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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANTS' ANSWER IN SUPPORT OF NRC
STAFF'S MOTION FOR SUMMARY DISPOSITION
OF ISSUE NO. 3

On October 29, 1982, the NRC Staff ("Staff") filed a Motion for Summary Disposition of Issue No. 3. Included with the Motion was a Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard. The Motion was supported by the Affidavit of James E. Konklin and Cordell C. Williams ("Staff's Affidavit"). Pursuant to 10 C.F.R. § 2.749, Applicants file this Answer, and the attached Affidavit of Murray R. Edelman and Ronald L. Farrell ("Applicants' Affidavit"), in support of the Staff's Motion.

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I. The Scope of Issue No. 3

Issue No. 3 asserts that "Applicant has an inadequate quality assurance program that has caused or is continuing to cause unsafe construction."1/ The issue does not constitute a generalized attack on Applicants' entire quality assurance ("QA") program, but rather is limited to the February 1978 stop work order,2/ steps taken to remedy the deficiencies that led to that order, and residual deficiencies related thereto.3/ The issue is thus focused on the Staff's February 8, 1978 immediate action letter and the deficiencies in Applicants' QA program which were identified in that letter. In addition, the Licensing Board imposed "the requirement that any quality assurance deficiency must be linked to a construction deficiency. That is, intervenors must provide us with a reason to believe that quality assurance deficiencies have led to some safety defect in Perry." LBP-81-24, 14 N.R.C. at 212.

1/ Special Prehearing Conference Memorandum and Order, LBP-81-24, 14 N.R.C. 175, 210 (July 28, 1981).

2/ After receiving information from NRC Region III inspectors concerning significant QA and construction deficiencies at Perry, The Cleveland Electric Illuminating Co. ("CEI") issued stop work orders in all the affected areas effective as of February 8, 1978. These were acknowledged in a letter dated February 8, 1978, from NRC to CEI, known as an immediate action letter.

3/ See LBP-81-35, 14 N.R.C. 682, 687 (September 9, 1981).

II. The Summary Judgment Standard Applied to Issue No. 3

The Licensing Board has previously articulated the governing standard to be applied to an answer opposing a properly supported motion for summary judgment on this issue. As stated by the Licensing Board, "Sunflower would need to demonstrate the existence of a genuine issue of fact concerning the existence of unsafe conditions as the result of a quality assurance deficiency." LBP-81-35, 14 N.R.C. at 687.

Thus, the only genuine issue of material fact which Sunflower could produce in this instance to defeat the Staff's Motion would be one demonstrating a QA deficiency, related to those identified in the Staff's February 1978 letter, which has led to unsafe conditions at Perry. Sunflower cannot avoid summary disposition "on the mere hope that at trial [it] will be able to discredit movant's evidence nor can [it] be permitted to go to trial on the vague supposition that something may turn up." Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), LBP-81-48, 14 N.R.C. 877, 883 (1981). As demonstrated in the affidavits of Staff and Applicants in support of the Staff's Motion, Sunflower has not identified unsafe conditions linked to a QA deficiency, and none are known by the Staff or Applicants to have occurred.

Of course, as on all nuclear projects, nonconformances and deficiencies have been identified by Applicants, their contractors, and the NRC Staff, both before and after February

1978. Applicants' Affidavit notes that over 18,000 nonconformances have been identified on the project to date. Indeed, as the Licensing Board has pointed out,

A good, working quality assurance program identifies deficiencies for correction. If deficiencies are reported the system is working; and intervenor cannot fashion an admissible contention merely by filing deficiency reports without further explanation. Otherwise, we would create an adverse incentive for reporting deficiencies; and this incentive could seriously impact plant safety.

