

514

October 10, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'84 OCT 16 11:03

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

OFFICE OF SECRETARY
DOCKETING & SERVICES
BRANCH

NRC STAFF RESPONSE TO APPLICANTS'
MOTION FOR DISMISSAL OF ISSUE #1

A. INTRODUCTION

By Order dated July 26, 1984,^{1/} the Atomic Safety and Licensing Board (Board) directed Sunflower Alliance, Inc., (Sunflower) to particularize Sunflower's Issue #1, which concerns offsite emergency evacuation plans. On August 20, 1984 Sunflower filed "Sunflower Alliance's Particularized Objections to Proposed Emergency Plans in Support of Issue No. 1," (Objections). On September 20, 1984 Applicants filed a motion to dismiss the emergency plan contention (Motion). Staff supports Applicants' request for dismissal of Issue #1 for failure to provide the specificity and bases necessary to raise a litigable issue, as discussed below.

^{1/} Memorandum and Order (Particularization of Emergency Planning Contention), July 26, 1984 (Particularization Order).

B410160736 B41010
PDR ADOCK 05000440
G PDR

DS07

B. BACKGROUND

By Order dated July 28, 1981, the Atomic Safety and Licensing Board (Board) admitted Issue #1, as a consolidation of several offsite emergency plan issues raised by three intervenors.^{2/} The contention originally submitted by Sunflower alleged many deficiencies in emergency plans which were not then in existence. The allegations of deficiencies were expanded during the prehearing conference.^{3/} However, because the emergency plans were not available, the several issues raised were combined into one by the Board. The comprehensive issue stated:

Applicant's emergency plans do not provide reasonable assurance that appropriate measures can and will be taken in the event of an emergency to protect public health and safety and prevent damage to property.^{4/}

The Board admitted the contention subject to summary judgment if the alleged deficiencies were cured and explained that the issue related to the overall proposition that the incomplete state and local emergency plans were not "workable" and that Applicants had not yet filed plans to comply with Section III of Appendix E to 10 CFR Part 50, and NUREG-0654.^{5/}

^{2/} Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 NRC 175, 189 (1981). One Intervenor, Mr. Kenney, has since withdrawn from the proceeding.

^{3/} LBP-81-24 at 186-87.

^{4/} Id. at 189.

^{5/} Id. at 189-90. The decision actually states the contention would be subject to summary judgment if deficiencies were "not cured." However, this appears to be a misprint, given the context of the Board's statement.

The Board acknowledged the fact that the consolidated issue, as rephrased, was a broad one but again pointed out that parties could file motions for summary judgment to "pare down" the issue.^{6/}

In a subsequent ruling on Applicants' motion for reconsideration of the admission of this issue, the Board directed the parties to refine issues and reach stipulations during discovery to eliminate matters, but also narrowed the contention to issues of evacuation plans and the requirements of 10 CFR Part 50, Appendix E.^{7/} The Board again rephrased the contention to read:

Issue #1: Applicant's emergency evacuation plans do not demonstrate that they provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency.^{8/}

More recently, upon motion for particularization of issue #1 filed June 26, 1984 by Applicants, the Board directed Sunflower to particularize the evacuation plan contention.^{9/} Sunflower submitted its response to the Board's Order and Applicants filed the pending motion to dismiss the issue on the basis of failure to comply with the Board's Order.

^{6/} Id. at 192.

^{7/} LBP-81-35, 14 NRC 682, 686 (1981).

^{8/} Id.

^{9/} Particularization Order, op. cit. The Board noted in the order that the word "Applicants"¹¹ should be replaced with "State and local" in Issue #1 since the contention challenges offsite evacuation planning. Id. p. 1 fn. 1.

C. DISCUSSION

1. Issue #1 Was Admitted Upon Condition of Provision of Future Specificity

The Board's Order for particularization explains that at the time of admission of Issue #1, the broadly worded contention was valid because the offsite emergency plans were incomplete.^{10/} In the Order, the Board recounted its previous instruction that the burden rested on the intervenor to show a factual issue requiring a hearing when the offsite emergency plans were developed.^{11/} Since the offsite emergency plans are now well developed and have been reviewed and found adequate by FEMA,^{12/} the Board directed intervenors to state with specificity, and with bases, the particular deficiencies that exist in the plans or if none are found, to withdraw their contention.^{13/} The Board explained that it considered the Applicants' motion for particularization to be partly in the nature of a motion to reconsider the admission of the contention and partly in the nature of a generalized motion for summary disposition, which the Board had invited as a condition of admitting this broad contention.^{14/} With this background in mind, the Board ordered Sunflower:

^{10/} Id. p. 1.

