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February 5, 1985

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' MOTION FOR
SUMMARY DISPOSITION OF CONTENTION Q

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 Q. As discussed herein, there is no genuine issue as to any fact material to Contention Q, and Applicants are entitled to a decision in their favor on Contention Q 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 Q";
2. "Affidavit of Gary Winters on Contention Q" ("Winters Affidavit");
3. "Affidavit of Dennis S. Mileti on Contention Q" ("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 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 Q 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 Q alleges:

There are an inadequate number of buses to transport school children during an emergency and evacuation procedures have not considered transportation obstacles which might originate with parents picking up their children at school.

"Memorandum and Order (Admissibility of Contentions on Emergency Plans and Motion To Dismiss)" (January 10, 1985), at 6-7.

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 the Board and the parties, February 1, 1985. Accordingly, the instant motion is timely, and Contention Q 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)(10), require, in relevant part, that:

[a] range of protective actions have been developed for the plume exposure pathway EPZ for * * * the public.

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 J.10.g specifies that offsite plans shall provide for "[m]eans of relocation."

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 Q should be granted. Neither part of Contention Q has any basis in fact.

The first assertion of Contention Q -- that there are not enough buses to evacuate school children in the event of an emergency at Perry -- is simply untrue.^{2/} To the contrary, there has been a detailed assessment of both the need for and the availability of bus resources for the evacuation of the schools within the plume EPZ. As explained below, the plans accomplish school evacuation in a single trip, using existing, available resources.

A recent survey of the superintendents of all school districts within the Perry plume EPZ indicates that current total enrollment in EPZ schools is approximately 19,802 students. Winters Affidavit, ¶ 3. Thus, the actual number of school buses needed to evacuate EPZ schools in a single trip -- based on actual evacuation capacity -- is 384 buses. Winters Affidavit, ¶ 4. While the schools in the plume EPZ do not have sufficient bus capacity to evacuate their students without

^{2/} Although the planning here will accomplish the evacuation of all schools in the EPZ in a single trip, there is no regulatory requirement that school evacuation must be completed in a single trip. See, e.g., Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-37, 20 N.R.C. 933, 995 (1984) (discussing plans for school evacuation involving multiple trips to reception centers).

assistance, Standard Operating Procedures developed with school districts in the three counties provide for the use of resources (school buses and drivers) from outside the plume EPZ to evacuate schools inside the EPZ in an emergency. Letters of agreement are being obtained for the use of these resources. Adequate numbers of buses are available to evacuate all school students from the plume EPZ in a single trip. Indeed, there is a surplus of 277 buses available within the three counties, over and above the buses needed to evacuate the schools in the EPZ. Winters Affidavit, ¶ 5. Thus, there is no basis in fact for the first part of Contention Q.

Moreover, there is a pool of 718 licensed school bus drivers available within the three counties to support evacuation in the event of an emergency at Perry -- many more than necessary to drive the 384 buses needed to evacuate the schools within the plume EPZ in a single trip.^{3/} Winters Affidavit, ¶ 6. The principles of emergency worker response have been well established through three decades of social science research on human response to emergencies. These principles would be applicable in the event of an emergency at a nuclear facility such as Perry. Mileti Affidavit, ¶ 2. Research conducted on the actual behavior of people with defined organizational responsibilities in emergencies has

^{3/} The contention itself only concerns the allegedly "inadequate number of buses." Information on bus drivers is presented for the information of the Board.

established that emergency workers who have a clear idea of their emergency roles do their emergency jobs. Mileti Affidavit, ¶¶ 3, 4.

Emergency worker performance levels are ensured by training,^{4/} which: (a) gives the emergency worker a clear understanding of his role; (b) makes the worker aware of the advantages of making family contingency plans in advance of an emergency; (c) makes the worker aware that the community and his co-workers depend on him; and (d) informs the worker about the nature of the radiation risk and about the procedures to be used in dealing with that risk, such as dosimetry. Mileti Affidavit, ¶ 10. Each of the three county plans provides for such training for school bus drivers, prior to fuel load. Winters Affidavit, ¶ 7.

In addition, by providing the worker with means to assess the risk to which he is exposed, the availability of dosimetry provides further assurance that emergency workers will fulfill their functions in a nuclear emergency. Mileti Affidavit, ¶ 11. All school bus drivers assisting with the evacuation of schools within the plume EPZ would be provided with personnel dosimetry, both self-reading and permanent record types. Winters Affidavit, ¶ 8.

