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

Docket Nos. 50-440
50-441 / 06

APPLICANTS' MOTION TO DISMISS
SUNFLOWER ALLIANCE'S PARTICULARIZED
OBJECTIONS TO PROPOSED
EMERGENCY PLANS IN SUPPORT OF ISSUE NO. 1

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September 20, 1984

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In its Memorandum and Order (Particularization of Emergency Planning Contention), dated July 26, 1984, the Licensing Board directed intervenor Sunflower Alliance, et al. ("Sunflower") to particularize Issue No. 1. Because of the changes in the underlying factual situation subsequent to the Licensing Board's initial admission of the broadly framed Issue No. 1, the Licensing Board directed Sunflower, as the lead intervenor, to "place a new set of cards on the table." Memorandum and Order, slip op. at 3.

It is time for the intervenors to state with specificity, and with bases, the particular deficiencies that currently exist in the draft plans.

After rejecting intervenor's arguments against particularization, the Licensing Board (id. at 5) ordered that Sunflower

shall, prior to August 22, 1984, specify in a written filing the specific inadequacies alleged to exist in the draft local and state emergency plans and shall provide a reasoned basis for believing that the allegations concerning inadequacies are true. If there are relevant sections of the applicable plans or of applicable regulations or guidance documents, those sections must be cited to support the claim of inadequacy.

Sunflower purports to respond to the Licensing Board's order in "Sunflower Alliance's Particularized Objections to Proposed Emergency Plans in Support of Issue No. 1," dated August 20, 1984 ("Sunflower Objections). As set forth below, Applicants submit that Sunflower has totally failed to meet the requirements set forth by the Licensing Board. Sunflower's "particularized objections " are inadequate because they either:

1. fail to cite to the relevant sections of the applicable plans, regulations or guidance documents;
2. do not specify the nature of the claimed inadequacy;
3. provide no reasoned basis for believing that the allegations concerning claimed inadequacies are true;
4. seek to raise issues outside the scope of Issue No. 1; or
5. challenge Commission regulations.

Sunflower has all but ignored the State and local plans;

notwithstanding the Licensing Board's order that relevant sections of appropriate plans must be cited. Where Sunflower does cite to a plan, more often than not it does not even cite to the correct plan.^{1/}

Sunflower has failed to meet its obligations set forth in the July 26, 1984 Memorandum and Order. Sunflower has had ample opportunity to identify specific, litigable issues. Based upon Sunflower's noncompliance with the Licensing Board's directives, as detailed below, Applicants respectfully request that the Licensing Board dismiss Sunflower's objections as issues in this proceeding, and in the absence of particularized objections to dismiss Issue No. 1.^{2/}

A. "Evacuation Time Estimate Defects"

Sunflower poses two contentions under this topic. First, Sunflower argues that Applicants have failed to afford the State and the three involved counties (Ashtabula, Geauga, and Lake) the opportunity to comment or review the "Applicants'

^{1/} For example, most of Sunflower's references to the "State Plan" are to non-existent citations. See, e.g., Sunflower Objections at 6 ("Table 6-1 in the State Plan, Rev. 3 appearing at 6-16," where there is no Table 6-1 or page 6-16 in the State Plan).

^{2/} Sunflower "expressly reserves the right" to submit new objections. Notwithstanding this "reservation", the rules for late-filed contentions apply and Sunflower's "reservation" should be disregarded. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 N.R.C. 683, 689-90 (1980).

estimated time requirements for confirmation of evacuation" or to make specific recommendations for actions that could significantly improve evacuation times. Second, Sunflower alleges that Applicants have not adequately addressed the effects of a thunderstorm on a summer Sunday evacuation. Neither of these presents a litigable issue.

1. Comments on Evacuation Time Estimate

Sunflower's allegation that Applicants did not afford the State and the Counties an opportunity to comment on the evacuation time estimate study is simply incorrect. The evacuation time estimate study itself indicates the interaction with the counties in developing the report. Perry Nuclear Power Plant Emergency Plan, CEI Report No. OM-15A, Rev. 3, dated April 23, 1984 ("PNPP Plan, Rev. 3"), App. D at vi. And, by letter dated March 9, 1984, CEI submitted the Evacuation Time Study to the Disaster Service Agency Directors and Sheriffs of the three Counties and the State's Nuclear Preparedness Officer and specifically invited their comments.

2. Summer Sunday Thunderstorm

Sunflower alleges that Applicants have "failed credibly to address the effects of adverse weather (i.e., a thunderstorm) on a summer Sunday evacuation." Sunflower Objections at 2. The only "basis" presented is a reference to NUREG-0887, Supplement No. 4 to the Staff's Safety Evaluation Report ("SSER

4") at p. 13-16, and a quotation from NUREG-0654 that a northern site with a high tourist population should consider adverse summer weather conditions. In SSER 4, the Staff requested that Applicants' "evacuation time estimate study should address the effects of adverse weather (i.e., a thunderstorm) on a summer Sunday evacuation." SSER 4, § 13.3.2.10 at p. 13-16. Applicants responded to the NRC Staff's comments in SSER 4 by revising Applicants' on-site emergency plan.^{3/} PNPP Plan, Rev. 3.

Sunflower fails to acknowledge, let alone reference, Applicants' explicit treatment of the impact of adverse weather conditions on a summer Sunday evacuation. See, PNPP Plan, Rev. 3, App. D, at 2-3, 2-6, 2-8, 2-10, 6-6 - 6-10, 6-14, Fig. 6-5, Table 6.1.4/ All that Sunflower has done is to state without support of any kind -- or indeed without recognition of the existence of the PNPP Plan -- that Applicants have "failed credibly" to address the effects of summer adverse weather.

^{3/} Applicants' April 28, 1984 letter transmitting PNPP Plan, Rev. 3 to the NRC Staff, explicitly stated that the revision responded to the NRC Staff's SSER 4 review comments and included a cross-reference showing where in the PNPP Plan, Rev. 3 each review comment was considered.

^{4/} Sunflower is obviously familiar with the PNPP Plan, Rev. 3 since its Objections refer to it. See, e.g., Sunflower Objections at 13, 16, 20. The PNPP Plan, Rev. 3 was also specifically called to Sunflower's attention in Applicants' Amended and Supplemental Answers to Sunflower's First Round Discovery Requests, dated June 15, 1984, at 3.

This clearly falls far short of specifying "the specific inadequacies alleged to exist" in the plans or setting forth "a reasoned basis for believing that the allegations concerning inadequacies are true." July 26, 1984 Memorandum and Order at 5. Sunflower provides nothing to explain what is wrong with Applicants' evaluation; indeed Sunflower does not even recognize that Applicants have addressed the issue. This showing (or more precisely, lack of showing) cannot conceivably meet the Licensing Board's tests.

B. "Lack of Identification of Route Impediments"

Under this heading, Sunflower appears to be posing two subissues -- (1) impediments to evacuation (such as stalled cars and a snow emergency), and (2) logistics of evacuating construction workers at Unit 2. Neither issue meets the Licensing Board's tests.

1. Route Impediments

Sunflower alleges that "draft state and local plans neither identify, nor propose options for dealing with, potential impediments to use of evacuation routes, as required by NUREG-0654 at 63." Sunflower apparently made no attempt to review the State and local plans, since the issue of route impediments is explicitly dealt with. Ashtabula Plan,^{5/} § J.4.2;

^{5/} Ashtabula County Radiological Emergency Preparedness Plan (May 10, 1984).

Geauga Plan,6/ § J.4.d; Lake Plan,7/ § J-08; State Plan,8/ § II.J.4.a(1). Sunflower's failure to refer to the plans or to the asserted deficiencies in those plans demonstrates the total absence of compliance with the Licensing Board's July 26, 1984 Memorandum and Order.

Sunflower also includes an argument that northeast Ohio receives considerable snowfall and that the "considerable hardware and road-clearing equipment" maintained by State and local governments are "quite strained perhaps a dozen times in any given winter." From this allegation, Sunflower argues that PNPP should be restricted to low or no-power "through the duration of an immobilizing period of inclement weather." Sunflower's argument evidences a fundamental misunderstanding of emergency planning requirements. Off-site emergency plans do not -- indeed should not -- contemplate evacuation in all cases.9/ One of the obvious situations where evacuation would be inappropriate would be if adverse weather conditions make roads

6/ Geauga County Radiological Emergency Response Plan (December 1983) (including Change No.1 dated March 1984).

7/ Lake County Emergency Response Plan for the Perry Nuclear Power Plant, (Rev. 1, December 1983).

8/ State of Ohio Plan for Response to Radiological Emergencies at Licensed Nuclear Facilities (Edition of 1984).

