRC Docket File
PDR/LPDR
Shapar/Engelhardt
Christenbury/Scinto
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ard F. Cole
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E. Miller, Chairman
STRATIVE JUDGE

Cite as 14 NRC 175 (1981)

LBP-81-26

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

In the Matter of

Docket Nos. 50-440-OL
50-441-OL

CLEVELAND ELECTRIC
ILLUMINATING COMPANY, *et al.*
(Perry Nuclear Power Plant, Units 1 & 2)

July 28, 1981

The Licensing Board issues a special prehearing conference order concerning the admission of parties, motions to dismiss and to stay, admissibility of contentions, and the adoption of special discovery procedures.

RULES OF PRACTICE: JURISDICTION

The Commission has jurisdiction to license nuclear facilities located within the United States. The fact that some emergency planning activities required for licensing may take place in Canada does not deprive the Commission of jurisdiction.

RULES OF PRACTICE: STANDING

An organization whose claim to have standing to intervene is based on residence of members 125 miles from the reactor site is not entitled to standing as a matter of right.

A. Emergency Planning Contentions

(1) The Contentions

There are several related emergency planning contentions. Sunflower alleged:

[T]he emergency and evacuation plans for the subject facilities are fatally defective in numerous respects including but not limited to inadequacy of notification plans; deficiencies in radiation exposure measurement techniques, insufficient practical workability; no agreement with local response organizations as to cost and implementation of plans and inadequate notification of and information to media and residents within the ten (10) and fifty (50) mile radii.

The Lake County Board of Commissioners seeks the Licensing Board's help on the "adequacy" of the emergency response plan which Applicant has submitted to Lake County and wants "to independently verify all monitoring [of possible accidental releases of radioactivity] so that we can adequately provide our citizens with an emergency warning if any dangerous or unsafe releases of radiation from the Perry Nuclear Power Plant occur." Furthermore, Robert E. Martin, president of the Board of Lake County Commissioners, stated at the conference that

the development, capitalization, implementation and maintenance of a workable and adequate emergency response plan is beyond the financial capabilities of Lake County.

(Tr. 145.)

OCRE (3) is a contention that Applicant should distribute potassium iodide to every household within ten miles of the plant in order to help protect the thyroid gland and "help calm citizen fears during a nuclear crisis."

Tod J. Kenney had not particularized his contentions prior to the Special Prehearing Conference. However, at the Board's invitation he managed during the conference to review the emergency planning sections of the FSAR and to present 14 points, complete with detailed references to the FSAR, before the Conference adjourned. (Tr. 596-603). Then, at applicant's request, Mr. Kenney was required to submit his contentions in writing and to serve them on both applicant and staff by Express Mail, which he has done. Mr. Kenney's contentions included a reference to findings by Dr. Edward Radford concerning allegedly increased risks from radiation exposure, and they also include the following allegations that went beyond the allegations of the other intervenors:

†that applicant's FSAR has not clearly defined the criteria used to determine who will receive special attention in an emergency,

†that the method of decontaminating affected persons is not adequately defined,

†that applicant should install off-site monitors with continuous readout of radiation so that it will be able to determine during an emergency whether population exposure levels may have risen to a dangerous level,

†that the Radford calculation of radiation risks should result in recalculation of a variety of parameters of the emergency plan, including definitions of "contaminated areas," "emergency action levels," "plume exposure pathway," "protective action guides," and "emergency planning zones,"

†that during an emergency, monitoring should be expanded to include the human population residing within the ingestion pathway of Iodine 131,

†that offsite radiological monitoring should routinely include samples from the human population, and

†that potassium iodide should be stockpiled at receiving hospitals. (Mr. Kenney's other contentions either reiterated those of other intervenors or, in one instance, did not relate to emergency planning.)

At the conference, Sunflower introduced further specification of its emergency planning contention, including the following points:

†that the City of Mentor has a road pattern with limited numbers of routes in and out, and this would impede efficient evacuation,

†that there are too few buses to serve schools in the emergency planning zone and that there is as yet no agreement with the Regional Transit Authority or other localities to remedy this situation,

†that there are not enough tow trucks, and

†that local volunteer fire fighters might prove inadequate in assisting in the evacuation of people who do not own automobiles.

(2) Arguments Opposing the Contentions

In its brief, prior to the extensive additional particularization which occurred at the conference, Applicant opposed this contention primarily because there was no "basis" and there was a failure to particularize sufficiently by explaining the nature of the alleged deficiencies. Staff concurred in the argument that intervenors' generalized assertions of injury or defectiveness are not admissible.