^{4/} This role of training in assuring emergency worker response is generally acknowledged in Commission case law on emergency planning. See, e.g., Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP-82-70, 16 N.R.C. 756, 805 (1982) (training in emergency response and nature of risk increases reliability of emergency workers), aff'd, ALAB-781, 20 N.R.C. 819 (1984).

Sunflower cannot avoid summary disposition merely by producing a few individuals who are willing to swear that they might not drive their buses in an emergency. Indeed, as Dr. Mileti indicates, such testimony would be inherently unreliable.^{5/} In actual emergencies, people conform to pro-social behavior patterns and assume their roles under the emergency plan, even when they have earlier asserted that they would not do so. Mileti Affidavit, ¶ 14. This general principle is recognized in Commission case law. See, e.g., Consolidated Edison Co. of New York (Indian Point, Unit No. 2), LBP-83-68, 18 N.R.C. 811, 958 (in actual emergency, people behave in a pro-social manner and in accord with roles under plan, despite earlier assertions to the contrary); Diablo Canyon, supra, 16 N.R.C. at 825 (characterizing as "unreliable" people's statements about their likely behavior under stress conditions while being interviewed under unstressed conditions). This case simply cannot be distinguished from the multitude of others approving emergency plans providing for the use of regular school bus drivers for school evacuation.

Contention Q also asserts that "evacuation procedures have not considered transportation obstacles which might originate with parents picking up their children at school." Again, Sunflower's concerns are unfounded.

^{5/} Moreover, the number of school bus drivers available greatly exceeds the number needed. Winters Affidavit, ¶ 6.

Both the public information brochure and the Emergency Broadcast System ("EBS") announcements for broadcast in the event of an evacuation will advise parents of the evacuation of the schools, and of the location to which each school's students are being evacuated. Parents are instructed not to attempt to pick up their children at school, but rather to pick them up at the appropriate receiving schools outside the plume exposure pathway EPZ. Winters Affidavit, ¶ 9. These measures assure that, in the event of an evacuation due to an emergency at Perry, few -- if any -- parents would attempt to pick up their children at their schools within the EPZ. Mileti Affidavit, ¶¶ 16-19; Winters Affidavit, ¶ 12. As another licensing board has recognized:

[T]he public will comply with a plan and with instructions; but it is the lack of a plan or clear instructions that may present a problem. * * * Therefore, to ensure the validity of an assumption that most parents will not rush to the schools to pick up their children, the plans * * * must contain clear instructions for the evacuation of school children, and the public must be properly educated.

Indian Point, supra, 18 N.R.C. at 959-60. See also Diablo Canyon, supra, 16 N.R.C. at 823; Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-84-37, 20 N.R.C. 933, 995 (1984). Thus, there is no creditable basis for the assertion that parents would generally disregard instructions to the contrary and attempt to pick up their children at school in the event of an emergency at Perry.

Moreover, the offsite plans are designed to facilitate the expeditious evacuation of school children, directly from their schools within the plume EPZ to predesignated receiving schools (reception centers) outside the EPZ. In the event of an emergency at Perry, many school children would already be enroute to receiving schools by the time parents could receive and react to notification of an evacuation and travel to their children's schools. Winters Affidavit, ¶ 10.

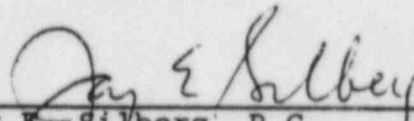
However, even if some parents did go to the schools to pick up their children in an emergency, school evacuation would not be seriously impeded. Any parents who did attempt to pick up their children at school would conduct themselves in an orderly manner. Normal school dismissal procedures would be followed, including the stationing of school personnel to direct buses out of the loading areas, and to prevent extraneous traffic from entering the loading area, if necessary. Winters Affidavit, ¶ 11; Miletic Affidavit, ¶¶ 16, 17.

In summary, like the first part of Contention Q, the second part of Contention Q utterly lacks substantive merit. Sunflower here has simply failed to distinguish this case from the body of NRC case law recognizing that -- provided parents are informed of the plans for evacuation of their children -- parents generally would cooperate with plans for the direct evacuation of their children from schools inside the EPZ to locations outside the EPZ. See, e.g., Indian Point, supra; Diablo Canyon, supra; Catawba, supra.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on either the issue of the ability to evacuate the schools in the plume EPZ in a single trip, or the issue of parents' attempts to pick up school children, Applicants' Motion For Summary Disposition of Contention Q should be granted.

Respectfully submitted,



Jay E. Silberg, P.C.
SHAW, PITTMAN, POTTS & TROWBRIDGE
1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Counsel for Applicants

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