LBP-81-24, 14 N.R.C. at 211. Other Licensing Board and Appeal Board decisions have applied the same doctrine. See Dugesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-408, 5 N.R.C. 1383, 1387 (1977) (holding that neither the nature nor the frequency of quality assurance infractions and deficiencies noted in NRC I&E Reports over a 16 month period undercut the conclusion that applicants' QA program was adequate or that good workmanship was employed in the construction of the plant); Consolidated Edison Co. of New York, Inc. (Indian Point Station, Unit No. 2), ALAB-188, 7 A.E.C. 323, 332-336 (1974) (affirming that "no quality assurance program, however thorough, can guarantee that there will be no errors in design and construction, or failures of equipment, or misoperation in a nuclear power plant," and concluding from a review of staff inspection reports and follow-up actions taken by the applicant in regard to discrepancies that the applicant "tried to learn

the causes of defects and errors," and that "applicant's management reacted with reasonable promptness to make continuing improvements in its quality assurance program and management"); The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), Initial Decision, October 29, 1982, slip op. at 14-15 (holding that applicants' inspection program was adequate during the early stages of construction, and stating "that there would be more reason for concern about the Applicants' program had no construction deficiencies been found. Deficiencies are, as a practical fact of life, to be expected. The purpose of inspection, and of quality control and assurance programs, is to assure that deficiencies are corrected before the facility operates."); and Waterford, supra, 14 N.R.C. 877 (granting applicant's motion for summary disposition of a contention alleging that "Applicant has failed to discover, acknowledge, report or remedy defects in safety related concrete construction," after applicant and Staff affidavits established, among other things, that deficiencies identified by NRC inspections were "relatively minor, mostly involving problems with QA/QC procedures and documentation," and that "[i]n each case, the problem discovered has been corrected by Applicant, and the matter has been closed following a reinspection by the NRC." Id. at 882-83).

As these decisions affirm, quality assurance programs do not become suspect by virtue of the fact that deficiencies are

identified by applicants' and Staff's inspectors. To the contrary, QA programs depend on vigilant, aggressive identification of deficiencies by applicants' inspectors, and on appropriate resolution of all deficiencies identified by applicant and Staff inspectors in the course of construction.

III. Staff's and Applicants' Affidavits

Applicants' Affidavit fully agrees with and supports the facts and conclusions set forth in the Staff's Affidavit. The Staff's Affidavit summarizes the extensive actions undertaken by Applicants to correct the deficiencies described in the Staff's February 1978 immediate action letter. Applicants' Affidavit details the actions taken to correct the eight deficient areas described in the Staff's letter, and discusses the major QA/QC organizational changes referred to in the Staff's Affidavit.

Applicants' Affidavit supports the position set forth in the Staff's Affidavit that the Staff's augmented inspection program for Perry conducted after the Staff's February 1978 findings revealed no unsafe areas of construction and showed that the construction QA program and construction practices at Perry improved substantially because of Applicants' aggressive corrective actions in response to the Staff's findings.

Applicants' Affidavit supports the Staff's conclusion as set forth in its affidavit that discrepancies and

noncompliances identified by NRC inspectors since February 8, 1978 do not reflect a breakdown in Applicants' construction QA program, are not related to a failure to correct the February 1978 findings, and that in fact, many of the discrepancies and noncompliances were identified and all were or are being resolved by the QA program.

In sum, the Staff's Affidavit, as supported by Applicants' Affidavit, shows that Applicants' management reacted promptly to the Staff's February 1978 findings, that Applicants learned the underlying causes of the identified deficiencies and corrected the deficiencies, that Applicants' QA program was substantially improved and that it worked effectively by continuing to identify and resolve deficiencies at PNPP after February 1978, and that neither the nature nor the frequency of deficiencies identified in subsequent Staff I&E Reports have called into question Applicants' overall QA program since February 1978 or the quality of Applicants' workmanship employed in the construction of the plant both before and after February 1978.

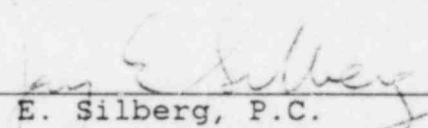
IV. Conclusion

For the above stated reasons, the Staff's Motion for Summary Disposition should be granted.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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