In the course of the conference, Applicant raised a series of questions concerning the specific facts raised by intervenors, including the adequacy of radiation monitoring and the sufficiency of the number of buses to be

utilized. However, Applicant's principal problem with the contention was that:

They are claiming they do not have enough tow trucks; they don't have school buses; too many schools; too many hospitals. It could just go on forever, and there is really no basis for him saying it's unworkable. How do we draw the line and how do we come up with a specific contention?

(Tr. 188.)

Applicant also was troubled because it is confident that agreements will be reached with localities concerning emergency planning and that the incompleteness of current plans will be remedied. Consequently, Applicant suggested that these were the kind of issues on which new contentions might be admitted later in the proceedings but that it was inappropriate to admit contentions about deficiencies which are likely to be cured. (Tr. 205-208).

In its "Brief on Contentions," filed July 6, Applicant continues to contend that Sunflower relies on "broad, conclusory allegations" that are without basis. (At 6-7.) It also identifies a portion of the record as standing for the proposition that intervenors were criticizing on-site emergency plans rather than the state and local off-site plans, which apparently have not yet been filed. (Brief on Contentions at 7.)

Staff, on the other hand, acknowledges specificity when intervenors attack the number of school buses available for evacuation, the lack of agreements with local counties, the resistance of the counties to financing emergency plans and the inadequacy of evacuation plans for certain hospitals. It asserts that, despite this specificity, there is no "basis" because the contentions rest on the "*ipse dixit* conclusory statement of Sunflower's counsel." (Comments on Contentions at 7.)

Applicant conceded that OCRE's contention concerning potassium iodide was admissible (Tr. 226); but Staff contested the admissibility on the ground that a letter of March 25, 1981, from the Commission to Mr. Lou E. Gurfitta, contained a position of the Commission concerning potassium iodide and precluded this Board from acting on this matter.

With respect to the Kenney contention concerning conclusions reached by Dr. Edward Radford about the effect of radiation on people. Applicant argues that Radford's conclusions diverge from those reached by the majority of the Biological Effects of Ionizing Radiation (BEIR) III report. However, Applicant further argues that even if Radford's conclusions are accepted as true they are consistent with the dose-effect estimates which formed the basis for Commission regulations and for Applicant's emergen-

cy response plans. Hence, Applicant considers that citation to the Radford report does not provide any basis for challenging the emergency planning regulations and that it certainly provides no basis for challenging emergency plans made pursuant to the regulations. (Applicant's Brief at 36-45.) Applicant also makes a variety of specific factual points about specific Kinney contentions. (Ibid.)

For its part, Staff generally agrees with Applicant but argues forcefully that the Radford article relates to a conflict over the shape of the dose-response curve for ionizing radiation and is not new. (Staff Comments at 19.)

(3) Conclusions

Intervenors contentions on emergency planning were not presented as a single contention. However, viewed as a whole, these contentions raise many concerns about the off-site emergency planning process. These contentions, including the separately argued Potassium Iodide issue and the other separate contentions discussed in this section, are admissible as an issue in this proceeding.

In reaching its decision on admissibility, the Board reviewed the specificity factors. (Its review of those factors is set forth below.) For ease of subsequent reference, we shall refer to admitted contentions as "issues." This particular issue has been rephrased by the Board as follows:

ISSUE #1: Applicant's emergency plans do not provide reasonable assurance that appropriate measures can and will be taken in the event of an emergency to protect public health and safety and prevent damage to property.

The contentions combined in this generally phrased issue raised a series of specific factual concerns related to the overall proposition that the emergency plan is not "workable." We interpret these contentions to apply to state and local emergency plans, which have not yet been completed, and to imply that Applicant has not yet filed plans that comply with NRC regulations found in Appendix E to Part 50. In particular, intervenors are understood to have asserted that Applicant has not satisfied the requirement of Section III of Appendix E, that:

[Applicant must] ... demonstrate that the [emergency] plans provide reasonable assurance that appropriate measures can and will be taken in the event of an emergency to protect public health and safety and prevent damage to property.

Intervenors also may be inferred to be alleging that Applicant has not complied with the joint Commission-Federal Energy Management Agency *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants* (NUREG-0654; FEMA-REP-1; Rev. 1) at 56, 58 (criteria 8 and 9).

