

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Atomic Safety and Licensing Board

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In the Matter of)
)
CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET. AL.)
)
(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-440
50-441
REGISTRATION & SERVICE
BRANCH (OL)

REPLY BRIEF OF SUNFLOWER ALLIANCE, INC.

IN SUPPORT OF MOTION TO SUBMIT AN ADDITIONAL CONTENTION

Intervenor Sunflower Alliance believes that Staff and Applicant arguments against the additional contention submitted on September 10, 1982 do not bar the admission of this contention.

Sunflower has demonstrated good cause for late filing due to the July 31 Science News article. The articles cited by Applicant deal with health dangers to shift workers; although this undoubtedly occurs, Sunflower's contention did not address the health of Perry plant workers. Rather, it dealt with possible threats to public health and safety posed by errors made by plant operators who must work unnatural shifts. Unlike the references Applicant cites, the Science News article specifically addresses shift worker performance in industries involving public safety.

The NRC Staff cannot be expected to protect Sunflower's interest with respect to this issue. IE Circular 80-02, which Applicant cites, does not address shift rotation, but, instead, only refers to maximum working hours. The Science News article states that "NRC regulations currently pay no attention to circadian principles."

The fact that NRC regulations do not include this issue clearly renders groundless the staff's argument that this contention is a challenge to Commission regulations. There can be no challenge to a regulation which does not exist.

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The Staff also errs in claiming that contentions addressing safety concerns not considered in NUREG-0694 and -0737 cannot be admitted. The Shoreham Licensing Board ruled that "TMI-related issues may be litigated in individual proceedings even if they are not included in the NUREG-0737 list of TMI requirements." Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1) LBP-82-19, 15 NRC 601. (It should be noted that the Board thoroughly discussed the applicability of the Statement of Policy, CL1-80-42, 12 NRC 654 and Pacific Gas and Electric Company (Diablo Canyon, Units 1 and 2), CL1-81-5, 13 NRC 361, at 15 NRC 606-608.)

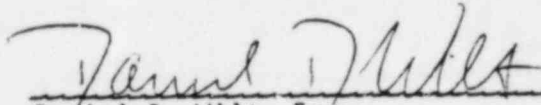
Both Staff and Applicant urge the rejection of this contention because Sunflower has not shown a nexus to the Perry facility. It is true that Sunflower has not identified any deficiencies in Applicant's shift rotation plans. This is because Applicant's plans are not available. Even in their response Applicant did not specifically identify what the plans are for the Perry plant, but only asserts that Cleveland Electric Illuminating Company has used the same system for over 40 years with no complaints. (It is not stated whether any worker feedback was ever sought.) It should be remembered that CEI has never operated a nuclear power plant before; operating a nuclear plant is quite different from operating a fossil plant. Applicant cannot merely transfer its policies from one to the other without considering the safety implications.

The Appeal Board decision in Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, does not prohibit the admission of this contention. ALAB-687 addressed the specific circumstance of contentions based on documents not yet publicly available, but which would be issued later. It did not consider the case where, as in this instance, the information may never be made available to intervenors, except through discovery. Indeed, this would place intervenors in a Catch-22 situation, which the Appeal Board in ALAB-687 considered unjust and illegal (slip up at 13-14 and 18).

The Science News article, in stating that "at least half the power plants are rotating their workers the wrong way, causing sleep deprivation and dangerous desynchronization" (this is the statement of Charles Ehret, a biologist at Argonne National Laboratory), gives Sunflower reason to suspect that Applicant's schedules may not be incorporating circadian principles. This article this provides both basis and good cause.

For these reasons, Sunflower's contention must be admitted into this proceeding.

Respectfully submitted,



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PROOF OF SERVICE

This is to certify that a copy of this Reply Brief has been mailed to all persons on the service list on this 19 day of October, 1982.



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