9/ Indeed, NRC regulations speak of "a range of protective actions" for the plume exposure pathway EPZ. 10 C.F.R. § 50.47(b)(10).

impassable. In such a case, where evacuation cannot be accomplished in a timely fashion, the appropriate protective action would be shelter, rather than evacuation. Consumers Power Co. (Big Rock Point Nuclear Power Plant), Initial Decision, LBP-84-____, 20 N.R.C. ____, slip op. at 146 (August 29, 1984). Nowhere has it been suggested that plant derating or shutdown is necessary or appropriate.

2. Unit 2 Construction Workers

Sunflower asserts that there is "[n]o discussion of the logistics of evacuating the supposed thousands of construction workers who will be laboring to complete Unit 2" Sunflower supports this allegation by citing to SSER 4. Once again, Sunflower has neglected to review the plans themselves or to cite to them. The issue of construction worker evacuation is dealt with in the PNPP Plan, Rev. 3 which, as noted above, responded to the comments in SSER 4. See, PNPP Plan, Rev. 3 at § 6.4.1, Figure 6-7, and App. D at 2-1, 2-8, 3-7, 3-8, 3-9, 3-14, 6-1 through 6-14, A3-2. Sunflower has failed to specifically identify a reasoned basis for its claimed inadequacy.

C. "Uncertain Chain of Command"

Under this title, Sunflower has grouped a number of allegations -- none of which presents litigable issues.

1. Consistency in Role of Commissioners

Although Sunflower's discussion is very confusing, its major complaint on this issue seems to be that "there is no consistently defined role in a major or minor emergency for County Commissioners, especially in conjunction with any leadership which would be forthcoming from the State." Sunflower Objections at 4. Again, Sunflower has failed to address the plans themselves.^{10/} In fact, the three County plans do reflect a consistent role for the County Commissioners. See, e.g., Ashtabula Plan, § A.3; Geauga Plan § A-5; Lake Plan §§ 5.2, 6.7; State Plan § II.A.1.b. The only example of "inconsistencies" given by Sunflower simply does not exist. Sunflower states that in Ashtabula County, the Commissioners order protective actions based on advice from County staff and "recommendations" of the Governor's office,^{11/} while in Lake County, "the Lake County Prosecutor advises on emergency

^{10/} Although Sunflower claims (Objections at 3) that "Lake County's Commissioners did not even rate a mention as to their roles in the State Plan, *id.* [State Plan, Rev. 3] at 5-25," there is no page 5-25 in the State Plan. Presumably, Sunflower has erroneously cited to PNPP Plan, Rev. 3, at 5-25, which summarizes the roles of certain Lake County agencies. The role of all County Commissioners is summarized in § 5.4.2 of PNPP Plan, Rev. 3. In any event, the State Plan does identify the role of the Lake County Commissioners. State Plan, § II.A.1.b.

^{11/} Sunflower appears to cite the Ashtabula Plan "at 4" for this statement. No such page number appears in the Ashtabula Plan, the State Plan, or the PNPP Plan.

authorities and proclamations."^{12/} In fact, the plans for both Lake and Ashtabula Counties provide for their Commissioners to make protective action decisions based on information and recommendations from CEI and State agencies. Compare Ashtabula Plan, App. 6, with Lake Plan, Attachment A-4. Sunflower has failed to present a litigable issue.

2. Legal Basis for Plans

Sunflower alleges that, despite the provision in NUREG-0654 that the plans contain their legal basis, "[n]owhere does any such documentation or discourse appear." Sunflower Objections at 4.^{13/} Once again, Sunflower has failed to read the plans. The information is clearly set forth therein. Ashtabula Plan § B.5; Geauga Plan § B-4; Lake Plan, §§ 1.1-1.3, A-07, A-08; State Plan, §§ II.A.1, II.A.3.b(3)-(5). Sunflower has not met the Licensing Board's criteria for admission of this issue.

^{12/} Sunflower cites "State Plan, Rev. 3 at 5-27" for this statement. No such page number exists in the State Plan. Sunflower has again apparently confused the PNPP Plan with the State Plan.

^{13/} Although Sunflower states that NUREG-0654 requires "Applicants' plans" to reference their legal basis, this is only required for State and local plans. Licensee plans are explicitly excluded. NUREG-0654, at 32 (Criterion A.2.b).

3. Declaration of Emergency by Governor

Sunflower sets forth a long, rambling discourse on questions of state law, and specifically whether local jurisdictions might be subject to civil monetary damages. Sunflower Objections, at 4-6. Mixed in with this is an apparent attack on the Price-Anderson Act^{14/}, an irrelevant reference to NUREG-0654,^{15/} and a misreading of the emergency plans.^{16/} Sunflower's argument seems to be that (1) Ohio's "Good Samaritan" statute only applies to confer immunity to civil liability if the Governor declares an emergency, (2) the local plans do not contemplate the counties awaiting a Governor's action before recommending or ordering protective actions, (3)

^{14/} Challenges to the Price-Anderson Act are, of course, not permitted in licensing proceedings. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 A.E.C. 79, 81 (1974).

^{15/} Sunflower states that the legal issues it raises are complicated by the "official guidance for decisionmaking" of NUREG-0654. Sunflower Objection at 6. Sunflower presumably means to suggest that the 15 minute time identified in NUREG-0654 cannot be met if the Governor must first declare a state of emergency. However, the portion of NUREG-0654 quoted by Sunflower, id. at 1-3, specifies 15 minutes as the time allowed for the utility to notify off-site authorities, not the time for the off-site authorities to make protective action recommendations.

^{16/} Sunflower claims that "locally-involved entities" receive their notification of an accident from the Ohio Disaster Services Agency. Sunflower Objections at 3 (citing SSER 4 at 13-2). In fact, the same page referenced by Sunflower (SSER 4 at 13-2) states that CEI directly notifies both the State and the Counties. See, also, PNPP Plan, Rev. 3 at § 6.1.

unspecified Ohio judicial decisions have "virtually destroyed" the sovereign immunity doctrine, and therefore (4) the County Commissioners may tailor their protective action decisions to avoid this potential liability.

Aside from the fact that NRC licensing proceedings do not appear to be the appropriate forum to litigate such points of state law,^{17/} Sunflower's contention nevertheless fails to meet the Licensing Board's criteria for admissibility. Sunflower's conclusion that County Commissioners might order shelter rather than evacuation "to avoid liability for such problems as a drunken or drugged or exhausted volunteer bus driver's antics," is nothing more than Sunflower's unsupported speculation. Certainly, no "reasoned basis" has been presented.

Also, Sunflower's argument that the claimed destruction of the sovereign immunity doctrine by unidentified Ohio Supreme Court cases would cause County Commissioners to warp their

^{17/} This seems particularly true where the Governor himself stated, in the letter transmitting the State Plan to the Federal Emergency Management Agency, that the plan furnishes "an adequate degree of protection" and that the plan is "designed to become effective without additional orders or directives from higher authority." Nor is it obvious that the statute quoted by Sunflower supports Sunflower's proposition. The statute provides its immunity for persons "in good faith carrying out, complying with or attempting to comply with ... any federal law" Ohio Rev. Code § 5915.10(A). Since off-site emergency plans and their implementation are required by "federal law," i.e., the Atomic Energy Act and NRC's regulations thereunder, the immunity would seem to apply.

protective action decisions in order to avoid liability is inconsistent with every other decision that the Commissioners make. If the County is not protected by sovereign immunity for decisions made during an emergency at PNPP, then it would be similarly exposed for every other type of decision -- both in non-nuclear "emergencies" (floods, storms, chemical spills, etc.) and in routine county business. This indicates the baselessness of Sunflower's claim that the alleged demise of sovereign immunity will uniquely affect decisionmaking.

D. "Protective Actions Decision-Making"

Under this category, Sunflower raised a number of subissues concerning the criteria for deciding upon shelter as a protective action. Although, as discussed below, the specific allegations are each deficient as contentions in this proceeding, as a group they are inadmissible because they are outside the scope of Issue No. 1. That issue was limited to "emergency evacuation plans." LBP-81-24, 14 N.R.C. 175, 189 (1981); LBP-81-35, 14 N.R.C. 682, 685. This scope was again recognized by the July 26, 1984 Memorandum and Order (at 2) when the Board observed that "evacuation planning for the Perry Nuclear Power Plant is well advanced." The Licensing Board, in directing Sunflower to particularize Issue No. 1, did not broaden the scope of the Issue, but rather ordered Sunflower "to make its contention relevant to the current situation."

Since contentions on shelter do not relate to evacuation, these issues are inadmissible.

Even if sheltering were within the scope of emergency evacuation planning, the specific issues raised by Sunflower do not meet the Licensing Board's criteria, and must therefore be rejected.