We have considered Staff's argument that an intervenor should not be permitted to establish basis through statements of counsel. (See Tr. 188, where Applicant appears to agree with this argument.) Were this argument limited to technical conclusions, it would be more persuasive. For example, we would be unlikely to accept a bare contention on stress corrosion cracking unsupported by any statement of authority. On the other hand, the regulations on emergency planning require that there be "reasonable assurance" of "appropriate measures." These are broad standards subject to differences of opinion. The Lake County Disaster Services Agency, which has official planning responsibilities, made a statement supportive of portions of the contentions included in this issue. (Tr. 224-225, 144-150.) There are other experts in emergency planning whose opinion may have special evidentiary weight, but this is a subject on which even the man in the street may have a credible opinion. We see no reason to require, at this stage of the proceeding, that intervenors disclose the experts they will call as witnesses or that they otherwise disclose their evidence on an issue in which opinion plays so important a part. Such a requirement would exceed the standard established in *Grand Gulf*.

We also reject Applicant's plea to delay ruling on this contention. (See Tr. 216.) Intervenors have given reasons for concern about the adequacy of the local plan which will be filed. Furthermore, they are required to file contentions now. If they find a current deficiency, it seems appropriate to admit the contention subject to dismissal through summary judgment if the deficiency is not cured.

There is one aspect of the emergency planning contentions which is not admissible. One of the arguments made by Sunflower at the hearing appeared to challenge the suitability of the Perry site because of the highway patterns in Mentor. We do not believe that this contention properly raises the issue of site suitability, which was litigated at the construction permit stage.

However, we reject Staff's argument that the contention relating to potassium iodide is barred because of the content of a letter of March 5, 1981 sent to Mr. Lou E. Gurfitta by the Commission. (Tr. 226-230.) That letter, which was not published for notice and comment and did not specifically bind this Board, simply refused to endorse use of potassium iodide at present. (Tr. 228.) Applicant does not consider this letter binding

on the Board. (Tr. 230.) The Board does not consider itself bound, and the potassium iodide considerations are therefore admissible.

In reviewing the specificity factors, we determined that Issue #1 satisfied specificity factor (1) because intervenors collectively demonstrated knowledge of Applicant's emergency plans, including a knowledge of the planning process and of the relationship between the proposed plan and the requirements of the surrounding community. This knowledge is not surprising. Intervenors live in the area of Perry, are well versed in its traffic patterns and facilities, and have raised a number of specific factual issues which, if accepted as true, cast substantial doubt on the overall workability of the emergency plan. Applicant's argument that petitioners did not understand the limited applicability of the on-site emergency plan included in the FSAR does not convince us that this contention should be excluded.

Factor (2) is satisfied because Applicant knows what is being challenged. We do not interpret the requirement of specificity of contentions to mean that only narrow issues can be raised. When, as here, intervenors challenge the overall workability of an emergency plan, together with making a number of narrower assertions concerning why it will not work, they cannot be barred from their broader contention on the ground that it is not specific. In the course of the special prehearing conference, Applicant and Staff learned specifically what intervenor asserts. That the assertion is broad does not prevent it from being asserted with specificity.

Factor (3) is satisfied because intervenors' specification of a number of emergency plan particulars provided a reasoned basis for their overall challenge to the workability of the plan. It is not necessary at this point for us to inquire into the truthfulness of each of the particulars. Indeed such an inquiry would place us in the position of disregarding *Grand Gulf* and *Allens Creek*. While providing a "reasoned basis" for a technical contention may at times require citation to a plausible authority, a reasoned basis does not always require a citation. The workability of an emergency plan is the kind of issue on which knowledgeable local citizens can form a reasoned opinion. In particular, the Lake County Disaster Services Agency has participated in raising doubts about the workability of the emergency plan; and we do not think it appropriate to reject that Agency's opinion, particularly at this early stage of the proceedings.

Factor (4) is not applicable because the issue of prior litigation has not been raised. Factor (5) is not applicable because intervenors' contentions could affect the outcome of the proceeding decisively. The regulations require a workable emergency plan. Factor (6) is not applicable because there was no showing of technical shortcomings of many parts of intervenors' showings.

On the other hand, the admission of Issue #1 should not be interpreted as endorsing the accuracy of intervenors assertions or the relevance of the Radford conclusions, which Mr. Kenney cited. In particular, intervenors will need to show the relationship between the Commission's emergency planning regulations and evidence concerning increased estimates of the somatic effects of radiation.

The admission of this broad issue should not necessarily be interpreted as foreshadowing a full evidentiary hearing on this entire subject. Parties have available a motion for summary judgment, and that procedure may be used to pare down this issue before hearing. The standard provided in the rules for application to a motion for summary judgment is more rigorous than the standard applicable to the admission of contentions.

