

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

DOCKETED
USNRC

'82 DEC -9 A9:28

Before Administrative Judges:
Peter B. Bloch, Chairman
Dr. Jerry R. Kline
Mr. Frederick J. Shon

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In the Matter of
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, et al.

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

(Perry Nuclear Power Plant, Units 1 & 2)

December 8, 1982

MEMORANDUM AND ORDER
(Concerning Discovery Against the Staff of the Commission)

On November 23, 1982, the Chairman of the Atomic Safety and Licensing Board (Board) conducted a telephone conference with representatives of Sunflower Alliance, Inc., et al., (Sunflower) Ohio Citizens for Responsible Energy (OCRE), Cleveland Electric Illuminating Company, et al. (applicant) and the Staff of the Nuclear Regulatory Commission (staff).

In the course of that conference, the parties argued the merits of a motion filed by Sunflower in order to obtain information from the staff concerning its Quality Assurance Contention. The Chairman then denied the motion and explained his reasons. However, since the motion was made in writing, the regulations require a written order concerning the motion, so the Chairman requested the prevailing parties to submit a suggested order. On November 29, 1982, the staff submitted an order in response to our suggestion. Since that order faithfully reflects the Chairman's reasoning and represents the views of the Board, the remainder of our order is a verbatim adoption of the staff's suggestion:

On November 10, 1982 Sunflower Alliance Inc., et al., (Sunflower) filed a motion seeking to have this Licensing Board order the NRC Staff to provide responses to Sunflower's third set of inter-

rogatories (with requests for production of documents). These discovery requests were filed on September 30, 1982 and are addressed to quality assurance matters. Sunflower alleges that it seeks an order because the Staff did not voluntarily respond to its discovery requests and that Sunflower is entitled to responses to those discovery requests under the Commission's Rules of Practice.

Sunflower's motion was discussed in a telephone conference call involving the Chairman of this Licensing Board and representatives of Sunflower, Ohio Citizens for Responsible Energy, Applicants and the NRC Staff on November 23, 1982.

Staff Counsel stated that the Staff had voluntarily responded to the only one of the thirty-five requests set forth in Sunflower's third set that is viewed by the Staff to be within the scope of the quality assurance contention admitted to litigation in this proceeding. He pointed to language in Sunflower's motion which states Sunflower's belief that "[t]he scope of discovery has been broadened to cover all aspects of the Applicant's Quality Assurance Program;" to language in our Memorandum and Order dealing with objections to our special prehearing conference order which states that "[Sunflower's] license to explore is limited to the [February 1978] stop work order, steps taken to remedy [the] deficiencies that led to that order, and residual deficiencies related thereto" (LBP-81-35, 14 NRC 682, 687 (1981)); and to language in a recent decision of the Appeal Board which states that "the Rules of Practice [do not] permit the filing of a vague, unparticularized contention, followed by an endeavor to flesh it out through discovery against the applicant or staff" and "discovery on the subject matter of a contention [can] be obtained only after the contention [has] been admitted to the proceeding "(Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC _____ (October 1, 1982) (Slip opinion at 32)) to support the Staff's position that the additional discovery sought by Sunflower is not proper and that the Licensing Board should decline to direct the Staff to respond to it.

Counsel for Sunflower stated Sunflower's view that our Memorandum and Order dealing with a motion to enlarge the quality assurance contention (See LBP-82-15, 15 NRC 555, 564 (1982)) had led it to believe that the scope of discovery had been broadened to cover all aspects of quality assurance, but was unable to identify specific language that supports that view. He also was unable to identify any of Sunflower's discovery requests other than the one voluntarily answered by the Staff that would in Sunflower's view be proper under the correct interpretation of our discovery rulings on quality assurance matters. Thus, Sunflower has not demonstrated the relevance of its unanswered discovery requests to the admitted contention. We are unable to find that the answers to those discovery requests are necessary to a proper decision in this proceeding, and we need not decide whether the answers are reasonably obtainable from other sources. See 10 CFR 2.720(h)(2)(ii).

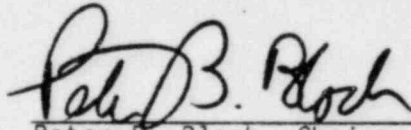
ORDER

For all the foregoing reasons above and based on consideration of the entire record in this matter, it is this 8th day of December, 1982,

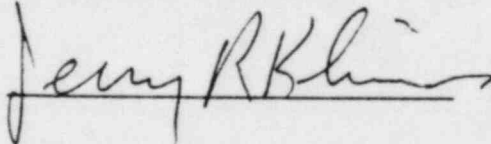
ORDERED

Sunflower's motion for an order requiring the Staff to answer its third set of interrogatories (with requests for production of documents) is denied.

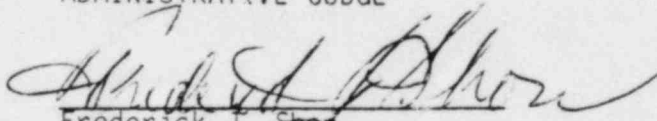
FOR THE
ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE



Jerry R. Kline,
ADMINISTRATIVE JUDGE



Frederick J. Shon
ADMINISTRATIVE JUDGE

Bethesda, Maryland