1. Ventilation Control

Sunflower cites to Table 6-1 of the "State Plan, Rev. 3" for the statement that "shelter is to be with ventilation control." Sunflower goes on to claim that ventilation control would be "unhelpful and potentially disastrous if hundreds are trapped in a rest home, shopping center or school in the plume exposure pathway, on a 95-degree August afternoon -- or a 5-degree January one." In the first place, the statement quoted by Sunflower does not appear in the State Plan.^{18/} Secondly, Sunflower's complaint seems to be an argument that shelter is an inappropriate protective action under all circumstances, notwithstanding the guidance provided in NUREG-0654 and EPA 520/1-75-001, "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents" (September 1975, rev. June 1980) that shelter is an appropriate protective action under some conditions. See, e.g., EPA 520/1-75-001 at 1.4-1.6;

^{18/} The State Plan has no Table 6-1. Presumably, Sunflower was referring to the PNPP Plan, Rev. 3.

NUREG-0654 at 9. Third, Sunflower's complaint fails to recognize that ventilation systems could be shut off for short periods of time or switched to recirculation modes while a plume passed over without its speculative "disastrous" results. Fourth, Sunflower has failed to address the criteria incorporated directly or indirectly in each plan for selecting protective actions. See, e.g., Ashtabula Plan, § J.3; Geauga Plan, § J-3; Lake Plan, § J-02; State Plan, § II.I.3.g(2). In short, Sunflower has set forth no reasoned basis for its claimed inadequacy.

2. EPA Guidance

Sunflower claims that "Applicant has ignored the plain intentions expressed in guidance from the U.S. Environmental Protection Agency" that "whole-body exposures to airborne radioactive materials for the general public should not exceed 1-5 rems." Sunflower cites EPA 520/1-75-001 to support this statement. Once again, Sunflower has totally ignored the State and County plans, each of which identifies this very EPA document as its guidance in determining protective actions. Ashtabula Plan, § J.3; Geauga Plan, § J-3; Lake Plan, § J-02; State Plan, § II.I.3.g(2). Thus, Sunflower is simply wrong in stating that the plans are "refusing to follow this authoritative guidance." Nor does Sunflower correctly read EPA 520/1-75-001 or understand the concept of protective action guides. That document

does not say that whole body exposures to the general public should not exceed 1-5 rems. The 1-5 rem protective action guide is "the projected [whole-body] dose to [the general public] which warrants taking protective action." EPA 520/1-75-001 at 1.1. It is neither an "acceptable" dose nor a dose limit. Id. at 1.1, 5.32. The language quoted by Sunflower merely states that the need for protective action should be determined at a projected dose of not more than 5 rems. Sunflower has failed to show any plan which is inconsistent with this guidance ^{19/} For these reasons, Sunflower has presented no litigable issue meeting the Licensing Board's criteria.

3. Evaluation of All EPZ Structures

Sunflower seems to criticize State and local plans because they lack proposals "to evaluate the relative degrees of 'ventilation control' within each and every structure in the EPZ." Sunflower points to no regulatory requirement or guidance even suggesting such an unreasonable requirement. Indeed, NUREG-0654 refers to the "expected local protection afforded in residential units or other shelter." NUREG-0654 at 64. Nor

^{19/} Table 6.1 of the PNPP Plan, Rev. 3 (miscited by Sunflower -- Objections at 6-7 -- as part of the State Plan) is fully consistent. Indeed, the PNPP Plan explicitly states that after off-site doses are projected, they "will then be compared to the Environmental Protection Agency's Protective Action Guidelines to arrive at a Protective Action Recommendation." PNPP Plan, Rev. 3 at 6-9.

does Sunflower suggest that the representative shielding factors set forth in PNPP Plan, Rev. 3 are in any way inadequate or inaccurate,^{20/} or that use of representative shielding factors will result in inappropriate protective action decisions. Sunflower has provided no "reasoned basis" for considering this issue.

E. "Authority Lacking for School Bus Usage"

As in Section C.3 above, Sunflower is seeking to litigate in this proceeding a question of state law. Sunflower asserts that Ohio state law forbids the use of school buses for off-site evacuation of individuals without access to private automobiles.^{21/} As in that case, litigation of state law questions is inappropriate here. As Sunflower recognizes, the Ohio Department of Education has issued an opinion that local school buses may be used for emergency purposes. All three County plans contemplate the use of school buses for transportation of the non-auto population, citing to the Department of Education opinion. Ashtabula Plan, § J.4.1 and App. 9; Geauga Plan, § J-4.a and App. 24; Lake Plan, § 6.9 and Attachment A-1. In

^{20/} The representative shielding factors identified in PNPP Plan, Rev. 3, Table 6-4, are from SAND 77-1725, a report whose consideration NUREG-0654 explicitly approves. NUREG-0654 at 64.

^{21/} Presumably, Sunflower would agree that school buses could be used to evacuate students.

any event, while Sunflower states that FEMA "has previously noted this" issue, citing p. 13 of the FEMA Interim Report on Off-site Preparedness for PNPP (transmitted by NRC letter dated April 20, 1984), Sunflower neglected to point out that FEMA's resolution of this item as stated in the Interim Report is that "Letters of Agreement will be needed with the School Districts involved to make the criteria item adequate." Interim Report at 13. Sunflower has not even alleged that agreements from school districts will not be forthcoming. Sunflower has presented no litigable issue.

F. "Insufficient Proofs of Volunteer Aid"

Sunflower claims that the "state and local plans are deficient because they fail to fix in unequivocal terms the availability of volunteers." Sunflower Objections at 10. Sunflower selectively quotes from NUREG-0654 to support this argument.

The full quotation of NUREG-0654 Criterion C.4 states:

Each organization shall identify nuclear and other facilities, organizations or individuals which can be relied upon in an emergency to provide assistance. Such assistance shall be identified and supported by appropriate letters of agreement (emphasis added).

By omitting the underscored language, Sunflower tries to give the impression that volunteer emergency workers must be identified in the plan and letters of agreement obtained from them. However, FEMA has stated, and NRC decisions have confirmed, that emergency workers need not be named in plans and need not

sign letters of Agreement. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), Initial Decision, LBP-84-____, 20 N.R.C. ____ (July 2, 1984), slip op. at 41, 92.

The only hint of a basis for Sunflower's claim of the unavailability of volunteers is its citation to a 1983 "Status Report" entitled "Planning for an Accident at the Perry Nuclear Power Plant" by the "Perry Legal Defense Fund."^{22/} The relevance of the report is at least questionable since it was prepared before agency procedures had been finalized and prior to training of any significant number of off-site emergency workers. As a result, any conclusions it reached on the availability of volunteers would be so totally out-of-date as to be irrelevant. Furthermore, the "Status Report" on its face is based on such limited information that it cannot conceivably be considered a "reasoned basis." For example, Table 9 of the "Status Report" gives the results of a "survey" of school bus drivers. The Table is extraordinarily confused, and does not appear to provide information on a significant sample of school bus drivers. Also, Table 10 of the Report (entitled "Fire Chief Survey Response") states, "Only 8.9% of the fire chiefs surveyed responded." In either case, such information hardly constitutes an appropriate basis for a contention at this late stage.

^{22/} A copy of the report was served by Sunflower Alliance's Supplemental Discovery Response, dated December 5, 1983.

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

Sunflower urges that state and county plans not be "approvable [sic]" unless supplies of potassium iodide ("KI") are maintained for emergency workers and the public. As Sunflower correctly notes, the position of the State of Ohio, as set forth by the Director of Health, is that KI should not be issued for emergency workers or the general population. State Plan, § II.J.3.c. The three counties have followed the State advice. Ashtabula Plan, § J.5; Geauga Plan § J-7; Lake Plan, § K-04.

Sunflower has presented no basis for requiring KI. While it cites to 10 C.F.R. § 50.47(b)(10) and NUREG-0654, those do not mandate the use of KI. As stated by the Appeal Board:

Neither these regulations [10 C.F.R. § 50.47(b)(10)] nor NUREG-0654 (which is a document designed to provide guidance and criteria for the development of radiological emergency plans) expressly mandates that such protective actions include the use of radioprotective drugs.

Union Electric Co. (Callaway Plant, Unit 1), ALAB-754, 18 N.R.C. 1333, 1334 (1983). The EPA document cited by Sunflower, EPA 520/1-75-001, does not apply to the general population at all, and even for emergency workers does not require the deployment of KI. At page 1.42 of that document, the reference cited by Sunflower, EPA states:

The use of stable iodine as a protective action for emergency workers has been recommended by EPA, but only in accordance with State health laws and under the direction of State medical officials as indicated above (emphasis added).

Here, the chief State health official has decided that KI should not be employed.

The Callaway Appeal Board stated that the appropriate resolution of the KI issue is to defer to the decision of the state.

Generally speaking, the Commission bases its decision regarding the adequacy of emergency plans on a review of findings and determinations made by the Federal Emergency Management Agency (FEMA), which is responsible for reviewing offsite emergency plans. In turn, FEMA leaves to state governments the decision regarding the distribution of KI. A FEMA interim policy guidance statement on the use of potassium iodide, dated December 1, 1982, indicates:

Each state has a responsibility for formulating guidance to define if and when potassium iodide is used as a thyroid blocking agent for emergency workers, institutionalized persons, and the general public. Where States elect not to include KI in their preparedness posture either for emergency workers or institutionalized persons, the plans should state under whose authority the decision was made and the rationale for the decision.