^{11/} Id. p. 2.

^{12/} FEMA's interim findings on the offsite plans were issued March 1, 1984. Final FEMA findings will not issue until after exercise of the plans.

^{13/} Particularization Order, p. 3.

^{14/} Id.

[T]o define the specific inadequacies alleged to exist in the draft local and state emergency plans and [to] provide a reasoned basis for believing that the allegations concerning inadequacies are true. If there are relevant sections of the applicable plans or applicable regulations or guidance documents, those sections must be cited to support the claim of inadequacy.^{15/}

Thus, as explained by the Board, Issue #1 was admitted in 1981 before development of the emergency plans, on condition that specificity and bases be provided by intervenor when the plans were developed. Consequently, if Sunflower has failed in its particularized "Objections" to provide the specificity and bases upon which conditional admission rested, the issue should be dismissed. Applicants' motion to dismiss the issue sets out at length the reasons they believe Sunflower has failed to raise a specific issue with reasoned basis and supporting citations. Motion, pp. 3-57. Staff's response to the particularized "Objections" is set out below.

2. Sunflower Has Not Provided Specific Allegations With Supporting Bases

It is Staff's view also that Sunflower's response to the Board's Order for particularization does not comply with the order. The many assertions^{16/} made in the "Objections" either (1) fail to raise an issue, (2) attempt to broaden the scope of the contention, (3) are based on mere speculations, or (4) are essentially interrogatories rather than issues of fact. The defects in the assertions are discussed serially below, according to Sunflower's designations.

^{15/} Id. p. 5.

^{16/} Sunflower lists 38 items, alphabetically designated A-Z and AA-LL.

3. Sunflower's "Objections"^{17/}

A. "Evacuation Time Estimate Defects" pp. 2-3.

B. "Lack of Identification of Route Impediments" p. 3.

These assertions by Sunflower reference onsite emergency plan deficiencies listed by NRC Staff in SSEK #4. Sunflower cites NUREG-0654 as supporting basis for the assertions. However, Sunflower fails to mention the new evacuation time estimate submitted by CEI in March 1984 (by HMM Associates) and the April 23, 1984 revision to the emergency plan submitted by CEI which addresses the deficiencies named in the SSER #4. Because Applicants have both generated new evacuation time estimates and revised their emergency plan to correct the deficiencies alleged by Sunflower, no basis for Sunflower's assertions exist. In view of Applicants' efforts to correct previously identified deficiencies, Sunflower's mere repetition of those deficiencies without addressing why corrective actions are inadequate amounts to a contention without supporting bases as required by 10 CFR § 2.714.

C. "Uncertain Chain of Command" pp. 3-6.

In this objection, Sunflower describes the authority of state and local officials set out in the offsite emergency plans yet concludes, without explanation, that there is no consistently defined role for County Commissioners during an emergency. It is entirely unclear just what assertion is made in this objection and no specific issue is raised. Sunflower speculates about possible decisions by local officials based

^{17/} Sunflower Alliance's Particularized Objections to Proposed Emergency Plans in Support of Issue No. 1, supra.

on fear of legal liability, recites Ohio law authorizing only the Governor to declare an emergency, and discusses limits on sovereign immunity in Ohio, the Price-Anderson Act and other unrelated matters. In short, objection C is confusing and vague and does not raise a specific, litigable issue. In view of the fact that the FEMA Interim Report contains a letter from the Ohio Disaster Services Agency which fully explains the state and local decision-making procedure,^{18/} Sunflower has not defined a particular issue with reasoned basis in this objection.

D. "Protective Actions Decision-Making" pp. 6-8.

This objection rests on the assumption that, because no study has been made of ventilation controls on all buildings within the EPZ, public officials will be unable to make a valid decision to recommend sheltering since some ventilation systems may not allow closure. Sunflower cites the EPA "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents" which states ventilation systems should be closed during sheltering. However, Sunflower misconstrues the EPA description of sheltering and attempts to create an unreasonable and baseless standard. Sheltering as described in the EPA manual, is a means of minimizing exposures as a protective action and does not require specific types of structures or ventilation systems.

