

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Before the Atomic Safety and Licensing Board

In the Matter of)

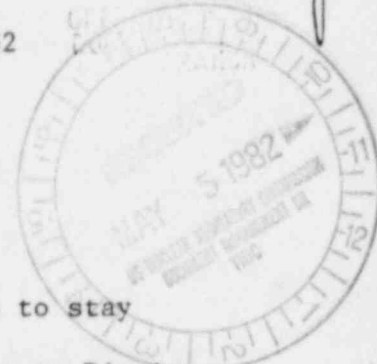
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY, et.al.,)

(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-440⁸² MAY -3 P3:59
50-441 *emp*

April 29, 1982

MOTION TO STAY DISMISSAL
AND MEMORANDUM IN OPPOSITION
TO MOTION TO DISMISS
FINANCIAL QUALIFICATIONS CONTENTION



Now comes Sunflower Alliance, Intervenor herein, and moves to stay dismissal of Issue #2 and to submit its opposition to the "Motion to Dismiss Financial Qualifications Contention" which Applicant filed on or about April 7, 1982.

Sunflower is mindful of 10 CFR §2.758(a)'s injunction to this Board. Nevertheless, by dismissing this contention, the Board would be sanctioning the ultra vires violation of federal law by the Commission.

The leading federal court interpretation of 42 U.S.C. §2232(a), New England Coalition on Nuclear Pollution v. NRC, 582F.2d87 (1978), does indeed recognize a discretion in the NRC to decide what financial qualifications are appropriate. But the flaw in the NRC's logic in repealing the financial qualifications regulations is that the statute mandates the standard of a "reasonable assurance" of financial capability. In other words, the NRC does not have discretion to order itself to have no discretion, and may not re-legislate its role.

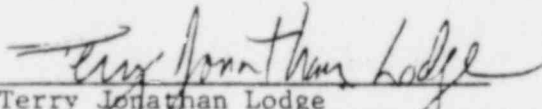
Sunflower will soon be petitioning, as an intervenor, for federal court review of the NRC final rule issued March 31, 1982 on this issue, and hereby formally moves the Board to stay any ruling on Applicant's Motion pending outcome of that review.

Sunflower further believes that the immediate effectiveness of the new regulations derogates the standards for such set forth in 10 CFR §2.807

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and the Administrative Procedure Act, and that the regulations are thus procedurally defective as well.

WHEREFORE, Sunflower respectfully prays the Board either to withhold any ruling dismissing Issue #2 pending outcome of federal Court review of the March 31, 1982 regulations, or alternatively, to deny Applicant's Motion.


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CERTIFICATION

I hereby certify that a copy of the foregoing "Motion to Stay Dismissal and Memorandum in Opposition to Motion to Dismiss" was sent by me via regular U.S. Mail, postage prepaid, this 29th day of April, 1982, to the parties on the attached "Service List."


Terry Jonathan Lodge

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