Similarly, the Federal Radiological Preparedness Coordinating Committee, which is comprised of representatives of numerous Federal agencies, including FEMA, the NRC, and the Environmental Protection Agency, states:

It is recognized that the decision to use KI for thyroid blocking to protect

the health and safety resides with the State and local health authorities. Therefore, with the exception of the NRC licensee's personnel located on-site during the accident, the decision for use of KI during an actual emergency by all other individuals for whom the use of KI is recommended are the responsibility of those authorities. In addition, because the factors bearing on the desirability of stockpiling and distributing KI for thyroidal blocking of the general population within the Emergency Planning Zone for the Plume Exposure Pathway depend heavily on local conditions, this matter is a decision for State and local authorities to make.

Callaway, supra, 18 N.R.C. at 1335 (footnotes omitted). See, also, Philadelphia Electric Co. (Limerick Generating Station) Special Prehearing Conference Order, LBP-84-18, 19 N.R.C. _____ (April 20, 1984) slip op. at 13-17 (contention challenging state policy against distributing KI to public rejected based on prior litigation of issue in other proceedings). Sunflower has certainly presented no Perry-specific basis -- nor indeed any basis -- for reaching a different conclusion.

H. "Inadequate Assurances of Worker Protection"

Sunflower links three separate issues under this topic -- availability of respirators, decision-making for exposures exceeding 25 rem, and decision-making for "cataclysmic moments." None of these should be admitted.

1. Respirators

Sunflower questions whether the Counties will make respirators available. The question is based on a footnote in EPA 520/1-75-001 quoted by Sunflower (Objections at 12) to the effect that complete thyroid loss while warranted to save a life should not be necessary if respirators and/or KI were available. There is no litigable issue presented. If Sunflower had reviewed the County plans, it would have observed that all include the availability of respirators. Ashtabula Plan, App. 22; Geauga Plan, App. 20; Lake Plan, Attachment K-1.

2. Decision-making for Doses Above 25 Rem

Sunflower cites the FEMA Interim Report at 15 for noting the absence in the Lake County Plan of a decision chain to authorize whole-body exposures exceeding 25 rem. This presents no litigable issue since the Lake Plan now states:

Should the need arise for an emergency worker to exceed the exposure limits in Attachment K-3 [which includes the 25 rem whole-body exposure value], the individual's department head will discuss the need with the EOC Direction and Control group in consultation with the Ohio Department of Health, Radiological Section, in the State EOC. If concurrence is received, the department head will approve and document the increased exposure.

Lake Plan, § K-03.4. Similarly unsupported is Sunflower's allegation that "Gauga County does not provide any decisional chain for authorizing excessive exposures of over 25 whole-body

rem." Sunflower Objections at 12. Such a decision-chain is explicitly set forth in the Geauga Plan, § K-4. Once again, Sunflower has failed to refer to the plans. Sunflower has failed to show any basis for its claim.

3. Cataclysmic Decision-Making

Sunflower claims that plans do not show how CEI, County and State officials will "render dozens, hundreds or thousands of such decisions [to exceed emergency worker protective guidelines] in the cataclysmic moments following a breach of containment or other consequential pluming radiation." Sunflower Objections at 12. First, Sunflower has provided no basis to support its alleged cataclysm or that such major radiation leakage could occur in "moments." Second, Sunflower has failed to indicate why sheltering would not be the appropriate response should such a "cataclysm" occur. And finally, Sunflower has shown no basis for even suspecting that excess exposure decisions could not be made for categories of individuals if its postulated catastrophe should occur. In sum, Sunflower has provided no "reasoned basis" for this claim of inadequacy.

I. "Slick as EALs"

This issue, while long in verbiage, is short in substance. Sunflower's claim is that the PNPP Plan, Rev. 3 only contemplates protective actions within five miles of the plant. Sunflower then argues that "the State of Ohio and the three

affected counties evidently have adopted these fallacious fundamentals lock, stock and syndrome" Sunflower Objections at 16.

Notwithstanding Applicants' suggestion in 1982 that the NRC Staff should reevaluate the size of the 10 mile "basic emergency planning zone" (see discussion in Sunflower Objections at 15),^{23/} Applicants have planned a plume exposure pathway EPZ of about ten miles, as called for by 10 C.F.R.

§ 50.47(c)(2). See PNPP Plan, Rev. 3 at § 2.3 and Figure 2-4. All off-site plans have adopted the same EPZ. Ashtabula Plan, App. 5; Geauga Plan, App. 2; Lake Plan, Attachment 2.1; State Plan, Figures II-J-2 to -4, II-J-17.

Contrary to Sunflower's explanation, the PNPP Plan does contemplate protective actions beyond five miles. Although the specific protective actions extend only to five miles, the PNPP Plan explicitly states "that assessment activities will

^{23/} Sunflower claims that "[t]he Staff promptly scotched that suggestion in an April 13, 1982 letter from A. Schwencer to Vice-President Davidson, noting that the underlying source terms were now considered conservative." Sunflower Objections at 15. Given the rather plain language of the Staff's letter, it is not clear how Sunflower totally misunderstands the use of the term "conservative." As the April 13, 1982 letter states:

Our current understanding of the postulated source term is that it may be too high by a factor of 2 to 10. Because we cannot technically justify the precise [sic] magnitude of the conservatism in the source term at this time, we believe it premature to rethink the size of the emergency planning zones.

continue to determine if additional protective actions should be recommended." PNPP Plan, Rev. 3 at 6-11. Later on that same page, it states that [r]ecommended protective actions may be extended depending on meteorological conditions, population distribution, and condition of roads and major traffic ways." Id. Since Sunflower cited to this page, it is not clear why Sunflower failed to acknowledge that the plan did contemplate protective actions beyond five miles.^{24/} And, of course, as Sunflower also fails to reflect, all three County plans are based on protective actions in the entire plume exposure pathway EPZ, not just five miles. Ashtabula Plan, § J.2; Geauga Plan, § J-2; Lake County Plan, § J-04.

In addition to these deficiencies underlying Sunflower's allegation, Sunflower also fails to acknowledge that the plant status protective action methodology it criticizes is only one of two techniques in place for for generating protective action recommendations. The other methodology, detailed on pages 6-9

^{24/} Sunflower observes (at 14) that its concern was shared by the Staff in a January 11, 1984 letter to Applicants. The January 11, 1984 letter commented on a few of the more than 200 Emergency Action Levels ("EALs"). None of the comments had any relevance to the protective action issue raised by Sunflower (5 mile evacuation), but related to such matters as whether two or more EALs should be linked by an "AND" or by an "OR." In any event, Sunflower failed to review the PNPP Plan itself, because the comments were addressed in PNPP Rev. 3 (except for one addressed in Applicants' April 28, 1984 letter transmitting Rev. 3 to the Staff and two addressed in Applicants' August 20, 1984 letter to the Staff).

and 6-10 of the PNPP Plan, Rev. 3, generates protective action recommendations by calculating the projected off-site doses and comparing these with EPA Protective Action Guideline values. The resulting recommendations would be determined by dose calculations, not by distance.

As shown by the foregoing discussion, the plans themselves demonstrate that Applicants' protective action recommendations are not limited to five miles. Nor are the County plans so limited. Sunflower's position can only be explained by its failure to refer to the plans themselves. Sunflower has provided no basis to support its claim.

J. "EALs are Incomplete"

This contention alleges that the detailed Emergency Action Levels set forth in Table 4-1 of PNPP Plan, Rev. 3 are "not technically complete." Sunflower Objections at 16. According to Sunflower, "Time and again as one reads Table 4-1, one sees critical measurements or standards left incomplete, marked 'later'." Sunflower's hyperbole does not supply a reasoned basis for this contention.

Although Sunflower has not identified the EALs which are incomplete, a review of Table 4-1 shows that of the more than two hundred individual EAL indications, only 12 are "incomplete."^{25/} And in each case, where the value to be specified

^{25/} Table 4.1, EAL §§ I.3.1(a) and (2); II.1.a(1); III.11.a, b and c; and IV.6.a(2), b.

"later" is unavailable, a comparable value is specified.^{26/} But more importantly, Sunflower has not indicated what it would hope to litigate or why the "missing" values need be included in Table 4-1 at this particular moment (especially since the values can only be added after the appropriate instrumentation has been calibrated). Sunflower can point to no requirement compelling its degree of "completeness." Certainly Sunflower has no basis to suggest that Applicants will not add the appropriate values when those values are available. Contrary to Sunflower's remark, the PNPP Plan is not "at this juncture rather prehensible [sic]," Sunflower Objections at 16. Rather, there are some rather detailed technical data which are simply not now available. Sunflower has not indicated what it would do with this data, even if it were available. There is no issue to litigate.