B. Financial Responsibility Contentions

(1) The Contentions

Sunflower alleged that Applicant lacks the financial resources to complete, operate and decommission the Perry units. The principal source of its concern arises from alleged construction cost increases from a planned total cost of \$1.2 billion to current cost projections of \$3.85 billion. (Tr. 235.) Sunflower cites Charles Kominov, an economist, for the proposition that the actual completed costs of Perry will be about \$5.25 billion. (Tr. 236.) Additionally, Sunflower states that there has been "a very substantial change in the circumstances [and] ... methods of financing and the overall characteristics of the cash flow requirements" of Applicant. (Ibid.) It cites a General Accounting Office study, EMD 8125, for the proposition that the utility industry in general has experienced a capital crunch arising from construction delays, sagging sales and sharply rising fuel costs. (Tr. 240.) It questions whether Applicant may have suffered financially from its participation in the Davis-Besse nuclear power plant, whose construction costs are alleged to have increased from a \$136 million original estimate to \$650 million. (Tr. 241.)

According to Sunflower, the Ohio utilities commission applies a rule which disallows from a utility rate base the cost of work in progress, prior to 75 percent completion of construction. (Ibid.) Since both Perry units are less than 75 percent complete, this is alleged to have an important financial impact on Applicant and its partners in financing Perry. (Tr. 241-242.) Indeed, one of the partners, the Penn Power Company, is alleged to be having financial difficulties that could prevent it from accepting its full share of the financing responsibilities. (Tr. 261-262)

Backfitting of plants since the Three Mile Island accident has been a substantial expense, and Sunflower alleges that there is a need to anticipate the need to finance further backfits in the future. (Tr. 242.) Furthermore,

the abandonment of recent nuclear power projects in the area was cited as an indication that such projects are generally now far less attractive financially than they have been in the past. (Tr. 244.)

Applicant's ability to provide properly for decommissioning is challenged by Sunflower because the size of the decommissioning surcharge imposed by the Public Utility Commission of Ohio has allegedly become inadequate due to inflation. (Tr. 245-246.) OCRE (7), a related contention, expresses the following broader concern with decommissioning:

In the aftermath of a *TMI*-type accident, Applicant's solvency would be imperative for the health and safety of OCRE members and the public. Applicant will need to promptly institute clean-up procedures to reduce further public jeopardy while maintaining containment integrity throughout that clean-up. The current financial straits of General Public Utilities (*TMI*) demonstrate that responsible and safe operation of a nuclear plant includes adequate preparation for such contingencies.

[Emphasis in original.]

This contention, which the Board interprets to relate to clean-up as well as decommissioning, is buttressed by an OCRE concern that the public has suffered a series of "rotating rate hikes" and that the utility could not look to the public for further increases to pay for a clean-up, should one be needed. (Tr. 250-251.)

(2) Arguments Opposing the Contentions

Applicant contends that its financial ability to complete construction is irrelevant at the operating license stage. It cites 10 C.F.R. § 50.33(f) as controlling. That section states:

If the application is for an operating license [for a commercial or industrial facility, the applicant shall show that it] ... possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated costs of operation for the period of the license ... plus the estimated costs of permanently shutting the facility down and maintaining it in a safe condition.

Applicant also argued in the course of the Conference that this section must be interpreted in light of Part B of Appendix C, which states:

[I]t will ordinarily be sufficient to show at the time of filing of the application, availability of resources sufficient to cover estimated operating costs for each of the first 5 years of operation plus the estimated costs of permanent shutdown and maintenance of the

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
55
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

CLEVELAND ELECTRIC ILLUMINATING COMPANY,

ET AL

(Perry Nuclear Power Plant, Units 1 & 2)

Docket Nos. 50-440-OL
50-441-OL

September 9, 1981

MEMORANDUM AND ORDER

CONCERNING THE STATUS OF ASHTABULA COUNTY AND
OBJECTIONS TO THE SPECIAL PREHEARING CONFERENCE ORDER

Sunflower Alliance, Inc., et al. (Sunflower), Cleveland Electric Illuminating Company, et al. (Applicant) and the Staff of the Nuclear Regulatory Commission (Staff) have filed objections to our Special Prehearing Conference Order of July 28, 1981. In addition, the Ashtabula County Commissioners and the Ashtabula County Disaster Agency (Ashtabula) have petitioned for admission as parties participant pursuant to 10 CFR §2.715(c). The purpose of this memorandum and order is to analyze and resolve these motions.