In further support of this objection, Sunflower references recommended protective actions in the State plan and concludes Applicants

^{18/} Interim Report on Offsite Radiological Emergency Planning for the Perry Nuclear Power Station, Federal Emergency Management Agency, March 1, 1984 (FEMA Findings), Attachment F, Comments on interrogatories with a letter dated January 8, 1982 from Ohio Adjutants General's Department ¶ 10.

have not followed EPA guidance. Beyond failing to explain the connection between the State plan and Applicants' compliance with EPA recommendations, Sunflower provides no reference to EPA guidance on protective actions to support the need for study of ventilation systems. Sunflower has failed to provide a rational basis for this objection and thus, fails to raise a particular issue with an adequately specific supporting basis.

E. "Authority Lacking for School Bus Usage" pp. 8-10.

Sunflower references an Ohio Board of Education provision for emergency use of school buses and Ohio State law which provides that school buses must be used solely for school purposes. On this basis Sunflower concludes that State law prohibits use of school buses during emergencies but then asserts that school board employees will refuse to drive the buses during a nuclear plant emergency or will drive recklessly. While Sunflower acknowledges a May 1983 letter from the Ohio Department of Education which clearly states that publicly owned buses may be used during a radiological emergency,^{19/} Sunflower takes issue with the interpretation of Ohio law by the Department of Education.

The assertions here are unfounded. Sunflower has referenced the authority for use of school buses contained in the FEMA Interim Report, and an NRC proceeding is not the proper forum to argue Ohio law.^{20/}

^{19/} Letter dated May 27, 1983 from H. L. Massie, Ohio Department of Education, Attachment A to FEMA Interim Report. This interpretation is referenced at pp. 5, 23, and 41 of FEMA's Interim Report.

^{20/} As recently pointed out by another licensing board, NUREG-0654 only requires reference to codes and statutes for legal authority and no interpretation by the Commission is called for. Duke Power Co. et al. (Catawba Nuclear Station, Units 1 and 2), slip op., September 18, 1984, p. 54.

Finally, the speculations concerning bus drivers' behavior are not credible and are baseless. This objection is vague and speculative and does not provide the specificity with reasoned basis required by the Board's Order.

F. "Insufficient Proofs of Volunteer Aid" pp. 10-11.

Sunflower asserts that, contrary to NUREG-0654, (1) the offsite emergency plans contain no letters of agreement identifying "individuals" to provide assistance during a plant emergency, (2) local emergency response organizations have inadequate knowledge of radiation hazards, and (3) institutional response organizations might not provide assistance in a nuclear plant emergency. No support for this objection is provided. The NUREG-0654 section quoted says nothing about "volunteer" assistance, nor does it require identification of "individuals," but rather, "facilities, organizations or individuals" who will provide emergency assistance. NUREG-0654, Rev. 1, Criterion C.4. Moreover, the FEMA Interim Report sets out the organizations available for emergency response in each County,^{21/} and the Report contains a discussion of State training for radiological emergency response personnel.^{22/} Sunflower's assertions are baseless, and the vague speculations about behavior of emergency response personnel are not credible and are without supporting basis. Sunflower has not specified an issue with reasoned or regulatory basis in this objection.

^{21/} See: FEMA Interim Report, p. 4 (¶ A.3 & A.4), p. 5 (¶ C.4), p. 23 (¶ A.1.a.) and p. 41 (¶ A.1.a).

^{22/} See: State of Ohio comments on interrogatories, ¶ 27, contained in Attachment F to FEMA Interim Report.

G. "Failure to Stockpile KI for Public and Emergency Personnel" p. 11.

Sunflower asserts that the Ohio Department of Health's decision not to distribute potassium iodide (KI) during a nuclear plant emergency violates 10 CFR § 50.47(b)(10) and NUREG-0654. This allegation is unfounded. Section 50.47(b)(10) requires development of guidelines for choice of protective actions during an emergency but no specifically identified actions, whereas NUREG-0654 only calls for a demonstration of the method of decisions by the State for administration of radioprotective drugs.^{23/} Sunflower's reference to 10 CFR § 50.47(b)(10) provides no basis for this assertion. KI distribution is not required by NRC regulations, and it is well established that decisions concerning radioprotective drugs are the prerogative of State and local health authorities.^{24/} Sunflower has failed to provide a basis for this "objection" as required under 10 CFR § 2.714.

