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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE DIRECTOR, OFFICE OF NUCLEAR REACTOR REGULATION

In the Matter of	)	
	)	
THE CLEVELAND ELECTRIC	)	
ILLUMINATING COMPANY,	)	Docket Nos. 50-440
<u>et al.</u> ,	)	50-441
	)	(10 C.F.R. § 2.206)
(Perry Nuclear Power	)	
Plant, Units 1 and 2)	)	

LICENSEES' ANSWER TO CONCERNED CITIZENS' LETTER  
REGARDING FEMA MEMORANDA ON § 2.206 PETITION

I. Introduction

By their "Request For Action Under 10 C.F.R. 2.206" (filed September 22, 1987) ("Petition"), as supplemented by letter dated October 8, 1987 ("Supplement"), three unincorporated associations -- Concerned Citizens of Lake County, Concerned Citizens of Ashtabula County and Concerned Citizens of Geauga County ("Concerned Citizens" or "Petitioners") -- requested that the Nuclear Regulatory Commission ("NRC") "order the Cleveland Electric Illuminating Company (CEI) to correct certain deficiencies and misinformation" in the Perry 1987 emergency public information handbook and to redistribute the handbook as revised.

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The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company ("Licensees") filed a detailed response to the Concerned Citizens' § 2.206 petition on March 9, 1988. See "Licensees' Response To § 2.206 Petition of Concerned Citizens of Lake County, Concerned Citizens of Ashtabula County and Concerned Citizens of Geauga County" (March 9, 1988) ("Licensees' Response"). Licensees' Response answered each of Petitioners' many allegations, with reference to the Perry 1988 Emergency Preparedness Information Calendar (which was issued shortly after the Petition was filed, and which superseded the 1987 handbook). The Concerned Citizens therefore requested that the Director issue a decision only on five specified issues which they asserted "remain objectionable." See "Concerned Citizens' Reply To Response of The Cleveland Electric Illuminating Company To The Petition On The Emergency Information Handbook" (April 8, 1988) ("Concerned Citizens' Reply"), at 1. The Concerned Citizens' Reply deemed "[a] ruling on all other matters" to be "unnecessary." Concerned Citizens' Reply at 1-2. Licensees responded to the Concerned Citizens' five specific issues on August 2, 1988. See "Licensees' Answer To Concerned Citizens' Reply To Response To § 2.206 Petition" (August 2, 1988) ("Licensees' Answer").

In the meantime, unknown to Licensees, the Concerned Citizens sent a one-page letter to the NRC, dated July 25, 1988.<sup>1/</sup> See Letter to T. Murley (NRC) from C. Kline, R. Bimber,

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<sup>1/</sup> Although the Concerned Citizens served Licensees with their initial Petition, the Supplement and their Reply, and although

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R. O'Connell and T. Burling, dated July 25, 1988 ("Concerned Citizens' 7/25/88 Letter"). In that letter, Concerned Citizens refer to certain FEMA and EPA letters and memoranda relating to their § 2.206 petition<sup>2/</sup> and purportedly amend that petition "to incorporate the FEMA and EPA recommendations." See Concerned Citizens' 7/25/88 Letter.

As set forth more fully below, Concerned Citizens' attempt to amend their Petition by broadly incorporating by reference

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(Continued)

Licensees served Concerned Citizens with their initial Response as well as their Answer to Concerned Citizens' Reply, the Concerned Citizens failed to serve Licensees with a copy of Concerned Citizens' July 25, 1988 Letter.

<sup>2/</sup> The referenced FEMA and EPA documents are:

- (1) Memorandum to F. Congel (NRC) from R. Krimm (FEMA), Re: 10 CFR 2.206 Petition, Public Information Brochure, Perry Nuclear Power Plant (February 26, 1988) ("FEMA 2/26/88 Memo");
- (2) FEMA Response To A Request for Assistance by the NRC to a Petition filed Under 10 CFR 2.206 (February 16, 1988) ("FEMA 2/16/88 Response");
- (3) Letter to D. Bement (FEMA) From S. Rothblatt (EPA) (December, 1987)("EPA Letter");
- (4) Memorandum to J.P. Stohr (NRC) from R. Krimm (FEMA), Re: Clarification of Two Issues in the FEMA Response to the Perry Nuclear Power Plant 2.206 Petition (April 19, 1988) ("FEMA 4/19/88 Memo"); and
- (5) Memorandum to F. Congel (NRC) from R. Krimm (FEMA), Re: Supplement to 10 CFR § 2.206 Petition on Public Information for the Perry Nuclear Power Plant (June 22, 1988) ("FEMA 6/22/88 Memo").

