

Staff 3/5/84

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET AL.)

(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket No. 50-440 OL
50-441 OL

NRC STAFF RESPONSE
TO SUNFLOWER ALLIANCE MOTION
TO READMIT ISSUE #2

I. Introduction

By motion dated February 14, 1984, the intervenor, Sunflower Alliance (Sunflower), requests leave to resubmit its Contention #2 concerning Applicant's financial qualifications on the basis of a recent Federal Court decision.^{1/} That decision set aside and remanded to the Commission for further rulemaking, the Commission's regulation 10 CFR § 50.33(f) which had prohibited litigation of the subject of Sunflower's Contention #2 and resulted in dismissal of the contention (admitted prior to the promulgation of the rule) by the Board. Sunflower now asserts this contention should be admitted by the Board due to the Federal Court's decision.

^{1/} New England Coalition on Nuclear Pollution v. NRC, No. 82-1581 (D.C. Cir. Feb. 7, 1984).

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Certified By

[Signature]

II. Discussion

Sunflower states that its contention (#2) concerning applicant's financial qualifications was originally admitted by the Board Order of July 28, 1981 and later dismissed by the Board because of a new rule (10 CFR § 50.33(f)) and instruction from the Commission to eliminate review of financial qualifications of electric utilities in operating license hearings.^{2/} Motion, at 1. Sunflower further points out that the recent Federal Court decision "struck down" the Commission's rule and remanded the rule to the Commission for further "proceedings." Motion, at 2. Sunflower then asserts that good cause exists for readmission of the contention because of the Court's decision. Motion, at 2.

Although the facts described by Sunflower are generally accurate as to the history of the contention, the Federal Court decision remanded the rule to the Commission for further proceedings. Among the further proceedings described by the Court are those to correct defects in the Commission's explanation of the basis for the rule.^{3/}

On February 27, 1984, the Commission issued a Statement of Policy regarding this rule, indicating, for the reasons explained therein, that the present rule remains valid until at least March 23, 1984 when the court's mandate may issue and directing the Atomic Safety and Licensing Board and Atomic Safety

^{2/} 47 Fed. Reg. 13750 (1982).

^{3/} New England Coalition on Nuclear Pollution v. NRC, No. 82-1581, slip op. at 9.

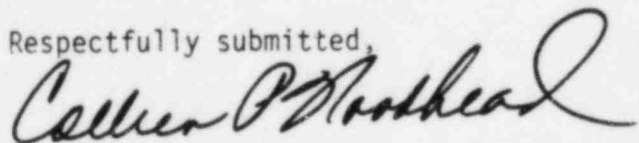
and Licensing Appeal Board Panel to continue to treat the rule as valid. This Policy Statement is attached to this response.

In light of the Commission's directive in the Statement of Policy and expressed intent to conduct expedited rulemaking, prior to issuance of the Court's mandate, to address the defects perceived by the Court, the Staff believes the Board should hold in abeyance the motion by Sunflower to readmit Contention #2 pending further guidance from the Commission. Such deferral would be consistent with similar actions taken by the Appeal Board recently in Wolf Creek.^{4/}

III. Conclusion

For the reason stated above, the Staff believes the Board should hold in abeyance the Sunflower motion to resubmit Contention #2 until further guidance is provided by the Commission.

Respectfully submitted,



Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 5th day of March, 1984.

^{4/} Kansas Gas and Electric Co. et al (Wolf Creek Generating Station, Unit 1), Memorandum and Order, February 28, 1984.

[7590-01]

Nuclear Regulatory Commission

STATEMENT OF POLICY

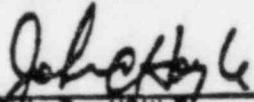
On February 7, 1984, the U.S. Court of Appeals for the District of Columbia Circuit granted a petition by the New England Coalition on Nuclear Pollution (NECNP) which challenged the Commission's rule eliminating financial qualification review requirements for electric utilities. New England Coalition on Nuclear Pollution v. NRC, No. 82-1581 (D.C. Cir. Feb. 7, 1984). The court found that the rule was not adequately supported by its accompanying statement of basis and purpose, and remanded it to the agency.

In response to this decision the Commission intends to conduct an expedited financial qualification rulemaking to address the problems which the court perceived in the Commission's present rule. The Commission understands from the court's order that the mandate will issue no earlier than 45 days from the date of the court's decision, i.e., not before March 23, 1984. Until then, the present rule remains formally valid. Therefore, the Commission directs its Atomic Safety and

Licensing Board and Atomic Safety and Licensing Appeal Panel to continue to treat the rule as valid. The Commission expects to complete an adequate response to the D.C. Circuit's decision before the court issues its mandate.

Commissioner Asselstine abstains.

For the Commission*


JOHN C. HOYLE
Assistant Secretary
of the Commission

Dated at Washington, DC
this 27th day of February, 1984

*Commissioner Gilinsky was not present when this Statement of Policy was approved but had previously indicated his approval.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO THE SUNFLOWER ALLIANCE MOTION TO READMIT ISSUE #2" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 5th day of March 1984:

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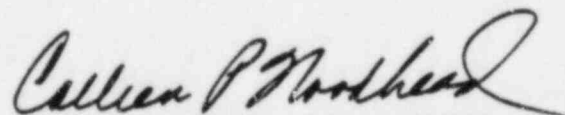
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A handwritten signature in cursive script, reading "Colleen P. Woodhead". The signature is written in dark ink and is positioned above a horizontal line.

Colleen P. Woodhead
Counsel for NRC Staff