

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

Before Administrative Judges:

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

OFFICE OF SECRETARY  
OPERATING & SERVICE  
BRANCH

In the Matter of

Docket Nos. 50-440-0L  
50-441-0L

CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, et al.

SERVED OCT 20 1982

(Perry Nuclear Power Plant, Units 1 & 2)

October 19, 1982

MEMORANDUM AND ORDER

(Concerning a Motion to Compel Answers About Emergency Planning)

On September 10, 1982, Sunflower Alliance Inc., et al., (Sunflower) moved to compel Cleveland Electric Illuminating Co., et al., (applicant) to respond to its second set of interrogatories, which it had filed on May 12, 1982. This is our second decision concerning a motion to compel answers to interrogatories that are relevant to Emergency Planning issues. Our first decision, LBP-82-67, 15 NRC \_\_\_\_\_ (August 18, 1982) established certain principles that we will apply to the pending motion. See also LBP-82-15, 15 NRC 555 (1982) at 564.

There have been some interrogatories covered by the motion to compel that are no longer in dispute either because of restrictions suggested by applicant and agreed to by Sunflower or because applicant has agreed to answer. This decision will not discuss those interrogatories.

I RADIOACTIVE IODINE RELEASES

Interrogatory 56 seeks information describing and evaluating the effectiveness of safeguards applicant is planning to use to reduce the release of radioactive iodine during a nuclear accident. Applicant objects to

the interrogatory as too broad because it inquires in depth into a nuclear plant system.

We previously have applied a rule of reason to emergency planning interrogatories. In a sense, many plant systems could be thought to be related to emergency planning, either because they relate to the ability of plant operators to diagnose plant conditions effectively or because they relate to the degree of risk to which an emergency plan is addressed. However, we do not believe that a contention about the workability of an emergency plan should become a license to explore every facet of plant operation.

In this instance, however, intervenors have contended that applicant should distribute potassium iodide (KI), a blocking agent which slows the accumulation of radioactive iodine in the thyroid. Furthermore, applicant has not indicated whether it might defend the KI contention by taking credit for the iodine mitigation devices that Sunflower seeks information about. If applicant takes credit for these devices, we would consider these interrogatories to be relevant. If, on the other hand, applicant stipulates that it takes no credit for these devices, we would consider the information irrelevant. Consequently, our order on this aspect of the motion to compel will contain a contingency, resulting in a grant of the motion unless applicant promptly stipulates that it takes no credit for the iodine mitigation devices.

We note that the potassium iodide issue is under consideration by the Commission, which may issue a policy statement on the subject. SECY-82-396 (September 27, 1982). However, the effect of such a statement on this proceeding has not been addressed by the parties, and we would need to be briefed on that subject before we would act. In particular, we would seek advice from the parties concerning the relationship of the policy statement to other regulations and Commission guidance and we also would need advice about whether we should examine the State plan to see whether it complies with the suggestions of the Commission concerning "other considerations and

problems to be evaluated by the State and local authorities." Id. at enclosure 3, p. 4.

## II CONSEQUENCES OF EVACUATION ESTIMATES AND ACCEPTABLE EVACUATION TIMES

Question 59 asks for the consequences associated with various evacuation time estimates, but we note that applicant is correct in stating that Sunflower has not specified the circumstances accompanying the accident, including the type of accident and prevailing meteorological conditions. Consequently, if applicant were to respond to the question more fully, it would be necessary for it to hypothesize a variety of conditions and to provide a matrix of responses. We do not think it necessary for the applicant to exercise such creative ingenuity, amounting to the conducting of research and development. Sunflower must phrase the question, not the applicant.

Applicant has a similar objection to Sunflower's complaint about the inadequacy of its response to Question 60. The highest evacuation time estimate acceptable to applicant would necessarily depend on the characteristics of the accident, which Sunflower has not provided.

We note, as well, that while applicant claims to have responded fully to these questions, Sunflower has not demonstrated the relevance of these questions to our satisfaction. The regulations require applicant to have a workable plan. Although the purpose of such a plan is to reduce dose exposure to the public, applicant is not permitted to avoid its planning obligation by proving that radiation releases will not occur and evacuation will not be needed. Furthermore, the regulatory materials provide extensive evaluation criteria concerning the acceptability of an emergency plan, but we have not been shown any criteria affected in any way by estimates of the type Sunflower is seeking. There are many criteria applicant is required to meet before being granted an operating license, but we do not know of any criteria related to the consequences of evacuation time estimates or to applicant's opinion about what evacuation estimates are acceptable.

