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February 5, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' MOTION FOR  
SUMMARY DISPOSITION OF CONTENTION H

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

#### 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 H 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>

Contention H alleges:

Inconsistent provisions in local emergency plans concerning radiation exposure levels for emergency workers and the non-availability of respirators evidences an inability to provide protection to such workers in the event of a major radiation leakage.

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

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<sup>1/</sup> 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)(11), require that:

Means for controlling radiological exposures, in an emergency, are established for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guidelines.

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 K.4 provides, in relevant part:

Each \* \* \* organization shall establish the decision chain for authorizing emergency workers to incur exposures in excess of the EPA General Public Protective Action Guides (i.e., EPA PAGs for emergency workers and lifesaving activities).

Further, while NUREG-0654 Criterion J.6.a expressly provides for the availability of "individual respiratory protection" for

onsite emergency workers, there is no comparable NUREG-0654 criterion providing for respirators for offsite emergency workers.

### 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 H should be granted. Contrary to Sunflower's assertions, all of the local emergency response plans establish radiation exposure limits for emergency workers which are consistent with EPA guidance, and thus comply with 10 C.F.R. § 50.47(b)(11). Winters Affidavit, ¶ 3. Further, in conformance with NUREG-0654 Criterion K.4, the three county plans reflect a decision chain for authorization of an emergency worker to exceed the exposure limits established in the plan. In each local plan, the decision chain provides that the emergency worker's department head will discuss the need for the exposure with direction and control personnel of local emergency operations (i.e., the County Commissioners) who, in consultation with the Ohio Department of Health, will concur with, or disapprove, the exposure. Winters Affidavit, ¶ 4. Thus, there is no basis in fact for the assertion that there are "[i]nconsistent provisions in local emergency plans concerning radiation exposure levels for emergency workers."

Sunflower's allegation that "the non-availability of respirators evidences an inability to provide protection to such workers" similarly lacks merit. While NUREG-0654 Criterion J.6.a expressly provides for the availability of "individual respiratory protection" for onsite emergency workers, there is no comparable NUREG-0654 criterion providing for respirators for offsite emergency workers. Winters Affidavit, ¶ 5. In any event, respirators are available for use by offsite emergency workers. A partial inventory<sup>2/</sup> of self-contained breathing apparatus ("SCBA") available to the three counties through municipal fire departments in the counties indicates the availability of 650 SCBA units from the surveyed departments. Winters Affidavit, ¶ 6.

In summary, contrary to Sunflower's claims, all of the local emergency response plans establish radiation exposure limits for emergency workers which are consistent with EPA guidance, and thus comply with the Commission's emergency planning regulations. In addition, all three county plans reflect a decision chain for authorization of an emergency worker to exceed the established exposure limits. Finally, respirators are available for use by offsite emergency workers.

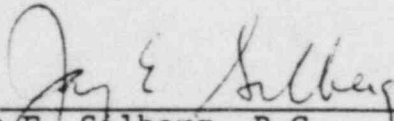
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<sup>2/</sup> The inventory of respiratory equipment did not include all fire departments within the three counties -- only those serving municipalities with a response role specified in the county plans. Therefore, additional respiratory protection equipment (beyond that identified in the inventory) is locally available to the counties. Winters Affidavit, ¶ 6, n.5.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on either the issue of the consistency of local emergency plans with regulatory guidance on radiation exposure levels for emergency workers, or on the issue of the availability of respirators for emergency workers, Applicants' Motion For Summary Disposition of Contention H should be granted.

Respectfully submitted,

  
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