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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

APPLICANTS' MOTION FOR
SUMMARY DISPOSITION OF CONTENTION JJ

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 JJ. As discussed herein, there is no genuine issue as to any fact material to Contention JJ, and Applicants are entitled to a decision in their favor on Contention JJ 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 JJ";
2. "Affidavit of David R. Green on Contention JJ" ("Green Affidavit");
3. "Affidavit of Gary Winters on Contention JJ" ("Winters 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 Nuclear Power Plant, 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 JJ 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 JJ alleges:

Emergency plans do not provide for back-up power so that evacuation procedures and activities can be carried out.

"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; Conference Call between Board and the parties, February 1, 1985. Accordingly, the instant motion is timely, and Contention JJ is ripe for summary disposition.

^{1/} 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)(8), require that:

Adequate emergency facilities and equipment to support the emergency response are provided and maintained.

See also 10 C.F.R. Part 50, Appendix E, § IV.E.9 (providing that emergency facilities and equipment shall include "[a]t least one onsite and one offsite communications system; each system shall have a backup power source").^{2/}

^{2/} NUREG-0654 Criterion F.1 also addresses the need to "establish reliable primary and backup means of communication for licensees, local, and State response organizations." See also NUREG-0654, Appendix 3, at 3-5 to 3-6 (communications system availability and reliability).

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 JJ should be granted.

Contention JJ alleges that the emergency plans do not provide for backup power so that evacuation procedures and activities can be carried out. Sunflower's argument is that an accident at Perry would cause a loss of power that would result in the unavailability of emergency equipment such as sirens, independent radiation monitoring equipment, gasoline pumps, and emergency traffic lights. Sunflower Alliance's Particularized Objections to Proposed Emergency Plans in Support of Issue No. 1, dated August 20, 1984, p. 27. Sunflower's argument is incorrect on two grounds.

First, Sunflower incorrectly assumes that an accident at Perry would cause a loss of power in the area around the plant. Load flow and stability studies, documented in the Final Safety Analysis Report, show that there would be sufficient power in the area around Perry to power emergency equipment, even if an accident at Perry caused it to go off-line. Green Affidavit, ¶ 3.

Second, there is adequate backup power (or systems which do not require electric power) for all emergency functions. Winters Affidavit, ¶¶ 4(a)-(e). This includes sirens (each of which has a built-in battery), radiation monitoring equipment (portable and mobile), emergency traffic control (in the event

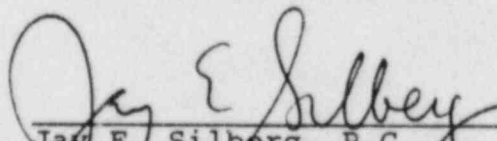
the traffic lights fail), gasoline (gravity feed as well as back-up generator powered), and communications. Id. The three county emergency operation centers also have backup generators. Id., ¶ 4(e). Finally, Fire and Road Departments within the three counties have 138 portable generators, totalling 449 kilowatts (without even considering portable generators available from other departments). Id., ¶ 5.

In summary, Sunflower's contention is without merit. An accident at Perry would not cause a loss of off-site power. And, even if there were no off-site power during the course of an accident at Perry, the three counties within the plume exposure pathway EPZ have back-up power for all emergency functions.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of back-up power, Applicants' Motion For Summary Disposition of Contention JJ should be granted.

Respectfully submitted,



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