regulatory correspondence is improper. Concerned Citizens' July 25, 1988 Letter should be rejected for that reason alone. Nevertheless, Licensees respond herein to each of the 18 recommendations in the FEMA and EPA documents to which the Concerned Citizens refer. As discussed below, the agencies determined that none of the issues required immediate action. Indeed, FEMA expressed reservations concerning only two of the many issues; and those two issues already have been resolved. As to the remainder of the 18 recommendations, FEMA suggested merely that Licensees and state and local governments consider them in the next revision of the Perry emergency public information materials. Thus, even if Concerned Citizens were permitted to incorporate the FEMA and EPA documents into their Petition, they still could not demonstrate the existence of a substantial health or safety issue. Under applicable legal standards, Petitioners have simply failed to establish any basis for the issuance of a show cause order or any other relief pursuant to 10 C.F.R. § 2.206. Accordingly, the Petition must be denied.

## II. Applicable Legal Standards

Concerned Citizens' attempt to incorporate by reference certain FEMA and EPA documents in their entirety as a basis for enforcement action is improper. As an NRC Licensing Board has noted, "[s]uch non-selective incorporation works to frustrate" the NRC's pleading requirements. Tennessee Valley Authority

(Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 N.R.C. 209, 216 (1976). See also Alabama Power Co. (Alan R. Barton Nuclear Plant, Units 1, 2, 3 and 4), LBP-75-32, 1 N.R.C. 612, 615 (1975) ("wholesale incorporation by reference does not serve the purposes of a pleading" and ordinarily requires denial of the petition). While these decisions were rendered in licensing proceedings, the logic applies with equal force to requests for enforcement action. Neither the NRC nor a licensee or applicant should be required to identify contested issues for a petitioner. Indeed, Petitioners' bare reliance on the FEMA and EPA recommendations -- with no elaboration whatsoever -- "tends to show that more ink than thought" went into the preparation of the July 25, 1988 supplement to their Petition. See Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 N.R.C. 1400, 1419 (1982). Accordingly, Concerned Citizens' July 25, 1988 Letter should be rejected.

The general legal standards for initiation of a show cause proceeding and the legal standards applicable to pre-emergency public information materials are set forth in sections II and III of Licensees' Response.

### III. Response To Recommendations in FEMA and EPA Documents

The FEMA and EPA documents to which Petitioners refer include a total of 18 recommendations. Licensees briefly address each of these recommendations below, noting where the issue was addressed in Licensees' Response<sup>3/</sup> and providing any further response to the FEMA and EPA recommendations, as appropriate.

Based on its review of the 1988 Perry emergency public information calendar, FEMA concluded that "the 1988 \* \* \* calendar \* \* \* does not adversely affect public health and safety" and therefore that no immediate action was required in response to the Concerned Citizens' Petition. See FEMA 2/26/88 Memo at 1; FEMA 2/16/88 Response at 15. Accord, EPA Letter at 1. Indeed, FEMA expressed reservations concerning only two of the many issues raised -- "receiving schools" and posting of emergency information signs in public recreation areas. FEMA 2/26/88 Memo at 1; FEMA 2/16/88 Response at 15; FEMA 4/19/88 Memo. As to the remainder of the 18 recommendations, FEMA suggested merely that Licensees and state and local governments consider them in the next revision of the Perry emergency public information materials. FEMA 2/26/88 Memo at 1-2; FEMA 2/16/88 Response at 15.

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<sup>3/</sup> Licensees' Response to the Petition was filed on March 9, 1988, and therefore was not before FEMA when it prepared its February 16, 1988 Response.

Licensees first address the issues of "receiving schools" and the posting of signs in public recreation areas, followed by a discussion of each of the 16 other recommendations.

