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January 30, 1985

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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APPLICANTS' MOTION FOR  
SUMMARY DISPOSITION OF CONTENTION BB

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 BB. As discussed herein, there is no genuine issue as to any fact material to Contention BB, and Applicants are entitled to a decision in their favor on Contention BB 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 BB";
2. "Affidavit of John Baer on Contention BB" ("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 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 BB 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 BB alleges:

Off-site emergency plans are inadequate due to the planning deficiencies set forth in the Federal Emergency Management Agency Interim Report of March 1, 1984.

"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 BB 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.

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

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 offsite (as well as onsite) 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 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.

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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).

### 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 BB should be granted.

Sunflower's contention incorporated by reference each of the "planning deficiencies" set forth in the Federal Emergency Management Agency ("FEMA") Interim Report dated January 10, 1984 on Perry Nuclear Power Station Offsite Radiological Emergency Planning (transmitted to NRC by FEMA memorandum dated March 1, 1984). The Interim Report reflects the review of draft emergency plans for Lake, Ashtabula and Geauga Counties conducted by the FEMA Regional Assistance Committee. Baer Affidavit, ¶ 4. That review concluded that "there is reasonable assurance that the plans are adequate and capable of being implemented in the event of an accident at the site." Id., ¶ 3. Subsequent amendments to the plans reflect corrective actions in response to the Interim Report. Id.

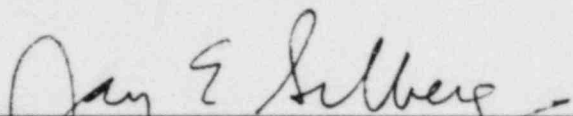
The Interim Report itself shows that more than half of the planning deficiencies identified in the Report had been corrected and the corrective action accepted. Id., ¶ 4 and Attachment B. Mr. Baer's independent review demonstrates that all the planning deficiencies identified in the Interim Report have now been, or are being, resolved. Id., ¶¶ 6-7 and Attachment B.

Based on Mr. Baer's affidavit, it is clear that the planning deficiencies identified in the Interim Report do not render the off-site emergency plans inadequate.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of the planning deficiencies identified in the FEMA Interim Report, Applicants' Motion For Summary Disposition of Contention BB should be granted.

Respectfully submitted,

  
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Dated: January 30, 1985