I OBJECTIONS OF SUNFLOWER

A. Need for Power

Sunflower objects to the exclusion of its contentions regarding the need for power and airplane crash probabilities.

contentions. We also called for "reasons, supported by legal authorities, why issues included in the petitions should be considered relevant", but Sunflower did not make such a filing.)

We wish to reassure Sunflower that we welcome its participation in this proceeding and do not derogate its potential contribution. On the other hand, these will be tough minded proceedings with difficult scientific and legal issues to resolve. When we set filing deadlines and request that specific briefs be filed, our requests are made in the interest of obtaining potentially valuable assistance in deciding issues correctly. However difficult it may be for Sunflower to marshal its volunteers to fulfill these assigned tasks, we urge it to strain to do so. Sunflower's success in informing the Board of its point of view will depend on its industry in complying fully with the Board's orders.

II OBJECTIONS OF APPLICANT

A. Emergency Planning

Applicant objects to the emergency planning contention accepted by the Board as Issue #1 on two grounds. First, it objects to the inclusion within the contention of the assertions of Tod J. Kenney. Second, it objects to the breadth and alleged vagueness of the contention.

First, we do not consider Mr. Kenney's petition to be untimely. His initial filing of March 23, 1981, noticed his concern about "emergency plans". Although he failed to particularize his contentions prior to the conference, we note that he is without counsel. We note also that certain issues which he raised seemed to us to be important safety contentions. Consequently, we are loathe to make any ruling which would deprive this

proceeding of his potentially valuable contribution. Mr. Kenney should understand that in the succeeding portions of this proceeding there will be no excuses. (See Public Service Electric & Gas Co., Salem Nuclear Generating Station 6 AEC 487, 489 (1973).) We are interested in solid legal and factual argumentation, filed within established deadlines. Only by meeting our requirements will Mr. Kenney be able to demonstrate the validity of his views.

As to breadth and vagueness, our reasons for admitting such a broad (but not vague) contention are adequately stated in our prior order. Intervenor added specificity both in their filings and at the prehearing conference. On the other hand, Applicant's point in footnote 8 to its pleading is well taken: the contention should track the latest version of 10 CFR 50 Appendix E. We also agree that the issue should be limited to emergency evacuation plans. As discovery proceeds, we will expect intervenors, Staff and Applicant to further refine these issues and, where possible, to eliminate matters by stipulation. Issue #1 should read:

ISSUE #1: Applicant's emergency evacuation plans do not demonstrate that they provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.

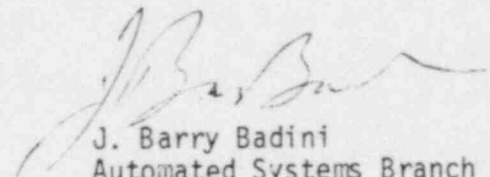
We also wish to clarify some procedural points relating to discovery and admissibility for hearing, both for this issue and for others where we have indicated that intervenors still bear some burden prior to the hearing. First, we urge the parties to meet informally in order to make the discovery process workable. Second, we expect the parties to consider in good faith whether to stipulate that certain facts are genuinely in dispute and should be included in the hearing. Third, if issues where intervenors bear a burden of proof are subject to motions for summary disposition, the

- Private Libraries (page 53) - please note that private libraries under EASY READER may not be stored on the MSS.
- WATFIV (page 55) - a new version of the WATFIV FORTRAN compiler will be installed on January 18, 1982.
- PL/1 (page 56) - on February 1, 1982, Release 4.0 of the PL/1 optimizing compiler will become the production version.

As usual, there is a shortage of on-line space on the dedicated NRC packs AEC001, NRC001, and NRC002 (86, 164, 119 free tracks respectively). Past memorandums have conveyed our instructions and intentions on the monitoring of static data sets. Upon submitting the next pack condense procedures, static data sets are subject to being scratched without notice. To again assist the user community in monitoring their data sets, the Office of Management and Program Analysis (MPA) has developed a WYLBUR Command Procedure (CP) that will list all data sets on the aforementioned packs (with the DATED option) and all data sets on the NIH public packs. Printing locations for the resulting output are Remote 14 or Central. This CP can be modified to print at any desired location. The CP can be accessed under WYLBUR as follows:

"USE FROM &WDCIBAD.LISTDS ON CAT"
"EXECUTE" (EX will suffice)

If there are any questions or assistance is needed, please do not hesitate to contact me on 492-8332.



J. Barry Badini
Automated Systems Branch
Office of Management and
Program Analysis