H. "Inadequate Assurances of Worker Protection" pp. 11-12.

Sunflower references (1) the EPA Protective Action Guidelines (PAGs) which recommend a decision-making structure for determining whether to allow exposures beyond 25 rem for emergency workers, and (2) Lake County's emergency plan establishing a maximum permissible dose of 25 rem for emergency workers, and then concludes that the offsite plans are "inconsistent" because no decision-making chain is described by Lake County to allow higher exposures as described by the other counties.

^{23/} NUREG-0654 Rev. 1, Criterion J.10.f.

^{24/} Union Electric Co. (Callaway Plant, Unit 1), ALAB-754, 18 NRC 1333, 1335 (1983).

This is a non-sequitur. Lake County obviously decided not to permit exposures for workers above 25 rem. Thus, no decision-making chain need be established to permit greater exposures. Sunflower also speculates on unspecified "implications" and asserts "thousands" of decisions concerning excess exposures will be necessary. These are vague assertions without reasoned bases. In short, Sunflower has failed to raise a specific issue with well reasoned, regulatory basis in this "objection."

I. "Slick as EALs" pp. 13-16.

Sunflower asserts in this objection that CEI does not intend to declare a general emergency requiring protective actions beyond a 5 mile radius of the Perry plant. Sunflower describes the criteria in the onsite plan to identify levels of severity of accident conditions, including a general emergency, and notes the onsite plan describes appropriate protective actions only for areas 5 miles from the plant. Sunflower references the § 50.47(c)(2) requirement for a 10 mile plume EPZ as basis for the objection.

Sunflower confuses a declaration of a general plant emergency with recommended protective actions. The area of protective actions recommended to local officials by CEI is a different matter from the appropriate identification of plant conditions which is the basis for declaring a general emergency. CEI will identify plant conditions and make recommendations to offsite officials who will actually decide and order protective actions for the public. Sunflower has incorrectly equated identification of emergency plant conditions with recommendations for protective actions. No specific issue with a valid basis is identified by this objection.

J. "The EALs are Incomplete" p. 16.

K. "Implementation of Staff Recommendations on EALs" pp. 16-17.

In these objections Sunflower asserts, without explaining, that "critical" measurements or standards in a table in the onsite plan are incomplete and attempts again to adopt Staff's SSER and other comments on the plan. These objections go beyond the scope of issue #1 since they relate to the onsite plan and not to offsite evacuation planning which is supposedly the subject of issue #1. In any event, these "objections" are without basis. Sunflower again fails to acknowledge the recent revision to the CEI emergency plan, previously noted in response to objections A and B. Because Applicants have revised the emergency plan to correct the previous problems which were the subjects of the Staff's comments on proposed EALs (emergency action levels), those Staff comments do not provide a basis for these "objections." No specific deficiency in offsite emergency plans with supporting basis is provided by these objections.

L. "Radius of EPZ" p. 17.

Sunflower references the accident evaluation model described in the Final Environmental Statement for PNPP (p. F-2) and then states that, because the Staff postulated a 15 mile evacuation area to assess environmental impacts, the Perry EPZ must be expanded to 15 miles. This assertion is illogical, baseless, goes beyond the scope of issue #1, and challenges 10 CFR § 50.47(c)(2), which establishes a plume EPZ of about 10 miles. This objection does not describe a specific deficiency in offsite emergency plans with applicable regulatory reference or well reasoned basis, but rather challenges NRC regulations without basis.

M. "Independent Monitoring" pp. 17-18.

Sunflower asks in this objection where the Lake County monitoring system will be located and how the monitoring data will be used. No deficiency in emergency planning is identified and those portions of this "objection" which simply ask questions about the Lake County monitoring system raise no litigable issue. To the extent that this "objection" impliedly asserts that other risk counties should have monitoring systems similar to that in Lake County, no regulatory or other basis has been provided to support such an assertion. This "objection" should be rejected.