K. "Implementation of Staff Recommendations on EALs"

Sunflower notes that the NRC Staff in a January 11, 1984 letter to CEI provided comments on the Emergency Action Level statements set forth in Applicants' on-site plan. Sunflower then "incorporates each of the Staff's criticisms of the EALs and realleges them herein by reference as particularized

^{26/} See, for example, Table 4.1, EAL § 1.3.a.1 ("Off-gas pretreatment process radiation monitor high alarm with indication of: (1) increase of (later) mRem/hr in 30 min. (equiv. to 100,000 uCi/sec).")

objections. Documents incorporated by reference "are not 'contentions'" and fail to meet the basis and specificity requirements of 10 C.F.R. § 2.714. Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 N.R.C. 209, 216 (1976). Moreover, this kind of unevaluated repetition of the Staff filing does not meet the Licensing Board's intent for a particularized discussion, focusing on the specific provisions of the current plans. This is particularly true where the Staff comments were addressing earlier versions of the on-site plan.

The current version of the on-site plan, PNPP Plan, Rev. 3 (to which Sunflower specifically cites in other sections of its pleading), addressed the Staff's comments, as explicitly pointed out in the April 28, 1984 letter from Applicants transmitting the Plan to the Staff. Sunflower's failure to even acknowledge the Plan itself disqualifies the contention.

L. "EPZ Radius"

Sunflower "demands" that the radius of the plume exposure pathway EPZ be increased to "15 miles or more." Sunflower bases this demand on the Staff's Final Environmental Statement for Perry (NUREG-0884, August 1982) ("FES"). In its discussion of the methodology for modeling the environmental consequences of core-melt accidents, the Staff stated that the calculational model assumes that people down-wind from the plant are

evacuated to 15 miles and that "at the end of the travel distance the evacuee is assumed to receive no further radiation exposure." NUREG-0884 at F-2. Sunflower interprets this statement as an admission that evacuees receive radiation exposure beyond the plume exposure pathway EPZ. Sunflower then argues, presumably as a matter of law, that the EPZ boundary must be moved beyond the point that evacuees would receive any radiation exposure.

Sunflower has provided no basis to challenge the size of the EPZ. By regulation, the NRC has fixed the plume exposure pathway EPZ as "an area about 10 miles (16 km) in radius" whose "exact size and configuration ... shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes and jurisdictional boundaries." 10 C.F.R. § 50.47(c)(2). Sunflower has identified no such factors relating to the Perry EPZ. The citation to a generic consequence model hardly qualifies. Arguing that the plume exposure pathway EPZ must be big enough to protect evacuees from all radiation exposure is a challenge to the Commission's regulatory definition and Sunflower has failed to make the showing required by 10 C.F.R. § 2.758 to support such a challenge.

M. "Independent Monitoring"

This objection has two parts. The first concerns the planned Lake County radiation monitoring system, while the second deals with the installation of similar systems for Ashtabula and Geauga Counties.

1. Lake County

Sunflower "applauds" Lake County's planned system of independent radiation alert monitoring. Sunflower then poses a series of questions -- where will the data be telemetered, how will the data be digested, what use will be made of the data. While these might make interesting interrogatories, they do not constitute contentions. No issue is posed to litigate. Sunflower does not allege any defect or deficiency in the proposed Lake County system. The Licensing Board's July 26, 1984 Memorandum and Order required the submittal of specific contentions, not additional discovery. In any event, there is no regulatory requirement for such a system. See Section M.2, below.

2. Ashtabula and Geauga Counties

Sunflower argues that because Lake County may have its own radiological monitoring system, Ashtabula and Geauga Counties and "the area within a 50 mile radius of PNPP" should also have such systems. The only basis suggested is that the trustees of Jefferson Township filed with the NRC a resolution to

[R]equest and support the installation and maintenance of independent monitoring facilities and procedures at and around the Perry Nuclear Power Plant.

This resolution does not support the need for independent radiation monitoring for Ashtabula and Geauga Counties and within 50 miles of Perry. First, the Lake County system would comply with Jefferson Township's resolution because it would provide "independent monitoring facilities and procedures at and around the Perry Nuclear Power Plant." Nowhere does the Jefferson Township resolution state that the Township wants its own system or wants one for Ashtabula County. Second, as Sunflower acknowledges, Jefferson Township is well outside the plume exposure pathway EPZ. Ingestion pathway issues are outside the scope of Issue No. 1. See Section N, below. Third, Sunflower is in error in stating that NUREG-0654 at 54, 58 "appears to require the use of independent data sources." Sunflower Objections at 17. There is no regulatory basis for requiring an independent radiation monitoring system. Sunflower's references do not support this claim. The only possibly relevant language on page 54 of NUREG-0654, Criterion H.7 (p. 54) states

Each organization, where appropriate, shall provide for offsite radiological monitoring equipment in the vicinity of the nuclear facility. (emphasis added)

Sunflower provides no indication why any additional monitoring is appropriate. Similarly, the only possible source for Sunflower's reference to NUREG-0654, p. 58, states

Each organization, where appropriate, shall provide methods, equipment and expertise to make rapid assessments of the actual or potential magnitude and locations of any radiological hazards through liquid or gaseous release pathways. This shall include activation, notification means, field team composition, transportation, communication, monitoring equipment and estimated deployment times. (emphasis added)

Evaluation Criterion I.10. As with Criterion H.7, Sunflower has provided no basis for why independent radiation monitoring systems are "appropriate" or needed to assess the actual or potential magnitude and location of radiological hazards.

N. "Ingestion Pathway Monitoring"

This contention charges that the State of Ohio lacks equipment and personnel to handle radiation monitoring and sampling in the ingestion pathway. The contention is outside the scope of Issue No. 1. As the Licensing Board has ruled, "the ingestion pathway is not part of this contention." Order (Concerning a Motion to Compel), dated August 18, 1981 slip op. at 5. See also Memorandum and Order (Concerning a Motion to Compel Answers About Emergency Planning), dated October 19, 1982, slip op. at 4. Nothing in the Licensing Board's July 26, 1984 Memorandum and Order has changed this scope. See § D above.

O. "Evacuated Area Re-Entry"

This contention states that

the PNPP emergency plan does not adequately set forth plans and procedures for re-entry and recovery of property within the 10 and 50 mile zones, nor does it set forth means by which protective measures are to be relaxed, all in violation of NUREG-0654 at 70.

This contention is in violation of the Licensing Board's criteria on many counts. First, it does not relate to emergency evacuation, and is therefore outside the scope of Issue No. 1. The Licensing Board, in ordering particularization, did not broaden the scope of Issue No. 1. See § D, above. Second, Sunflower makes no reference to the "relevant sections" of the PNPP emergency plan, as required by the July 26, 1984 Memorandum and Order. Third, the contention is totally unspecific, providing no hint of what the inadequacies in the PNPP Plan, Rev. 3 might be.^{27/}

P. "Hospitals"

Sunflower claims that "[h]ospital designations and medically-related decontamination procedures are incomplete or absent from draft plans." Sunflower Objections at 19. Again, Sunflower has failed to cite to any specific provisions of the

^{27/} Section 9 of the PNPP Plan, Rev. 3, sets forth plans for recovery and reentry, as called for by NUREG-0654, Planning Standard M (p. 70). The State and County plans deal with this topic in Part M of each respective plan. Sunflower cited to none of these.

emergency plans. Sunflower also asserts that information is missing from the plans which does not belong in plans and which, in any event, is not required under Commission precedent.

As for "hospital designations," NUREG-0654 only recommends that lists of hospitals considered capable of providing medical support be included in the State Plan. NUREG-0654, Evaluation Criterion L.3 (at 69). Such a list appears in the State Plan (Figure II-L-2) and Sunflower has shown no reasoned basis for attacking it. Indeed, Sunflower has not even acknowledged that such a list exists. "Medically-related decontamination procedures" are not required to be included in emergency plans. Implementing procedures are not required at this stage and are not supposed to be the subject of this hearing. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3) ALAB-732, 17 N.R.C. 1076, 1107 (1983). As the Commission held in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3) CLI-83-10, 17 N.R.C. 528, 536 (1983), no additional medical facilities or capabilities are required for the general public.

All of Sunflower's other allegations seem to be more in the nature of late-filed discovery requests (without any good cause showing). Thus, Sunflower asks a series of questions concerning resources ("[a]re operating rooms to be lead-lined") or procedures ("[w]hat becomes of contaminated hospital

materials, such as food trays ..."). Nowhere does Sunflower identify particular deficiencies or supply reasoned bases for believing those deficiencies to be true.

The remainder of Sunflower's complaints are that the Ashtabula Plan does not contain certain details (such as a "complete inventorying of available resources for decontamination of personnel or patients at hospitals outside the 10-mile EPZ"). Sunflower fails to provide any citation to regulation or guidance requiring such detail in a plan. Indeed, NUREG-0654 specifies that "the plans should be kept as concise as possible." NUREG-0654 at 29. Nor has Sunflower provided a reasoned basis that any of the details which it claims should be in the plans, are in fact not adequately dealt with. At this stage of the proceeding, Sunflower should be able to do more than ask questions. The July 26, 1984 Memorandum and Order demands more.

