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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY, ET AL.)
)
(Perry Nuclear Power Plant,)
Units 1 and 2))

Docket Nos. 50-440
50-441

/oc

APPLICANTS' RESPONSE TO SUNFLOWER NOTICE OF APPEAL

By Decision dated July 25, 1986, ALAB-841, 24 N.R.C. ____, the Atomic Safety and Licensing Appeal Board "summarily re-ject[ed]" an appeal of Sunflower Alliance, Inc. ("Sunflower") from the Atomic Safety and Licensing Board's Concluding Partial Initial Decision on Emergency Planning, Hydrogen Control and Diesel Generators, LBP-85-35, 22 N.R.C. ____ (1985) ("PID").^{1/} On August 8, 1986, Sunflower appealed from ALAB-841, in a pleading entitled "Notice of Appeal From Decision of Atomic Safety and

^{1/} Sunflower's appeal from the PID dealt only with emergency planning contentions which it had litigated before the ASLB.

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Licensing Appeal Board" ("Notice of Appeal"). The NRC Staff opposes Sunflower's Notice of Appeal, on the ground that it fails to meet any of the requirements of 10 C.F.R. § 2.786(b)(2).^{2/}

Applicants agree with the Staff's position, as set forth in its Response, that Sunflower's Notice of Appeal is not in accord with the Commission's regulations governing review of decisions and actions of an Atomic Safety and Licensing Appeal Board. 10 C.F.R. § 2.786. Applicants concur in the reasoning set forth in the Staff's Response.

Section 2.786(b)(2) requires that a petition for review of a decision or action by an Atomic Safety and Licensing Appeal Board "shall contain the following:

(i) A concise summary of the decision or action of which review is sought;

(ii) A statement (including record citation) where the matters of fact or law raised in the petition for review were previously raised before the Atomic Safety and Licensing Appeal Board and, if they were not why they could not have been raised;

(iii) A concise statement why in the petitioner's view the decision or action is erroneous; and

(iv) A concise statement why Commission review should be exercised."

Id. (emphasis added). Sunflower's Notice of Appeal includes none of these required summaries and statements. Nor is there any basis for the Commission to conclude that the Appeal Board's

^{2/} See NRC Staff Response to the Notice of Appeal From the Decision of the Atomic Safety and Licensing Appeal Board (August 15, 1986) ("Response").

disposition of Sunflower's appeal involves a case of "exceptional legal or policy importance," such that the Commission should review the Appeal Board's decision on its own motion, under 10 C.F.R. § 2.786(a). Thus, Sunflower, who is represented by counsel, has once again disregarded clear prescriptions set forth in the regulations governing the proper form and content of appeals from decisions of NRC tribunals.^{3/}

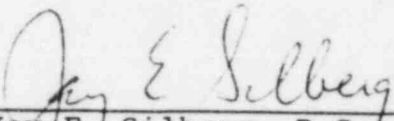
3/ See ALAB-841, slip op. at 3-4:

In the circumstances, we have no hesitancy in summarily rejecting the Sunflower appeal in its entirety. In passing in March 1985 upon Sunflower's appeal from an earlier partial initial decision in this proceeding, we took note of the fact that, with respect to several of its appellate assertions, Sunflower had "failed to provide any explanation why its claim of error is correct." That being so, we announced, the assertions were being treated "as waived or abandoned." It is difficult to understand why Sunflower's counsel chose to attach no significance to that result in the subsequent preparation of his brief on the present appeal. Whatever may have been the reason, however, the same outcome is warranted here. The short of the matter is that, if Sunflower wished us to take seriously its insistence that the Licensing Board committed error, its counsel was duty-bound to illumine the foundation for that insistence. [footnotes omitted].

For these reasons, Applicants respectfully request that Sunflower's Notice of Appeal be denied.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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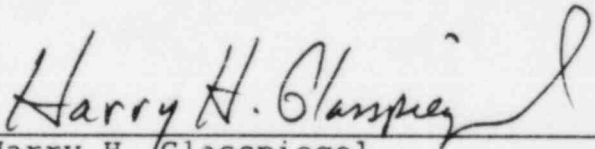
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing APPLICANT'S RESPONSE TO SUNFLOWER NOTICE OF APPEAL were served by deposit in the United States Mail, first class, postage prepaid, this 22nd day of August 1986, to all those on the attached Service List.



Harry H. Glasspiegel

DATED: August 22, 1986

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