N. "Ingestion Pathway Monitoring" pp. 18-19.

O. "Evacuation Re-Entry" p. 19.

In these objections, Sunflower challenges the ability of Ohio to monitor the ingestion pathway, and the failure of the onsite plan to describe procedures for reentry into the EPZ. The assertions attempt to raise issues beyond the scope of issue #1 which is limited to offsite emergency evacuation planning within the plume exposure EPZ. These objections should be rejected, since they both concern the ingestion pathway EPZ, and issue #1 is limited to evacuation planning for the plume EPZ. LBP-81-35, at 686; Particularization Order, at 5.

P. "Hospitals" pp. 19-20.

Sunflower states the offsite plans do not completely describe decontamination procedures at hospitals, potential patient populations at hospitals, resources for decontamination beyond the 10 mile EPZ, and medical personnel available. Sunflower then asks many questions about medical equipment. Sunflower does not reference any emergency plan and

provides no regulatory basis to support this as an issue for litigation. There is no requirement for the detailed documentation of hospital procedures and equipment described by Sunflower. Sunflower has not described an issue with supporting basis.

Q. "Fallacious Transportation Assumptions" p. 20.

Sunflower asserts that the onsite plan invalidly assumes a single evacuation trip for school children because many children walk to school, many ride with parents, and buses often make more than 2 trips to transport children to and from schools. Sunflower states, without providing basis for belief, that there are insufficient buses available to evacuate all school children in one trip. Sunflower also asserts that parents will panic when picking up their children and will cause traffic jams.

In this objection Sunflower merely quarrels with the method used in the onsite plan to estimate school evacuation times and appears to confuse evacuation time estimates with evacuation plans. However, Sunflower does not address state and local plans to provide emergency evacuation of school children and no deficiency in offsite plans for evacuation is asserted. Moreover, the assertion made does not raise an issue since there is no requirement or reason suggested for one-trip evacuations. Finally, the panic situation asserted by Sunflower is mere speculation, without basis. This objection does not raise an issue of deficiency in offsite emergency evacuation plans, and has no supporting basis.

R. "Insufficient Background Data" p. 21.

Sunflower asserts that background radiation readings must be taken of the 50 mile ingestion pathway in order to accurately assess the extent of radiological releases during an accident. No reason is provided to support this allegation or to explain why routine monitoring required of

all nuclear plants would be inadequate. (See PNPP FES §§ 5.9.3.4-5.9.3.4.1). In addition, the objection goes beyond the scope of issue #1 by encompassing the matter of radiation monitoring of ingestion pathway which is unrelated to emergency evacuation of the plume EPZ. LBP-81-35 at 686. No issue of a specific deficiency in offsite emergency evacuation plans with supporting basis is raised by this assertion.

S. "Unavailable Extension Agent" p. 21.

Sunflower asserts the extension agent at Astabula County has no training or equipment to provide advice on food and livestock protection. No basis is provided for the statement and the assertion goes beyond the scope of issue #1 by addressing the ingestion pathway.

T. "Shelter and Loading Buses" pp. 21-22.

In this objection, Sunflower criticizes the EPA protective action guide description of the effectiveness of sheltering and speculates on hypothetical events. This objection goes beyond the scope of Issue #1 since it does not state a specific deficiency in offsite evacuation planning with reasoned or regulatory basis, but rather consists of a challenge to a guidance document without a rational basis for such a challenge.

U. "Disposing of Contaminated Property" p. 22.

V. "Monitoring Contaminated Consumables" p. 22-23.

W. "Phantom Reimbursement" p. 23.

X. "Source Term" pp. 23-24.

Sunflower goes beyond the scope of issue #1 in these objections by asserting that emergency plans must provide procedures for quarantine of contaminated personal property, by speculating about "desperate farmers"

harvesting and selling contaminated crops, by questioning reimbursement for emergency offsite expenditures and by asserting that no emergency plans can be approved until completion of the current NRC reassessment of the source term used in accident assessment. The Board clearly limited issue #1 to offsite emergency evacuation plans at the time of admission and in the recent particularization order. LBP-81-35 at 686. However, three of the allegations deal with actions after evacuation takes place and are unrelated to issue #1 and must be rejected. The "source term" objection is obviously irrelevant to any deficiency in offsite emergency evacuation since it questions the validity of the current regulatory criteria for emergency planning. Sunflower has not attempted to raise a specific issue of deficiency in offsite evacuation plans in these objections.