Q. "Fallacious Transportation Assumptions"

Sunflower raises two separate issues under this heading -- the availability of school buses and drivers to evacuate school children, and the question of parents picking up children at school.

1. School Buses and Drivers

Sunflower, citing PNPP Plan, Rev. 3 at A3-7, states that 21,393 children will need to be evacuated, and that the assumed basis for 40 children per bus, 535 buses would be required. Sunflower then implies that there will not be enough buses.

To begin by correcting Sunflower's numbers, the 40 student per bus value was used in the evacuation time estimate study included in the PNPP Plan, Rev. 3, App. D, at A3-7 fn.4, as an assumption to calculate the total number of vehicles using the road network. The number of vehicles was then used to determine the estimated evacuation times. As stated in the evacuation time estimate study, PNPP Plan, Rev. 3, App. D at 3-8, the Counties in fact plan to use 60 or more students per bus; the 40 students/bus was used as a conservative assumption for the time estimate study. As a result, the number of buses needed would drop to somewhat less than 360.

The question then to be asked is whether Sunflower has shown a reasoned basis for questioning the availability of enough school buses. The only support for Sunflower's argument is its unsupported statement that the 535 buses it assumes are needed "far exceeds the inventory of operating equipment which is extant in EPZ schools." Sunflower Objections at 20 (emphasis added). Whether the correct number is 360 buses or 535 buses, Sunflower's unsubstantiated statement misses the point. There is no requirement that the school buses to be used all be

from EPZ schools. Nor is this the case. Each of the three counties has a considerable portion of its geographical area (and as a result its schools) outside the plume exposure pathway EPZ. Compare PNPP Plan, Rev. 3, Fig. 2-4 with Fig. 2-5. All plans contemplate that school buses from districts outside the plume exposure pathway EPZ will be used to evacuate school children from within that EPZ. Ashtabula Plan, App. 6; Geauga Plan, App. 4; Lake Plan, § J-11 and Attachment A-1. Sunflower has provided no reason to question the number of school buses available from elsewhere in the counties.28/

Equally unsupported is Sunflower's request for "the documentation of volunteer availability" to drive the buses. As Applicants stated in responding to Sunflower's discovery, there are no volunteer school bus drivers. See Applicants' Amended and Supplemental Answers to Sunflower's First Round Discovery Requests, dated June 15, 1984 at 9-10. As discussed in § F above, Sunflower has provided no basis to question the availability of emergency workers.

28/ In fact, Lake County has 346 school buses available for evacuation, while Ashtabula and Geauga Counties have 185 and 27, respectively.

2. Parents' Pickup of Students

Sunflower states that "[p]revailing school policies will allow a parent to pick up a child at school during an emergency if a release is signed." Sunflower then speculates that "thousands of near-panicked parents will converge on schools both within and without the 10-mile radius from PNPP," with an attendant parade of horrors (traffic congestion, "redundant bedlam", etc.). Sunflower Objections at 20.

Once again, Sunflower has completely ignored the plans. All counties provide that school children will be transported by school bus from their schools to predesignated reception centers outside the plume exposure pathway EPZ. Ashtabula Plan, § J.4.1; Geauga Plan, § E-6; Lake Plan, § J-11 and Attachment A-1. The draft public information brochure states that children will be evacuated directly to a reception center outside the plume exposure pathway EPZ. See, e.g., Lake County Plan, Attachment G-1.

The Lake Plan included the statement that "[p]arents insisting on picking up their children at school may do so, upon signing a written release at school." Id. at 121.29/ Given the public information emphasizing direct evacuation of the

29/ The most recent version of the Lake Plan has deleted this statement. Lake Plan, Rev. 2 (June 15, 1984). Both Rev. 1 and Rev. 2 included the statement that "School children are not released to go home prior to evacuation." Lake Plan at 121.

students by bus, and the deletion from the plan of the statement cited by Sunflower, there is no reasoned basis for Sunflower's allegations of "thousands of near-panicked parents." Sunflower has thus failed to meet the Licensing Board's criteria.

R. "Insufficient Background Data"

Sunflower claims that "[b]ackground radiation readings must be taken before PNPP becomes operational for the entire 50-mile EPZ." Sunflower urges that "readings be taken and logged now of virtually every inhabitable space within the 50-mile zone."

As noted in Section N above, Issue No. 1 does not deal with the ingestion pathway (50-mile) EPZ. Therefore, a contention calling for radiation monitoring for "the entire 50-mile EPZ" is beyond the scope and must be excluded.^{30/}

S. "Unavailable Extension Agent"

Sunflower claims that the Ashtabula County Cooperative Extension Service has not received the equipment or training to advise on food and livestock protection. Sunflower fails to note that the Cooperative Extension Service is responsible only

^{30/} Although Sunflower claims that this monitoring is required "to conform with NUREG-0654 at 67", Applicants can divine no such recommendation from that page of NUREG-0654 or from anywhere else in that or any other document.

for ingestion pathway concerns. The Ashtabula Plan provides the following description of the Service's responsibility:

Assist the Ohio Department of Agriculture in the determination and evaluation of the impact of any radioactive material on crops and milk.

As discussed in Section N above, ingestion pathway issues are beyond the scope of Issue No. 1. Since the Licensing Board did not authorize Sunflower to expand Issue No. 1 beyond emergency evacuation planning, ingestion planning issues cannot be admitted.

Apart from this issue being outside the scope of Issue No. 1, Sunflower has failed to identify any equipment that the Service needs to carry out its functions under the Ashtabula Plan which it does not already have. No equipment is needed. Similarly, no specification of the additional training which the Service allegedly needs is provided. Finally, Sunflower erroneously characterizes "internal service regulations" when it states that they "require [the Cooperative Extension Service Agent] to take whatever steps are needed for him to secure himself and his family in time of accident." Sunflower Objections at 21. In fact, the "internal regulations" to which Sunflower presumably refers (Sunflower provided no citation) state that "each individual with an emergency assignment is responsible for arranging in advance for the care of his own family." U.S. Department of Agriculture Emergency Operations Handbook For

USDA State and County Emergency Boards (1975) at 12 (emphasis added). The "conflict" which Sunflower wants resolved does not exist.

T. "Shelter and Loading Buses"

Sunflower here seems to be attacking the concept of shelter as a protective action. Sunflower Objections at 22. ("Sunflower objects to mere shelter precautions) This argument is outside the scope of this issue. See Section D, above. Sunflower also questions the effectiveness of a shelter recommendation followed by a decision to evacuate, arguing that "the plans effectively could cause school children to evacuate outside[,] under or into a plume." Sunflower again totally ignores the County plans, which identify the factors to be considered in choosing protective action.^{31/} Since the time availability and the projected dose -- the two factors raised by Sunflower -- are already identified in the plans as part of the protective action decision-making process, there appears to be no litigable issue presented. Certainly, Sunflower has presented no reasoned basis for challenging the decision-making process identified in the plans (and ignored by Sunflower).

^{31/} For example, the Ashtabula Plan calls for consideration of the following variables: projected radiation dose, measured radiation dose, portion of EPZ at risk, time available to take action to significantly reduce doses, pathway, available resources, weather and road conditions.
§ J.3.

U. "Disposing of Contaminated Personal Property"

Sunflower complains that the plans do not indicate that reception centers will provide for "quarantining or isolating personal property found to be excessively contaminated." Again, Sunflower has failed to reflect on the contents of the off-site plans and as a result has failed to identify and support any specific inadequacies. The State Plan explicitly addresses handling contaminated materials.

Radioactive waste from decontamination procedures will be monitored by [Ohio Disaster Services Agency] teams. Any involved service equipment will be decontaminated if measurable radiation levels greater than .75 mR/hr are detected.

(a) The means for decontamination of personnel, clothing, supplies, instruments, and other equipment may be found by referring to the Ohio DSA Decontamination SOP [Standard Operating Procedure], maintained as a matter of record by the ODSA.

State Plan, § II.K.3.a(10). The State Plan further states that the Ohio Environmental Protection Agency will employ

[a] means for the disposal of radioactive wastes with a reading of above .75 mR/hr, which will be arranged for by contracting with a licensed firm to transport waste to a federally directed disposal site.

State Plan, § II.K.3.c(3).^{32/} See, also, Ashtabula Plan,

^{32/} No advance agreements with commercial radioactive waste disposal firms are needed. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), Initial Decision, LBP-84-____, 20 N.R.C. ____ (July 2, 1984), slip op. at 40.

§ K.6; Geauga Plan, § K-6; Lake Plan, § K-03. Sunflower's failure to cite to or address the plans (or the SOP's referenced therein) demonstrates its failure to meet the Licensing Board's criteria.

