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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
REGULATORY & SERVICE  
DIVISION

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

APPLICANTS' MOTION FOR SUMMARY DISPOSITION  
OF CONTENTION GG

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company ("Applicants") hereby move the Atomic Safety and Licensing Board ("Board"), pursuant to 10 C.F.R. § 2.749, for summary disposition in Applicants' favor of Contention GG. As discussed herein, there is no genuine issue as to any fact material to Contention GG, and Applicants are entitled to a decision in their favor on Contention GG as a matter of law.

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This motion is supported by:

1. "Applicants' Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard On Contention GG";
2. "Affidavit of Janet E. Dugan on Contention GG" ("Dugan Affidavit");
3. "Affidavit of Dennis S. Mileti on Contention GG" ("Mileti Affidavit"); and
4. Section II.A of "Applicants' Motion For Summary Disposition of Issue 14" (January 14, 1985) (articulating the legal standards applicable to a motion for summary disposition).

#### I. PROCEDURAL BACKGROUND

Prior to the availability of offsite emergency plans for the plume exposure pathway Emergency Planning Zone ("EPZ") for the Perry facility, the Board admitted a very broad emergency planning contention, Issue 1:

Applicants' 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.

See LBP-81-24, 14 N.R.C. 175, 189 (1981), as modified by LBP-81-35, 14 N.R.C. 682, 686 (1981). The Board subsequently noted that the words "State and local" should be substituted for the word "Applicants'" in the wording of the contention. See LBP-84-28, 20 N.R.C. 129, 130 n.1 (1984).

After well-developed offsite plans had been publicly available for some time, Applicants (with the support of the Staff) moved for a Board order requiring the particularization of the broad contention. The Board granted Applicants' motion,

directing Intervenor to "specify in a written filing the specific inadequacies alleged to exist in the draft local and State emergency plans \* \* \*." See LBP-84-28, 20 N.R.C. at 132.

Contention GG was initially advanced in "Sunflower Alliance's Particularized Objections To Proposed Emergency Plans In Support of Issue No. I" (August 20, 1984). Over the opposition of Applicants and the Staff, the Board admitted a form of that contention. As admitted by the Board,<sup>1/</sup> Contention GG alleges:

The emergency plans have not made provision for communicating with individuals (like Amish people) who do not utilize radio or television devices.

"Memorandum and Order (Admissibility of Contentions on Emergency Plans and Motion To Dismiss)" (January 10, 1985), at 7.

As the Board has noted, discovery on emergency planning issues in this proceeding has been completed. See January 10, 1985 Memorandum and Order, at 5. Further, the schedule proposed by Applicants establishes February 5, 1985 as the last day for filing summary disposition motions. See January 18, 1985 Letter, Counsel for Applicants to Licensing Board. Accordingly, the instant motion is timely, and Contention GG is ripe for summary disposition.

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<sup>1/</sup> The Board expressly rejected all allegations of the proposed contention which are not included in the contention as framed by the Board. See January 10, 1985 Memorandum and Order, at 5.

## II. GOVERNING LEGAL STANDARDS

### A. Summary Disposition

Section II.A of "Applicants' Motion For Summary Disposition of Issue 14" (January 14, 1985) sets forth the legal standards applicable to a motion for summary disposition. The discussion there is fully applicable to this Motion and is incorporated by reference herein.

### B. Substantive Law

The Commission's emergency planning regulations, at 10 C.F.R. § 50.47(b)(5), require, in relevant part, that:

\* \* \* means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

The regulations specifically require "a listing of local broadcast stations that will be used for dissemination of information during an emergency." 10 C.F.R. Part 50, Appendix E, § IV.D.2.

This planning standard is further addressed by NUREG-0654/FEMA-REP-1, "Criteria For Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness In Support of Nuclear Power Plants" (Rev. 1, November 1980). NUREG-0654 Criterion E.5 provides:

State and local government organizations shall establish a system for disseminating to the public appropriate information \* \* \* received from the licensee including the appropriate notification to appropriate broadcast media, e.g., the Emergency Broadcast System (EBS).

Criterion E.6 further provides, in relevant part:

Each organization shall establish administrative and physical means \* \* \* for \* \* \* providing prompt instructions to the public within the plume exposure pathway Emergency Planning Zone. (See Appendix 3).

NUREG-0654 Appendix 3 details the acceptance criteria for "Means For Providing Prompt Alerting and Notification of Response Organizations and The Population," and is unequivocal in its reliance on broadcast media as a means of "notification" of the public (after the public has been "alerted" by the sirens):

A prompt notification scheme shall include the capability of local and State agencies to provide information promptly over radio and TV at the time of activation of the alerting signal [i.e., sirens]. The Emergency Plans shall include evidence of such capability \* \* \* [to] provide for designated agencies to air messages on TV and radio in emergencies.

NUREG-0654, at 3-4. See also NUREG-0654, at 3-13 to 3-15 (discussing EBS). NUREG-0654 expressly recognizes that compliance

with the applicable regulations and regulatory guidance "does not \* \* \* constitute a guarantee that early notification can be provided for everyone with 100% assurance \* \* \*." NUREG-0654, at 3-1. See 10 C.F.R. Part 50, Appendix E, § IV.D.3 (capability to provide 15-minute notification is "design objective").

