

specificity so that the parties are on notice as to what they must defend against or address.^{4/}

BACKGROUND

The Atomic Safety and Licensing Board (Licensing Board) admitted the quality assurance contention as an issue in this proceeding in its July 28, 1981 Special Prehearing Conference Memorandum and Order.^{5/}

The admitted contention was framed as follows:

Issue #3: Applicant has an inadequate quality assurance program that has caused or is continuing to cause unsafe construction.

On September 9, 1981, the Licensing Board issued a Memorandum and Order^{6/} that limited Issue #3 to the quality assurance implications arising from the February 1978 Stop Work Order issued to Applicant and the steps taken by it to remedy the alleged deficiencies leading to the issuance of the Stop Work Order. The Licensing Board also provided that Sunflower would "not be permitted to launch a generalized attack on the applicant's entire quality assurance program. Its license to explore is limited to the stop work order, steps taken to remedy [those] deficiencies that led to that order, and residual deficiencies related thereto."^{7/}

^{4/} Philadelphia Electric Co. (Peach Bottom, Unit 3), ALAB-216, 4 AEC 13, 20-21 (1974).

^{5/} LBP-81-24, 14 NRC 175, 210 (1981).

^{6/} LBP-81-35, 14 NRC 682 (1981).

^{7/} Id., at 687.

On January 8, 1982, Sunflower filed a motion to expand the quality assurance contention to include alleged deficiencies that occurred subsequent to the February 1978 stop work order.^{8/} Sunflower therein provided a list^{9/} of certain items of non-compliance and unresolved items identified in NRC inspection reports from February 1978 to approximately January 1982.

The Staff, in its response,^{10/} opposed the granting of the motion because the general allegations were based on a large number of NRC inspection reports and did not provide an adequate basis for expanding the contention. Staff asserted that no nexus between deficiencies in construction and defects in a quality assurance program had been established by the filing of deficiency reports without further explanation.^{11/} The Staff stated that the requirement of 10 C.F.R. § 2.714(b) that a contention possess a specifically articulable basis is vital to the integrity of the NRC's hearing process, and a party cannot be expected to litigate and bear the burden of proof on an issue that has not been clearly framed. The Staff maintained that the submission of an unexplained laundry list of NRC inspection reports provides no basis for a proposed contention.

^{8/} "Intervenor Sunflower Alliance, et al., Motion To Expand Quality Assurance Contention," dated January 6, 1982.

^{9/} Id., at 2-13.

^{10/} "Response of NRC Staff To Motions of Sunflower Alliance To Resubmit Hydrogen Control Contention and To Expand Quality Assurance Contention," dated January 28, 1982. (Response)

^{11/} Id., at 12-14.

On March 3, 1982, the Licensing Board issued a Memorandum and Order^{12/} where it held that Sunflower's January 8, 1982 motion to enlarge the scope of Issue #3 was not ripe for adjudication. The Order explained that Sunflower was already permitted to engage in discovery relevant to its contention or to applicant's defense including recent deficiencies that may be related to the effectiveness of the steps taken to remedy the deficiencies. Relevance was broadly interpreted, and the Licensing Board concluded that "it was doubtful that serious discovery requests, related to safety or environmental consequences of quality deficiencies would be irrelevant to the admitted contention."^{13/} The Licensing Board also held that Sunflower may add to its contention, if necessary, by offering genuine issues of fact relevant to its contention, and if the genuine issues of fact have important safety significance, they may be admitted as newly discovered material. The Licensing Board said that new material uncovered during discovery may at that time form the basis for a new contention, and while Sunflower's motion contained many alleged quality assurance deficiencies, not all had safety significance that would form the basis for enlarging the contention at a subsequent time. Thus, ruling on expansion of the contention was deferred until the Licensing Board could be more fully informed of the available evidence.^{14/}

^{12/} Memorandum and Order (Concerning Late-Filed Contentions: Quality Assurance, Hydrogen Explosion, and Need for Increased Safety of Control Systems Equipment), dated March 3, 1982 (slip op.).

^{13/} Id. at 12.

^{14/} Id.

III. DISCUSSION

Sunflower bases this second motion for expansion of the quality assurance contention on the existence of additional evidence it has provided in an Appendix to its motion. Staff asserts that this Appendix is simply another unexplained laundry list of NRC inspection reports and newspaper articles similar to the list Sunflower filed on January 8, 1982. Sunflower has again failed to provide any explanation of how the enumerated items establish construction deficiencies that are the result of an ineffective quality assurance program. The fact that deficiencies have been reported and are in the process of being corrected, such as the noted unresolved items, does not indicate a deficient quality assurance program. As the Licensing Board Memorandum noted, a "good, working quality assurance program identifies deficiencies for correction."^{15/}

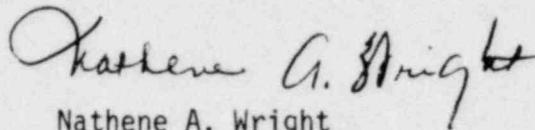
Thus, the Staff position with regard to this type of laundry list evidence has not changed since its January 28th Response to Sunflower's first motion to expand. As stated earlier, the Licensing Board in its March 3rd Memorandum and Order provided Sunflower's motion to expand was not ripe for adjudication until there was additional discovery. Sunflower has not submitted additional interrogatories or engaged in any additional discovery that would further develop their previous quality assurance allegations. Moreover, with respect to Sunflower's assertion of the need to expand the contention to permit unlimited discovery, the Licensing Board has already permitted a very broad scope of discovery.

^{15/} LBP-81-24, 14 NRC at 211.

IV. CONCLUSION

For the reasons stated above, Sunflower's motion to expand the quality assurance contention should be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "Nathene A. Wright". The signature is written in dark ink and is positioned above the typed name and title.

Nathene A. Wright
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11 day of August 1982.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SECOND MOTION OF SUNFLOWER ALLIANCE, INC. ET AL., TO EXPAND QUALITY ASSURANCE CONTENTION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of August 1982:

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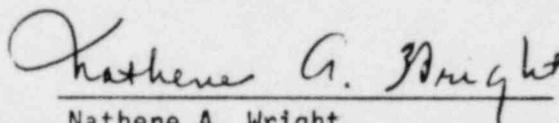
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