Y. "Incoherent Ambulance Usage" p. 24.

Sunflower in this objection, speculates on the "possibilities" of "conflicting responses" due to the counties' plans to use ambulances for evacuation. The assertion is vague and without basis. Sunflower does not raise an issue of a specific deficiency in offsite plans by this objection.

Z. "Bus Driver Protection" p. 24.

Sunflower asserts that the offsite plans' provision of dosimeters to bus drivers in a nuclear plant emergency are deficient because dosimeters do not adequately measure radiological exposure and bus drivers should be provided protective equipment. No basis is provided for these assertions. Sunflower only speculates that bus drivers will be subject to exposures requiring protective equipment. Further, the FEMA Interim

Report in Section "H" for each county, describes protective equipment available for emergency personnel which could be provided if necessary, and Section K.3.b. describes dosimeter reading and exposure control. No specific deficiency in offsite plans with valid basis is described in this objection.

AA. "Sunflower's Status Report"

Sunflower attempts in this "objection" to incorporate by reference, a 1983 supplemental discovery response entitled "Planning for an Accident at the Perry Nuclear Power Plant." This 32 page document consists of a lengthy discussion of emergency planning standards and various speculations about possible events which might occur during emergency evacuation. The document raises no specific issue regarding the adequacy of offsite emergency evacuation plans, but rather, consists of unfounded speculations. No issue is raised by this objection.

BB. "FEMA's Interim Report" pp. 24-25.

CC. "The SER" p. 25.

Sunflower attempts in these "objections" to incorporate the deficiencies listed in the March 1984 FEMA Interim Report and the SSER. In fact, for most deficiencies described in the Interim Report, corrective actions are also indicated along with FEMA's acceptance of the corrections. Indeed, FEMA's Report concludes and finds that there is reasonable assurance that adequate protective actions will be taken, based on the offsite emergency plans, even though some deficiencies remain. Sunflower does not attempt to refute this conclusion nor provide a basis for asserting the existence of deficiencies in view of this conclusion and the noted corrections to deficiencies. Similarly,

as previously stated, the deficiencies listed in the SSER #4 have been addressed by a recent revision to the onsite plan so that the SSER #4 does not provide a basis for the listed deficiencies. In any event the SSER addresses the onsite and not the offsite plans which are the subject of issue #1. Therefore, no issue of offsite plan deficiency with valid basis is raised by referencing the two documents.

DD. "Location of the EOF" p. 25.

EE. "Reception Center Locations" p. 25-26.

Sunflower goes beyond the scope of issue #1 in these objections by challenging the location of the Applicants' emergency operations facility and the location of offsite reception centers within 20 miles of PNPP. The locations for each type of facility conform to NRC regulatory guidance, and Sunflower provides no basis in reason or regulation for the objections. Sunflower has not presented a specific issue with regulatory basis in these assertions.

FF. "Remote-Control Sirens"

Sunflower objects to the NUREG-0654 guidance that Applicants install and maintain sirens to be operated by local governments. Sunflower asserts that an explanation must be provided of how FCC approval will be obtained. No basis is provided for this confusing assertion, and no relevance to issue #1 is apparent. Sunflower has not described a particular deficiency in offsite plans with reference to an applicable requirement in this objection.

GG. "Persons Without Technology" p. 26.

This assertion speculates that some persons (the Amish) of unspecified location ("northeastern Ohio") have no radios or television and thus there must be documentation of the group's size and alternate

means of notification provided. This statement is vague and baseless. There is no specific allegation that there are Amish in the Perry plume EPZ and there is no basis given to support any such allegation. Nor is there any allegation that the alerting and notification provisions of the offsite emergency plans are in any way deficient for notifying any Amish present in the plume EPZ of an emergency at Perry. In short, no specific issue with well reasoned or regulatory basis is identified by this objection.

HH. "Evacuees Not Going to Centers" p. 26.

Sunflower asks how persons who go to friends' and relatives' homes during a crisis will be identified, checked, and if need be, decontaminated. This does not attempt to raise an issue but simply asks a question, and is essentially an interrogatory. No specific deficiency in offsite plans is described, and no litigable issue is raised by this "objection."