Consequently, the motion to compel answers to questions 59 and 60 shall be denied.

### III CONSEQUENCE ANALYSES

Sunflower seeks, in interrogatories 61 and 62, to obtain information about analyses of the consequences of nuclear accidents at Perry. We consider these interrogatories irrelevant, for the following reasons, supplied to us by applicant:

What applicants are required to show is that there is a workable off-site emergency evacuation plan--that is, a plan that will safely evacuate the residents within the plume exposure pathway Emergency Planning Zone, or a selected portion thereof. The evacuation time estimate study is developed not to show that the evacuation will "outrun" all accidents under all conditions, but, rather, as a planning tool to enable the responsible officials in time of an emergency to determine whether an evacuation should be ordered or some other protective action taken. As recently stated by the licensing Board in Diablo Canyon, "[t]he purposes for evacuation time estimates are to identify transportation routes for which traffic control planning is needed and to provide time estimates which enable decision makers to choose between sheltering and evacuation as protective actions." Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Initial Decision, slip op. at 173 (August 31, 1982). If the consequences of a particular accident are so serious that evacuation is not feasible, the off-site emergency evacuation plan does not thereby become unworkable. It simply means that evacuation is not the desirable protective measure.

Applicant's Answer at 7-8.

### IV FEASIBILITY OF TOTAL EVACUATION AND NEED FOR EVACUATION OUTSIDE EPZ

Intervenors have not provided any meritorious reason to compel a response to its interrogatories 63 and 64. We have already ruled that the ingestion pathway is beyond the scope of the admitted contention. LBP-82-67, 15 NRC \_\_\_\_\_ (August 18, 1982). Furthermore, the existence of a petition for rulemaking has no logical relevance whatsoever to the relevance of these interrogatories to Perry and there is no apparent relevance to "applicant's opinion" about the possibility of ordering an evacuation beyond

the EPZ. Consequently, the motion is denied with respect to these two interrogatories.

#### V ACCEPTABLE LEVEL OF RISK

Interrogatory 69, dealing with acceptable levels of risk and "uppermost numbers of health effects" is not relevant to this emergency planning contention. The radiological consequences of nuclear accidents are not drawn into question by this emergency planning contention.

Sunflower should not be confused by the apparently parallel proceeding concerning Indian Point. See, e.g., CLI 82-25, September 17, 1982. In that special proceeding, consideration is being given to allegations of extraordinary risks that might require modification of the plant or the emergency plan for that plant. Hence, the Board is required to look into the overall risks, including probabilities and consequences, from operating that plant. In that case, because consideration is being given by the Commission to modifying the effect of the regulations, radiological consequences are being considered. Here, those consequences are irrelevant to the question being considered in this case: whether the emergency planning regulations are being complied with.

#### VI LIQUID PATHWAY

Sunflower has not made any effort to demonstrate the relevance of interrogatory 80 to the admitted contention or the regulations. There is no indication that it has exercised the self-discipline we expect of all parties: to require this Board to decide only genuine issues. We expect the parties to apply strict, logical tests to their own filings and to call on Board decisions only where those decisions are needed.

O R D E R

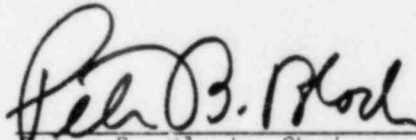
For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 19th day of October, 1982,

ORDERED

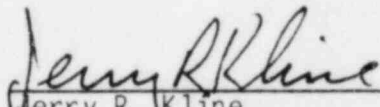
(1) Cleveland Electric Illuminating Company, et al., (applicant) may promptly stipulate that it will not claim credit for any engineered safeguards as part of its defense to the subcontention that potassium iodide should be distributed to the public. If applicant does not so stipulate than it shall respond promptly and completely to Sunflower Alliance Inc., et al.'s (Sunflower) Interrogatory 56, which is part of Sunflower's Second Set of Interrogatories to Applicants.

(2) In all other respects, Sunflower's Motion to Compel Applicant to Answer Second Set of Interrogatories 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