### III. ARGUMENT

Applying the Commission's summary disposition standards to the facts of this case, it is clear that the instant motion for summary disposition of Contention GG should be granted. The existence within the Perry EPZ of an Amish population -- or, indeed, any discrete population which does not use radio and TV -- is flatly disproven by the affidavit of Janet E. Dugan. In 1984, CEI conducted a study to determine the location of the Amish in northeastern Ohio, as a part of the Perry-Hanna transmission line proceedings. The results of that study indicate that there is no Amish population within the Perry plume EPZ. Dugan Affidavit, ¶ 3. Further, contacts with the planning commissions of Lake, Ashtabula, and Geauga Counties indicate that there are no population groups within the plume EPZ which do not use radio and TV. Id., ¶ 4. In addition, local Councils of Churches as well as parish priests and various other ministers throughout the EPZ were contacted. None of these persons was aware of any people within the EPZ whose religious beliefs would preclude use of radio or TV. Id., ¶ 5.

As discussed in Section II above, the NRC/FEMA regulatory scheme expressly contemplates reliance upon the broadcast media (in particular, EBS) to provide emergency instructions to the public (after the public has been "alerted" by the sirens). Sunflower has provided no regulatory basis for its implication that other means of warning must be provided, in addition to radio and TV broadcasts via the EBS system. Nor is there a need for additional formal means of warning. As explained in the affidavit of Dr. Miletì, members of the public can be expected to receive emergency warning information through a wide variety of indirect means. The existence and efficacy of such means of indirect alerting and notification are recognized in Commission case law. See, e.g., Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-46, 15 N.R.C. 1531, 1534-35 (1982); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-37, 20 N.R.C. 933, 973-74 (¶¶ 10, 12), 978 (¶ 29) (1984).

Decades of research on public response to notification of an emergency have established that, historically, many people have first received emergency information from other members of the public. Miletì Affidavit, ¶¶ 2, 3. The initial response of most people to a warning of an impending emergency is to seek out more information, and/or engage in additional communication with others in order to confirm the warning and information. Confirmation of warning information occurs in a variety

of ways; people may turn to different radio or TV stations to hear the warning several times, check with friends and neighbors to ask if they heard the same message, and talk the situation over with others. People thus become part of the warning dissemination effort, albeit informally, through social networking. Id., ¶¶ 4, 5. In the event of an emergency at the Perry plant, the seeking of confirmation would lead people to contact others who might or might not as yet have learned of the emergency. Similarly, people hearing sirens can naturally be expected to take steps to determine the reason for the use of the sirens, by turning to radio and TV and/or checking with friends or neighbors. Id., ¶ 5.

In addition to the confirmation process that may be carried out by the public, the pre-emergency public information brochure (and other media) will educate the public to tune to an EBS radio or TV station when the sirens within the plume EPZ are sounded, to receive a message. Therefore, even if a household does not have a radio or TV, it will be aware of the need to seek additional information about the EBS message from friends or neighbors with TV or radio. Dugan Affidavit, ¶ 7.

Moreover, in an emergency, neighbors, friends and family -- and even total strangers -- check on one another and offer assistance if it is needed. As a result, people communicate with other members of the public who might not as yet have learned of the emergency. Thus, people who have received



notification of an emergency at Perry generally can be expected to notify those whom they have reason to believe may not have been informed of the nature of the emergency. Members of the public would be particularly likely to provide such notification to any discrete segments of the population known not to have access to emergency information on radio or TV (e.g., the Amish). Mileti Affidavit, ¶ 6.

Finally, the high level of activity which would be associated with an emergency at Perry would have a strong "ripple effect," generally alerting members of the public to seek additional information about the events taking place, even if they had not been directly warned by the official alert and notification system or another member of the public. In other words, the activities of other residents who have already received notification (turning on the lights in their homes, perhaps preparing to evacuate, or even the stream of traffic driving out of the 10-mile EPZ) would alert most members of the public who may not yet have been warned, and cause them to seek additional information about what is going on (for example, by talking to neighbors). Id., ¶ 7.

In any event, the offsite plans include measures to assure that any members of the public without radio and TV receive direct notification of the need to evacuate in an emergency. The public information brochure will include a special needs information card to be completed and returned (in advance of

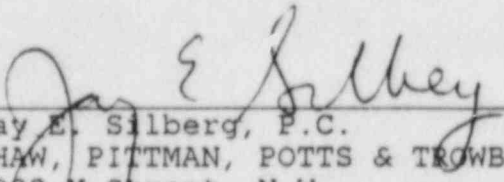
any emergency) to the respective County Disaster Services Agency by anyone who might need special assistance in an emergency. The special help categories on the card include persons without radio and persons without TV. In the event of an evacuation, special personal notification would be provided to those individuals -- if any -- who have indicated that they have no radio or TV. Dugan Affidavit, ¶ 6. In addition, each household in the EPZ is being provided with a card stating "WE HAVE BEEN NOTIFIED." In the event of an emergency, the members of the public would display the card, or tie a towel to the doorknob or mailbox, to indicate that they are aware of the need to take specific protective action. Any household not displaying the card or a towel would be individually checked, and given the EBS message, Id., ¶ 8.

In summary, there is no evidence whatsoever to indicate the existence of a population which does not use radio and TV (such as the Amish) within the Perry EPZ. Nevertheless, the offsite plans include measures to assure that any members of the public without radio and TV receive direct notification of the need to evacuate in an emergency. These members of the public can also be expected to receive emergency warning information through a wide variety of indirect means. For all these reasons, Sunflower's claims in Contention GG lack substance.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard with respect to the warning of persons without radio or TV (such as the Amish), Applicants' Motion For Summary Disposition of Contention GG should be granted.

Respectfully submitted,

  
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