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February 1, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket Nos. 50-440
50-441

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APPLICANTS' MOTION FOR SUMMARY DISPOSITION
OF CONTENTION C

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 C. As discussed herein, there is no genuine issue as to any fact material to Contention C, and Applicants are entitled to a decision in their favor on Contention C as a matter of law.

This motion is supported by:

1. "Applicants' Statement of Material Facts As To Which There Is No Genuine Issue To Be Heard On Contention C";
2. "Affidavit of John Baer on Contention C" ("Baer Affidavit"); and
3. 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).

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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 C 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,^{1/} Contention C alleges:

^{1/} The Board expressly rejected all allegations of the proposed contention which are not included in the contention

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Emergency plans do not contain a consistently defined role for County Commissioners during an emergency nor is their legal authority to act, as required.

"Memorandum and Order (Admissibility of Contentions on Emergency Plans and Motion To Dismiss)" (January 10, 1985), at 6.

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 C is ripe for summary disposition.

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.

(Continued)

as framed by the Board. See January 10, 1985 Memorandum and Order, at 5.

B. Substantive Law

The Commission's emergency planning regulations, at 10 C.F.R. § 50.47(b)(1), require, in relevant part, that:

Primary responsibilities for emergency response by * * * local organizations within the Emergency Planning Zones have been assigned, [and] the emergency responsibilities of the various supporting organizations have been specifically established * * *.

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 A.2.a provides, in relevant part:

Each organization shall specify the functions and responsibilities for major elements and key individuals by title of emergency response * * *. The description of these functions shall include a clear and concise summary such as a table of primary and support responsibilities using the agency as one axis, and the function as the other.

Criterion A.2.b further provides:

Each plan shall contain (by reference to specific acts, codes or statutes) the legal basis for such authorities.

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 C should be granted. The gravamen of the first part of Sunflower's complaint 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." See "Sunflower Alliance's Particularized Objections To Proposed Emergency Plans In Support of Issue No. I," at 4. To the contrary, the radiological emergency response plans clearly and consistently define the role of the County Commissioners as including overall responsibility for local emergency operations. Baer Affidavit, ¶ 3. Although the emergency organizations among the three counties may differ, the responsibilities and roles of the County Commissioners in the three counties are parallel, as established by the emergency plans. Baer Affidavit, ¶ 3.2/ Moreover, the plans for all three counties establish that, in the event of an emergency at

2/ In conformance with NUREG-0654 Criterion A.2.a, each of the three county plans includes a matrix of responsibilities for the various emergency response organizations. See "Lake County Emergency Response Plan for the Perry Nuclear Power Plant" (Rev. 3, October 1984), Attachment A-7; "Ashtabula County Radiological Emergency Preparedness Plan" (May 10, 1984), Appendix 7; "Geauga County Radiological Emergency Response Plan" (Change No. 2 dated July 1984), Appendix 6.

Perry, the Commissioners would receive protective action recommendations from the State, and would confer with appropriate State agencies concerning relaxation of protective measures. Baer Affidavit, ¶ 4.

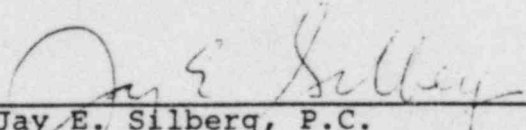
Sunflower also contends that the plans fail to establish the legal authority for the County Commissioners to act under the plans in the event of an emergency. Sunflower has simply failed to examine the plans themselves. In compliance with NUREG-0654 Criterion A.2.B, the information is clearly set forth in the plans. Baer Affidavit, ¶ 5.

In summary, contrary to Sunflower's claims, there is no confusion with respect to emergency roles of the County Commissioners (including their relationship to the State), and the legal basis for their authority is set forth in the respective plans.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on either the issue of the consistency of the emergency roles of the County Commissioners (including their relationship to the State), or the inclusion in the plans of the legal authority of the Commissioners to take emergency actions, Applicants' Motion For Summary Disposition of Contention C should be granted.

Respectfully submitted,



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