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UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL PANEL
WASHINGTON, D.C. 20555

April 3, 1986

DOCKETED
USNRC

'86 APR -3 P4:05

Terry Jonathan Lodge, Esq.
618 N. Michigan Street, Suite 105
Toledo, Ohio 43624

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Re: In the Matter of
Cleveland Electric Illuminating Company, et al.
(Perry Nuclear Power Plant, Units 1 and 2)
Docket Nos. 50-440 OL and 50-441 OL

Dear Mr. Lodge:

This will confirm the substance of your telephone conversation yesterday with John Cho, the Counsel to the Appeal Panel.

As Mr. Cho informed you, the Appeal Board rejected your oral request to be allowed to participate in the telephone conference that is being conducted today pursuant to the Board's March 20, 1986 order (as modified on March 27). The basis for the rejection was that the conference is properly restricted to counsel or other representatives of (1) the party that filed the motion to reopen the record on the question of the adequacy of the Perry facility's seismic design (i.e., Ohio Citizens for Responsible Energy); and (2) the parties that responded to the motion (i.e., the applicants and the NRC staff). In this connection, the Board did not regard as satisfactory your explanation that your failure to respond to the motion on behalf of your client, Sunflower Alliance, was due to "inadvertence."

Mr. Cho went on to indicate that, notwithstanding the foregoing, you will be free to file a motion for leave to participate in the exploratory hearing that is also called for by the March 20 order. Any such motion must be accompanied, however, by a specific concrete showing of an ability to contribute to the development of a record on the principal question to be considered at the exploratory hearing -- namely, whether the issue sought to be raised by the OCRE reopening motion has safety significance. In this regard, the mere assertion that your participation would consist of the cross-examination of the witnesses for other parties will not suffice. It might be added that, should you successfully seek leave to participate in the exploratory hearing, it will be necessary to abide by any

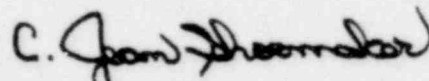
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dates that may have already been established for the commencement of that hearing (and for the submission prior thereto of prepared testimony).

Finally, Mr. Cho informed you that, should the OCRE reopening motion be granted following the exploratory hearing, your client will have an automatic entitlement to participate in any further proceedings on the seismic issue (whether or not it may have sought and been granted permission to participate in the exploratory hearing).

Sincerely,



C. Jean Shoemaker
Secretary to the
Appeal Board

cc: Ms. Susan L. Hiatt
Jay E. Silberg, Esq.
Colleen P. Woodhead, Esq.
Docketing and Service Branch