V. "Monitoring Contaminated Consumables"

Sunflower, without addressing the plans, states that the "role of the State and county public health departments in monitoring the agricultural food chain" is given "little more than lip service." Sunflower Objections at 22. For the reasons set forth in Section N above, this ingestion pathway allegation falls outside the scope of Issue No. 1 and must be rejected. Even if it were not outside the scope, its failure to address the specifics of Part IV of the State Plan, and its attempt to raise Price-Anderson Act and similar issues, would also lead to this contention's exclusion.

W. "Phantom Reimbursements"

Sunflower seems to take offense at the State Plan's statement that, in the event of a radiological accident, "state agencies will keep accurate records pertaining to costs incurred on a state level." State Plan at I-05. Sunflower complains that the Plan represents a "vicious falsehood" because it does not resolve whether there will be reimbursement after an accident and where it will come from. Sunflower cites no support for the proposition that the Plan must definitively

identify who will reimburse the State. The State Plan identifies possible sources of reimbursement:

Reimbursement may be furnished from three (3) major sources: (1) The utility companies for those costs of government; (2) The Federal Emergency Management Agency (FEMA) if a federal disaster/emergency is declared; (3) Through a further request to the State of Ohio Controlling Board:

Id. Sunflower has not said why the State must resolve in advance the source of reimbursement (if any) after an accident. Sunflower has not even alleged that the absence of a resolution would interfere with the response to the accident. Sunflower has obviously provided no reasoned basis for such an allegation. The issue must therefore be rejected.

X. "Source Term"

Sunflower claims that NRC's on-going reevaluation of "source terms" must be completed before the emergency plans can be approved. This argument, even if it had some basis, is a challenge to NRC regulations. NRC has defined the plume exposure pathway EPZ in 10 C.F.R. § 50.47(c)(2). If the source term reevaluation leads the NRC to choose a different size EPZ (and all the information to date indicates that any change will be to reduce the EPZ size), the appropriate step will be to amend § 50.47(c)(2). Until that time, Sunflower cannot challenge that regulation in this proceeding.

Y. "Incoherent Ambulance Usage"

Lake County may call upon ambulances from Ashtabula and Geauga Counties to evacuate people who cannot be moved by bus. Sunflower states that this "underscores the possibility of conflicting responses at the county level." Sunflower provides nothing to support this "possibility".

The Lake Plan provides that non-ambulatory persons would be transported "by ambulances from local fleets and from adjacent counties." Lake Plan, at § J-06. In addition, the State Plan identifies 65 National Guard ambulances to be called upon. State Plan, Figure II-J-1. Sunflower has provided no reasoned basis to indicate that there are insufficient ambulances. Nor has Sunflower provided a reasoned basis to question the three counties' ability to coordinate their ambulance requirements in light of the inter-county communications network (see, e.g. Lake Plan, § F-05, Figs. F-1, F-3) and the inter-county coordination function (Ashtabula Plan, §§ E.+.2, F.2.1, G.3; Geauga Plan, §§ E-6, F-2, G-4, App. 5; Lake Plan, §§ 6.4, 6.7, E-07, F-05, G-03).

Z. "Bus Driver Protection"

Sunflower states that bus drivers will play "a crucial and dangerous role in evacuation" and that they must therefore be given protection gear such as respirators and goggles. Sunflower Objections at 24. Sunflower has provided no basis for

why the bus driver's role is a dangerous one -- or at least more dangerous than other emergency workers, many of whom will remain in the plum exposure pathway EPZ for an extended period. Sunflower has provided no basis for expecting that protective equipment would be needed for bus drivers.^{33/}

AA. "Sunflower's Status Report"

In this contention, Sunflower "incorporates by reference and realleges herein all objections to State and local emergency plans which appear in the 'Status Report: Planning for an Accident at the Perry Nuclear Plant,' Perry Legal Defense Fund (1983)." Such a generalized recitation to whatever "objections" Sunflower believes are lurking in the 32-page "status report" hardly qualifies as a specific statement of the particular deficiencies currently existing in the plans. See § K, above. This is especially true where the most recent State and county plans post-date the status report.

^{33/} While Sunflower states without citation or support that the dosimeters to be provided to bus drivers will only show how much exposure has been received "after the fact." The self-reading dosimeters to be provided are to be read at least every hour and show the cumulative dose as it is received. See, e.g. Lake Plan, § F-03.2, Attachment K-2. Sunflower is also incorrect in implying that bus drivers' radiation exposures can only be determined by their dosimeters. Off-site doses are projected and measured by PNPP (PNPP Plan, Rev. 3, § 7.3.11), Lake County (Lake Plan, Part I) and the State (State Plan, Part II.I). By knowing where bus drivers are (and how long they are there), their exposures can easily be determined.

BB. "FEMA's Interim Report"

Here, Sunflower "incorporates by reference and realleges herein each and every 'planning deficiency' set forth in" FEMA's March 1, 1984 Interim Report. This contention, wholly apart from the general undesirability of incorporation by reference (see § K, above), is clearly defective since it completely ignores the corrective actions which appear in the Interim Report itself. Immediately following each "planning deficiency," FEMA's Interim Report sets forth the corrective action taken by the State or County as well as FEMA's evaluation of the corrective action. Sunflower has not only ignored the plans themselves, but even the content of the very document it cites. Sunflower thus violates the Licensing Board's direction to provide a reasoned basis based upon the particular deficiencies in cited sections of the plans.

CC. "The SER"

As in the case of the preceding two contentions, Sunflower attempts to incorporate by reference "each and every 'resolution item'" in the SSER 4. As noted above, incorporation by reference is inappropriate. See § K, above. Furthermore, Sunflower has ignored the fact that PNP Plan, Rev. 3 responds to "each and every 'resolution item'" in SSER 4. See footnote 3 above. Sunflower's failure to reflect the contents of the plan should disqualify the issue.

DD. "Location of the EOF"

Sunflower claims that the location of the Emergency Operations Facility ("EOF") at the Perry site is contrary to the recommendations of NUREG-0814 and NUREG-0696 and would require "decision-making officials to come to the nuisance in the event of a severe accident." Sunflower Objections at 25.

Contrary to Sunflower's unsupported claim, NUREG-0696 and NUREG-0814 do not recommend that the EOF be located off-site. NUREG-0696, "Functional Criteria for Emergency Response Facilities" (February 1981), provides criteria for EOF's located "within 10 miles of the TSC [Technical Support Center]" and for EOF's located "at or beyond 10 miles of the TSC." Id. at 18. For "EOF locations beyond 20 miles of the TSC," specific Commission approval is required. Id. No similar Commission approval is required for locations on-site or close to the plant. Similarly, NUREG-0814, "Methodology for Evaluation of Emergency Response Facilities" (August 1981), does not recommend an off-site EOF, although it does identify different ventilation requirements for EOF's within 10 miles of the TSC that differ from those for EOF's beyond 10 miles of the TSC. In any event, SSER 4 reviews the EOF and does not identify its location as inconsistent with any NRC guidance. SSER 4, § 13.3.2.8.

Sunflower cites nothing to support its claim that the EOF location would force County decision-makers to jeopardize themselves by coming to PNPP in an accident. At no time do the

decision-making officials come to the EOF. The plans provide that each county's decision-makers will convene in that county's emergency operation center ("EOC"). Ashtabula Plan, §§ A.3, B.3; Geauga Plan, §§ A-5, B-3; Lake Plan, §§ 5.1, H-01 and Attachments 5.1 and H-3. The three EOCs are linked by dedicated communications systems. Ashtabula Plan, §F.2.1 and App. 20; Geauga Plan, § F-2; Lake Plan, §§ F-05, H-02. Thus, Sunflower has provided no basis to support the argument that the EOF location will harm decision-making by county officials. Once again Sunflower's contentions have failed to reflect the contents of the plans.

EE. "Reception Center Locations"

Sunflower argues that reception centers should be located more than 20 miles from PNPP. This argument appears to be a disguised attack on the plume exposure pathway since Sunflower claims that "prompt fatalities might occur as far away from a leaking plant as 20 or more miles." Such prompt fatalities would be inconsistent with a 10 mile EPZ boundary. This is also clear from Sunflower's reference to the "undecided source terms." The contention must therefore be rejected as an attack on NRC regulations without the showing required by 10 C.F.R. § 2.758.

FF. "Remote Control Sirens"

This somewhat confused contention seems to allege that CEI must activate the sirens since it is required by NUREG-0654 to install and maintain them and therefore must hold the Federal Communications Commission license for the radio-activation system.

Applicants do not understand the starting point for Sunflower's argument. Sunflower states that "NUREG-0654 requires (at 45) that CEI install and maintain sirens." Sunflower Objections at 26. Applicants see no such requirement in NUREG-0654. Evaluation Criteria E.6 (NUREG-0654 at 45) does state in part:

It shall be the licensee's responsibility to demonstrate that such means exist [to notify and provide prompt instructions to the public], regardless of who implements this requirement.

