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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	)	Docket Nos. 50-440
ILLUMINATING COMPANY, <u>ET AL.</u>	)	50-441
	)	
(Perry Nuclear Power Plant,	)	
Units 1 and 2)	)	

APPLICANTS' ANSWER TO SUNFLOWER'S MOTION  
TO REOPEN DISCOVERY ON ISSUE NO. 1

By motion of February 3, 1984, Intervenor Sunflower Alliance, Inc., et al. ("Sunflower") asks the Licensing Board "to allow the reopening of discovery" on Issue No. 1, concerning emergency planning. Sunflower's Motion To Reopen Discovery on Issue No. 1, dated February 3, 1984 ("Motion"), at 1. Sunflower in its Motion states: "Substantial justice and fairness dictate that the intervenors be allowed, not just to receive the seasonable updates to previous discovery requests, but that new discovery requests, including but not limited to depositions and further interrogatories, be authorized by the Board." Motion at 2. Sunflower's Motion is without cause and should be denied.

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The Licensing Board has made clear that it will not entertain blanket requests to reopen or extend discovery. In denying an earlier motion by Sunflower for an indefinite extension of discovery on Issue No. 1, the Licensing Board stated:

[T]he purpose of a discovery cut-off date is to require a party to complete as much discovery as is feasible before that date. The fact that Sunflower will obtain additional information in the future will permit it to argue that it has good cause for late-filing of interrogatories with respect to that material, providing that the information was not previously available to it.

We will not deprive Sunflower of its fair opportunity to seek discovery of matters not previously known to it, but that is not a reason to extend the deadline on matters already known to it.

Memorandum and Order (Concerning Request to Extend Discovery on Issue #1), dated October 8, 1982, slip op. at 1. The Licensing Board recently reaffirmed these principles when it denied Intervenor Ohio Citizens for Responsible Energy's Motion to reopen discovery on Issues No. 6, 8, 14 and 15. See Memorandum and Order (OCRE Motion to Reopen Discovery), dated December 20, 1983, slip op. at 1-3. The same principles require denial of the instant Motion.

Further, Sunflower's Motion fails to establish the good cause required to conduct any additional discovery on this issue. The Motion is supported only by the general observations that "[t]echnical arrangements for emergency planning coordination have been made, or are considerably more completed, than was the

case in 1982" and that "[a]ll of the affected counties have greatly and materially expanded their physical response capabilities as part of emergency planning." Motion at 1-2.<sup>1/</sup> Nowhere does Sunflower identify any particular information or material, not previously available to it, which would provide good cause for further discovery.<sup>2/</sup> Neither does it identify

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<sup>1/</sup> Sunflower also asserts as good cause that "[u]pon information and belief, the Federal Emergency Management Agency and Ohio Disaster Services Agency have begun to plan or conduct tabletop exercises." Motion at 2. The Commission's regulations state that "[e]mergency preparedness exercises (required by paragraph (b)(14) of this Section and Appendix E, Section F of this part) are part of the operational inspection process and are not required for any initial licensing decision." 10 C.F.R. § 50.47(a)(2) (emphasis added). Since the emergency preparedness exercises are beyond the scope of this proceeding, see Statement of Considerations to Notice of Final Rulemaking, 47 Fed. Reg. 30232 (1982), Sunflower's information cannot be good cause for additional discovery on Issue No. 1.

<sup>2/</sup> Neither does Intervenor Ohio Citizens for Responsible Energy ("OCRE") in its Brief in Support of "Sunflower's Motion To Reopen Discovery on Issue #1," dated February 17, 1984 (filed February 18, 1984) ("OCRE Brief"), provide good cause to conduct additional discovery on Issue No. 1. OCRE cites a letter from counsel for the NRC Staff ("Staff") to the Federal Emergency Management Agency ("FEMA"), dated December 29, 1983, requesting an evaluation and affidavit by a FEMA representative in support of a possible motion for summary disposition to be filed by the Staff prior to the hearing on this issue, then tentatively scheduled for March 1984. OCRE states that "[t]he Staff's plan for the imminent summary disposition of this issue alone constitutes abundant good cause for reopening discovery." OCRE Brief at 2.

On the contrary, the letter cited by OCRE contains no particular information or material which would justify additional discovery on Issue No. 1. It simply does not follow that, because the Staff may be considering filing a motion for summary disposition, discovery must be reopened. Moreover, OCRE does not show why it is necessary to reopen discovery in order to determine "the basis for FEMA's assessment." OCRE Brief at 2. At any rate, Applicants are unaware of any "imminent" plans by the Staff to file a motion for summary disposition; and it is obvious that no hearing will be held on Issue No. 1 in March 1984.



the particular types of additional information or material which it seeks to obtain.<sup>3/</sup>

Sunflower already has conducted extensive discovery on Issue No. 1. This discovery has included numerous interrogatories and document requests covering a wide range of emergency planning issues.<sup>4/</sup> Moreover, discovery has been closed for almost two and one-half years, since September 30, 1982. See Tr. 753-54

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3/ Applicants are in the process of supplementing their answers to Sunflower interrogatories on Issue No. 1. Applicants' supplemental answers will address the current status of offsite evacuation planning for Perry Nuclear Power Plant, including information regarding "technical arrangements" and "physical response capabilities." If, after Applicants have filed their supplemental answers, Sunflower believes it has good cause to seek specific additional information, it may file a request for further discovery in accordance with the Licensing Board's prior rulings.

4/ See Sunflower Alliance, Inc. Fourth Request for Production of Documents to Nuclear Regulatory Commission in Care of Executive Director of Operations, Nuclear Regulatory Commission, Washington, D.C. 20555, dated September 30, 1982; Third Request for Production of Documents to Nuclear Regulatory Commission, Washington, D.C. 20555, dated June 30, 1982; Sunflower Alliance, Inc., et al. Second Set of Interrogatories to NRC Staff, dated April 30, 1982; Sunflower Alliance, Inc., et al. Second Set of Interrogatories to Applicants, dated April 30, 1982; Request for Production of Documents to NRC, dated February 24, 1982; Intervenor's Request for Production of Documents to Applicant, dated February 24, 1982; Sunflower Alliance, Inc., et al. Second Set of Interrogatories to Lake County Commissioners and Lake County Disaster Service Agency (hereinafter called County), dated February 24, 1982; Sunflower Alliance Interrogatories and Request for Production of Documents to Lake County Commissioners and Lake County Disaster Services Agency, dated December 18, 1981; Sunflower Alliance's Interrogatories to Nuclear Regulatory Commission Staff (First Set), dated December 18, 1981; Sunflower Alliance, Inc. et al. First Set of Interrogatories to Applicants, dated December 2, 1981.

(August 13, 1982 Prehearing Telephone Conference). The Licensing Board has previously held that "matters that can be completed, be completed, so that they will not interfere with other matters that may arise." Memorandum and Order (Concerning Request to Extend Discovery on Issue #1), supra, slip op. at 2. Sunflower's Motion fails to show why additional discovery needs to be conducted on this issue.

For all of the above reasons, Sunflower's Motion To Reopen Discovery on Issue No. 1 should be denied.

Respectfully submitted,

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DATED: February 21, 1984

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Answer To Sunflower's Motion To Reopen Discovery On Issue No. 1" were served by deposit in the United States Mail, First Class, postage prepaid, this 21st day of February, 1984, to all those on the attached Service List.

Michael A. Swiger  
MICHAEL A. SWIGER

DATED: February 21, 1984

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