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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Before the Atomic Safety and Licensing Board

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

APPLICANTS' MOTION FOR LEAVE TO FILE ANSWER TO  
"REPLY BRIEF OF SUNFLOWER ALLIANCE, INC."  
IN SUPPORT OF MOTION TO SUBMIT AN ADDITIONAL CONTENTION"

On October 19, 1982, Sunflower Alliance, Inc. et al. ("Sunflower") filed a reply to the answers of Applicants and the NRC Staff to Sunflower's motion to submit an additional contention regarding Applicants' shift rotation.

Although Sunflower's reply contains a number of legal and factual arguments which Applicants believe are incorrect, only one matter appears to warrant comment. That matter is Sunflower's characterization of the references Applicants cited to demonstrate Sunflower's lack of timeliness. This characterization is Sunflower's only response on untimeliness. As shown in the attached Answer, Sunflower's characterization is simply incorrect. Indeed, Sunflower's counsel acknowledged to Applicants' counsel that he had not even read these references.

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In its Memorandum and Order (Concerning Procedures for Late-Filed Contentions), dated October 6, 1982, the Licensing Board stated that it would permit Applicants to respond when an intervenor "introduces material that is entirely new". Slip op. at 3. While the articles which Sunflower characterizes are not "entirely new" (Applicants having cited them in their reply), Sunflower's characterization of them is. While an argument could be made that Sunflower's characterization of the cited references is not "material that is entirely new", the reply being requested here is the only way to correct a factually incorrect statement that goes to the heart of Sunflower's timeliness argument. Unlike legal citations to which the Licensing Board has obvious access, the references cited in Applicants' Answer may not be readily available. The Licensing Board thus may have no way to test the accuracy of Sunflower's characterization, absent a response by Applicants.

For the reasons set forth above, Applicants respectfully request leave to file the attached answer.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

BY: \_\_\_\_\_

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