Applicants understand this requirement to establish the burden of proof, not the burden of ownership. Sunflower has provided no basis for the argument that CFI must be the licensee. In any event, the plans explicitly state that the Counties will activate the sirens. Ashtabula Plan, § E.4.1; Geauga Plan, § E-5; Lake Plan, § E-07. Sunflower has presented no issue to litigate.

GG. "Persons Without Technology"

Sunflower claims that "there is a rather large Amish population in northeastern Ohio, many of whom adhere to traditional religious beliefs, rejecting much twentieth-century technology." As a result, Sunflower argues, notification means other than radio and television must be developed.

The requirement to provide early notification and instruction only applies within the plume exposure pathway EPZ. 10 C.F.R. § 50.47(b)(5). Therefore, Sunflower's concern (even if valid) would only apply if there were a substantial Amish population within the plume exposure pathway EPZ. Sunflower has provided no support for the existence of any Amish population within that area, and Applicants are aware of none. While it may be true that, as Sunflower states, many Amish live in "northeastern Ohio," northeastern Ohio is a much larger geographic area than the Perry plume exposure pathway EPZ. And even if there were Amish in the Perry plume exposure pathway EPZ, the county plans already set forth the mechanisms for alerting such individuals (sirens, brochures, notification confirmation). Sunflower has failed to recognize these mechanisms, cite to them, or explain why they are inadequate. The contention therefore should be excluded.

HH. "Evacuees Not Going To Centers"

This contention asserts that the plans do not address the identification and monitoring of evacuees who do not report to reception centers. The counties will be screening for contamination those evacuees who report to reception centers.

Ashtabula Plan, § J.4.3; Geauga Plan, § J-4.e; Lake Plan, § J-12. Other information on the likelihood of contamination would be available as part of the accident assessment process. Ashtabula Plan, § I.2; Geauga Plan, § I-2; Lake Plan, Part I. If necessary, evacuees not reporting to reception centers would be told to do so via the Emergency Broadcast System and the news media. See Ashtabula Plan §§ E.4.2, G.3; Geauga Plan, §§ E-6, G-4; Lake Plan, §§ E-07, G-03. Sunflower, again without referencing the plans, has failed to supply a reasoned basis for its allegation.

II. "Evacuation Center Resources"

Sunflower states that the plans do not cover the availability of food, drugs, beds, etc., that no "documentation is provided of the potential length of stays, and the no mention is made of

psychological services to assist those who cannot accept the possible facts that they may never be able to return to homes, pets, etc., or might not be able to cope with the loss of friends or relatives in a nuclear accident.

Sunflower's complaint that "data on available resources" should be included in the plans is without foundation. NUREG-0654 indicates that the plans should be written to a more general level, without including lists of how many beds, sheets and pillows are in stock.

The plans should be kept as concise as possible. The average plan should consist of perhaps hundreds of pages, not thousands. The plans should make clear what is to be done in an emergency, how it is to be done, and by whom.

NUREG-0654 at 29. The level of resource detail called for by Sunflower is inconsistent with this guidance.^{34/} Sunflower has provided no support for the contrary position. As a legal argument on the level of detail necessary in the plans, Sunflower's claim is baseless.^{35/}

Sunflower's contention that the plan must include "documentation of the potential lengths of stays which might be necessitated by a severe accident" is likewise unsupported. No citation is provided for such a requirement. And, in any

^{34/} As the Appeal Board stated in ruling that implementing emergency procedures were not to be considered in a hearing, "we believe the Commission did not want licensing hearings to become bogged down with litigation about such details." Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 N.R.C. 1076, 1107 (1983).

^{35/} Since the American Red Cross will handle registration, feeding and lodging at reception centers, Ashtabula Plan, App. 6; Geauga Plan, § B-4; Lake Plan § 6.13, it is not surprising that Sunflower does not allege that the necessary equipment and supplies will be unavailable.

event, since it does not relate to emergency evacuation planning it is beyond the scope of Issue No. 1. See Section D, above.

The claim that the plans should discuss "psychological services" is similarly far-fetched. In addition to going beyond the scope of emergency evacuation planning, Sunflower provides no reasoned basis why such services are necessary, and if necessary, why they would be any different from the counseling which could be available in any emergency.

JJ. "Emergency System Equipment"

This contention argues that the plans should address the availability of electric power "to compensate for the loss of power from PNPP that would accompany an accident." Sunflower provides no support for the claim that an accident at Perry will cause a loss of power in the area surrounding the plant. Nor does Sunflower suggest any error in the analysis showing that accidents at PNPP would not cause a power outage. Final Safety Analysis Report, §§ 8.2.2.1, 8.2.2.2, 8.2.2.3. In any event, the plans do indicate the availability of backup power. PNPP Plan, Rev. 3, §§ 7.2.1, 7.2.5 (communications, sirens); Geauga Plan, App. 18 (shows EOC emergency generator); Lake Plan, Attachment H-1 (shows EOC emergency generator). (The Ashtabula EOC has an emergency generator as well, although not shown in its plan.) Sunflower simply provides no basis for the absence of adequate electricity.

KK. "Returning to the EPZ"

In this contention, Sunflower states without support that "[t]he issues of securing the cordoned area while allowing access to bona fide residents is difficult to manage." No explanation or basis is provided as to why it is so difficult. And in terms of radiation exposure control for persons reentering the evacuated area, such an issue is beyond the scope of emergency evacuation planning, and is therefore inadmissible. In any event, radiation exposure control is covered in Part K of the County Plans and Sunflower has not identified any inadequacies therein.

LL. "The Plans Will Not Work"

This generalized contention merely asserts that the evacuation plans are "unworkable because they have not been submitted to these myriad acid tests which implementation would impose." It is precisely the vagueness of this type of allegation that led the Licensing Board to order particularization. No such particularization appears here. If anything, this issue is a challenge to the Commission's regulations, which base the reasonable assurance finding not on the outcome of drills and exercises, but on the plans themselves. Waterford, supra, 17 N.R.C. at 1107-08.

CONCLUSION

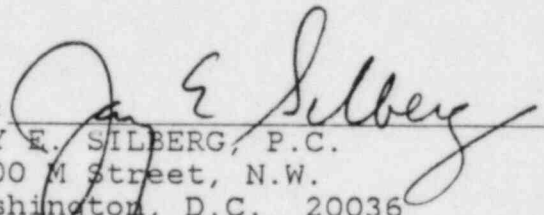
The Licensing Board's July 26, 1984 Memorandum and Order directed Sunflower as lead intervenor on Issue No. 1, to provide specific contentions related to emergency evacuation plans, supported by a reasoned basis and citations to relevant sections of the appropriate plans. As Applicants' analysis above indicates, Sunflower has failed to comply with the Licensing Board's directives. Sunflower's "particularized objections" totally ignore the State and County plans, challenge Commission regulations, and have no basis (and certainly not a "reasoned basis"). Sunflower has incorporated other documents by reference and has "realleged" every unspecified "objection" in those documents, without even acknowledging that subsequent documents or events have resolved those "objections."

Sunflower has had wide-ranging discovery on this Issue. See Applicants' June 26, 1984 Motion for Particularization of Issue No. 1, Attachment 1. Applicants' attempt to informally discuss particularization of this Issue with Sunflower was rebuffed. See *id.*, at 5. The Licensing Board's attempt to achieve particularization has likewise been rebuffed by Sunflower. Sunflower has set forth no acceptable contentions. As a result, Applicants respectfully submit that Issue No. 1 no longer belongs in this proceeding. The Licensing Board's July 26, 1984 Memorandum and Order pointed out that subsequent to the admission of Issue No. 1, "the underlying factual situation

has shifted so dramatically that the original basis for the contention has been undermined." Memorandum and Order at 3. Sunflower's "particularized objections" have failed to supply the necessary basis. Sunflower has been given the opportunity to submit properly supported contentions, and has essentially brushed aside the Board's directives. Applicants therefore submit that the Licensing Board should dismiss Issue No. 1.

Respectfully submitted,

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

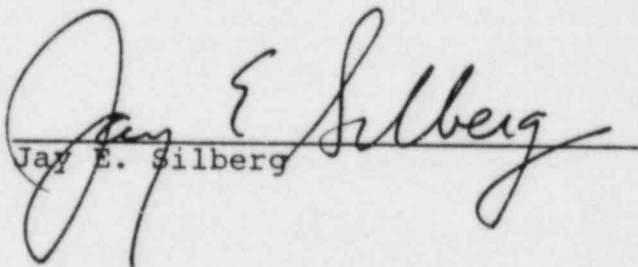
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing "Applicants' Motion to Dismiss Sunflower Alliance's Particularized Objections to Proposed Emergency Plans in Support of Issue No. 1" were served by deposit in the United States Mail, first class, postage prepaid, this 20th day of September, 1984, to all those on the attached Service List.


Jay E. Silberg

DATED: September 20, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
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THE CLEVELAND ELECTRIC) Docket Nos. 50-440
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