II. "Evacuation Center Resources" pp. 26-27.

Sunflower simply complains in this objection that "insufficient" data is provided in the emergency plans concerning food, drugs, beds, protective gear, KI, and psychological services in the evacuation centers. This objection points to no requirement and is unclear as to what Sunflower deems "sufficient" or why the plans are "insufficient." No specific emergency plan deficiency with regulatory basis is provided by this statement.

JJ. "Emergency System Equipment" p. 27.

Sunflower asserts the emergency plans must describe alternate power sources to operate equipment in case of an accident at the Perry plant and questions whether sufficient power will be available. In view of the fact that the emergency plans do indicate the availability of backup

power for certain facilities and equipment, Sunflower's "objection" is inexcusably vague in failing to specify where backup power may be needed and inexcusably lacking in basis in failing to indicate why backup power is needed for particular facilities and equipment. This "objection" is vague and lacks the supporting basis set forth with specificity as required by 10 CFR § 2.714.

KK. "Returning to the EPZ" p. 27.

Sunflower asserts the emergency plans do not "sufficiently" describe how persons entering the EPZ to evacuate families will be handled. Sunflower speculates on difficulties in providing access, limiting exposures and measuring contamination but does not cite a particular deficiency in the offsite evacuation plans which describe orderly evacuation and traffic control. The objection points to no specific deficiency in the offsite evacuation plans and consists of a vague generalization and speculation without any supporting basis.

LL. "The Plans Will Not Work" p. 28.

Sunflower states that, because the emergency plans have not been tested by an exercise required by 10 CFR § 50.47(a)(1), the plans are "unworkable." The assertion is contrary to the Board's direction,^{25/} It is also basically lacking in specificity and is the same kind of broad, general, unspecific assertion, unsupported by any specific basis, that caused the Board to require issue #1 to be further particularized in the first place. It should be rejected for lack of specificity and supporting basis.

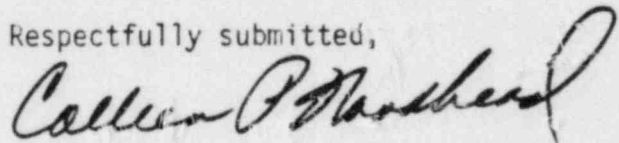
^{25/} The Board expressly rejected this notion in the Particularization Order, p. 4.

In summary, the "Objections " presented by Sunflower do not provide a single specific deficiency in offsite emergency plans with a supporting reasoned or regulatory basis. On the contrary, the objections consist of vague assertions and speculations or baseless, unsupported statements. Since Sunflower has totally failed to specify a litigable issue in accord with the Board's order for particularization, the conditionally admitted contention should be dismissed.

D. CONCLUSION

For all the foregoing reasons, Sunflower has failed to provide the required specificity and supporting bases for conditionally admitted issue #1. Applicants' motion to dismiss the issue should be granted.

Respectfully submitted,



Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 10th day of October, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
CLEVELAND ELECTRIC ILLUMINATING)
COMPANY, ET AL.) Docket No. 50-440 OL
(Perry Nuclear Power Plant,) 50-441 OL
Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANTS' MOTION FOR DISMISSAL OF ISSUE #1" 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 10th day of October, 1984:

*Peter B. Bloch, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Dr. Jerry R. Kline
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Mr. Glenn O. Bright
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jay Silberg, Esq.
Shaw, Pittman, Potts and Trowbridge
1800 M Street, NW
Washington, DC 20036

Donald T. Ezzone, Esq.
Assistant Prosecuting Attorney
105 Main Street
Lake County Administration Center
Painesville, Ohio 44077

Susan Hiatt
8275 Munson Road
Mentor, Ohio 44060

Terry J. Lodge, Esq.
618 N. Michigan Street, Suite 105
Toledo, OH 43624

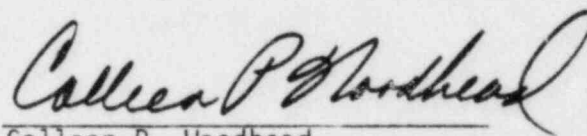
John G. Cardinal, Esq.
Prosecuting Attorney
Ashtabula County Courthouse
Jefferson, Ohio 44047

Janine Migden, Esq.
Ohio Office of Consumers Counsel
137 E. State Street
Columbus, OH 43215

*Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

*Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555



Colleen P. Woodhead
Counsel for NRC Staff