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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Peter B. Bloch, Chairman  
Dr. Jerry R. Kline  
Mr. Glenn O. Bright

POSTAL TELEGRAPH  
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OFFICE OF REGISTERED  
CORRECTING & SERVICE  
BRANCH

In the Matter of

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

CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, et al.

SERVED JUL 9 1984

(Perry Nuclear Power Plant, Units 1 & 2)

July 6, 1984

MEMORANDUM AND ORDER

(Motion to Readmit Financial Qualifications Contention)

Sunflower Alliance Inc., et al. (Sunflower), supported by Ohio Citizens for Responsible Energy (OCRE), seeks the readmission to this proceeding of Sunflower's financial qualifications contention.<sup>1</sup>

Subsequent to the filing of Sunflower's motion, the U.S. Court of Appeals for the District of Columbia issued New England Coalition on Nuclear Pollution v. NRC, 727 F.2d 1127 (D.C. Cir. 1984) and the Nuclear Regulatory Commission issued a policy statement that determined that financial qualifications contentions are to continue to be excluded from operating license proceedings. Financial Qualifications Statement of Policy, June 7, 1984, 49 Fed. Reg. 24111 (June 12, 1984).

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<sup>1</sup> Sunflower's Motion to Readmit Issue No. 2, February 14, 1984; OCRE Brief in Support of "Sunflower's Motion to Reopen Discovery on Issue #1", February 17, 1984; Response of Sunflower Alliance to 'Applicant's Further Answer to Sunflower's Motion to Readmit Issue No. 2', June 21, 1984; OCRE Brief on Financial Qualifications Policy Statement, June 25, 1984.

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Sunflower and OCRE argue: (1) that the Commission's Financial Qualifications policy statement was illegal because it did not fulfill the standard set forth by the Court of Appeals, and (2) that the Commission's statement was illegal, and ought not to be applied to this case, because the attorneys for Cleveland Electric Illuminating Company, et al. participated in illegal ex parte contacts with the Commission about its statement, which was neither adjudication nor rule making.

We take no position on the merits of the arguments made by the intervenors.<sup>2</sup> If intervenors are correct, they have the right to make their arguments to the Court of Appeals. They will not have been prejudiced by the refusal of this Board to consider whether or not the Commission may have been in error in its actions.

O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 6th day of July 1984

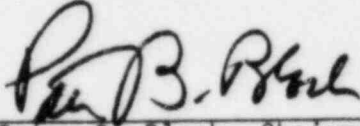
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<sup>2</sup> Hence, we do not line up at any "bettor's window." See Sunflower's Response at 2.

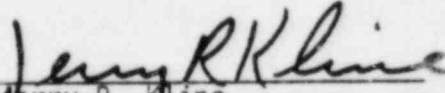
ORDERED:

Sunflower's Motion to Readmit Issue No. 2, filed February 14, 1984,  
is denied.

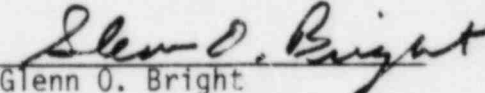
FOR THE  
ATOMIC SAFETY AND LICENSING BOARD



Peter B. Bloch, Chairman  
ADMINISTRATIVE JUDGE



Jerry R. Kline  
ADMINISTRATIVE JUDGE



Glenn O. Bright  
ADMINISTRATIVE JUDGE

Bethesda, Maryland