

January 30, 1985

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
ENFORCEMENT & SERVICE  
BRANCH

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

Docket Nos. 50-440 OC  
50-441 OC

APPLICANTS' MOTION FOR  
SUMMARY DISPOSITION OF CONTENTION CC

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 CC. As discussed herein, there is no genuine issue as to any fact material to Contention CC, and Applicants are entitled to a decision in their favor on Contention CC 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 CC";
2. "Affidavit of Daniel D. Hulbert on Contention CC" ("Hulbert 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).

~~DS08~~

DS03

## 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 CC 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>

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<sup>1/</sup> The Board expressly rejected all allegations of the proposed contention which are not included in the

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Contention CC alleges:

The resolution items set forth by the staff in its Safety Evaluation Report, NUREG-0887, Supp. 4 (February 1984) pp. 13-1 to 13-22, are uncorrected deficiencies in the emergency plans.

"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 CC is ripe for summary disposition.

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(Continued)

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 are codified at 10 C.F.R. § 50.47 and 10 C.F.R. Part 50, Appendix E. Pursuant to those regulations, a finding of "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency" is required prior to issuance of an operating license. 10 C.F.R. § 50.47(a)(1). Adequate protective measures for onsite (as well as offsite) are required.<sup>2/</sup> The regulations set forth 16 emergency planning standards, and define the areas of responsibility of each organization (the licensee, as well as state and local government) with respect to emergency preparedness and response. See 10 C.F.R. § 50.47(b). Each of the 16 standards of the regulation is further addressed by more specific, parallel Evaluation Criteria set forth in

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<sup>2/</sup> The Commission bases its overall "reasonable assurance" finding on a review of the FEMA determination of the adequacy of offsite planning, and on the NRC Staff's assessment of the adequacy of an applicant's onsite plan. 10 C.F.R. § 50.47(a)(2).

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 was prepared jointly by the NRC and FEMA, to provide guidance in the development and the review of emergency plans.

### 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 CC should be granted.

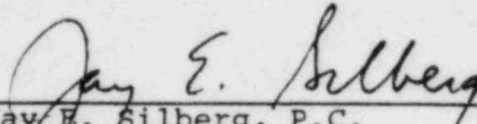
Supplement 4 to the NRC Staff's Safety Evaluation Report (NUREG-0887) (February 1984) reviewed the Perry Emergency Plan (through Revision 2) and identified 35 items which required resolution. Hulbert Affidavit, ¶ 2. Sunflower's contention states that these items are "uncorrected deficiencies."

Sunflower failed to recognize that Revision 3 of the Perry Emergency Plan, transmitted to the NRC Staff on April 28, 1984, specifically resolved many of the resolution items identified in Supplement 4. Hulbert Affidavit, ¶¶ 3-4. Nor does Sunflower recognize the additional material presented by Applicants in letters to the NRC Staff dated August 20, 1984 and October 29, 1984. Id., ¶ 3. As detailed in Mr. Hulbert's affidavit, Applicants have responded to each of the 35 items. The specific responses are set forth in paragraphs 4(a)-(ii) of Mr. Hulbert's Affidavit. Mr. Hulbert's Affidavit demonstrates that the resolution items in Supplement 4 are not uncorrected deficiencies in the Perry Emergency Plan.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of the resolution items in Supplement 4 to the Safety Evaluation Report, Applicants' Motion For Summary Disposition of Contention CC should be granted.

Respectfully submitted,



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Dated: January 30, 1985