A. Receiving Schools

The Concerned Citizens' initial Petition raised the issue of the location of receiving schools. See Petition at 17. FEMA too expressed concern, recommending that the NRC require action on the matter. See FEMA 2/26/88 Memo at 1; FEMA 2/16/88 Response at 11-13, 15; FEMA 4/19/88 Memo. However, given the many advantages of the use of receiving schools (detailed at pages 56 to 57 of Licensees' Response), state and local emergency management officials declined to abandon the receiving school concept.

In discussions with the NRC and with counsel for Licensees, FEMA subsequently clarified that its concern is not with either the concept of receiving schools or with the location of those schools. Rather, FEMA is concerned that existing emergency plans do not expressly provide for the monitoring and decontamination of evacuating school children who may have been exposed to a passing plume and therefore may be contaminated. To resolve this concern, local emergency management agency officials have agreed to revise the county plans to include such provisions. FEMA officials have advised counsel for Licensees that this resolves FEMA's concern. See "Third Affidavit of Daniel D. Hulbert" (August 31, 1988) ("Third Affidavit"), ¶ 3. Accordingly,

Petitioners' reliance on FEMA's recommendation on the receiving schools issue is misplaced.

B. Signs in Recreation Areas

The Concerned Citizens' Petition also criticized provisions for emergency information for transients, relying upon the results of their survey of motels, gas stations and phone booths in the EPZ. According to Petitioners, a number of those facilities did not display emergency public information stickers. Petition at 18-19, Appendix C. Licensees' Response explained that the present system for provision of pre-emergency information to transients does not include the use of such stickers. Instead, pre-emergency information is now being provided to transients through the phone directory, through distribution of the Calendar to motels throughout the EPZ (for placement in guest rooms), and through the posting of signs in known transient areas (such as beaches and campgrounds) in the EPZ. See Licensees' Response at 60-62.

FEMA's Response recognized that Geauga County had already posted signs in recreation areas, but FEMA expressed concern that Lake County and Ashtabula County had planned to post their signs at the time of an emergency. FEMA therefore recommended that the NRC require action on the matter. See FEMA 2/26/88 Memo at 1; FEMA 2/16/88 Response at 14-15; FEMA 4/19/88 Memo. In response to FEMA's concern, the posting of the signs was completed in the



Spring of 1988. Licensees' Response at 61. Through spot checks, FEMA Region V representatives have confirmed that the emergency information signs have been posted. Third Affidavit, ¶ 4. FEMA's recommendation on the posting of emergency information signs therefore provides no basis for enforcement action.

C. Emergency Public Information For Vision-Impaired

The Concerned Citizens' Petition questioned whether the Perry emergency public information materials are "available in braille. Petition at 5. Licensees' Response explained that there is no regulatory requirement for such publication. Licensees' Response at 16. Licensees further explained that persons with severely impaired vision can be expected to have neighbors, friends or family who read their mail to them, and who would communicate the important information in emergency public information materials to them. Further, the disabled generally have "support networks" of neighbors, friends and family who would be attentive to their special needs due to any type of hazard. In any event, those individuals who have not -- for whatever reasons -- received pre-emergency information would instinctively seek out information (from the media, friends and family) when they hear emergency sirens sound for an extended period. This is as true of those who are vision-impaired as those who are not. And it is the information which is disseminated at the time of an emergency which determines the efficacy of emergency

response. For all these reasons, a reminder to readers of emergency public information materials to read the materials to blind persons is unnecessary and superfluous. Nevertheless, the 1988 Calendar includes such a reminder. Licensees' Response at 16-17.

FEMA recognized that "CEI, State, and local authorities should be commended for encouraging the reading of the \* \* \* [emergency public information materials] to blind persons; however, in the next annual \* \* \* update these authorities may want to consider other means of providing information to the visually handicapped such as large print, braille materials, audio cassette tapes, and other audio media." FEMA 2/26/88 Memo at 2; FEMA 2/16/88 Response at 2. FEMA thus recommended simply that other means of providing pre-emergency information to the vision-impaired be considered; FEMA did not find such other means to be necessary.

Nevertheless, to enhance existing public education efforts, Ohio Emergency Management Agency is hiring an additional Public Information Officer ("PIO"). As recommended by the State's Emergency Evacuation Review Team, this new PIO will develop additional methods of increasing the awareness of emergency information among those with disabilities. Third Affidavit, ¶ 5. FEMA's views on emergency public information for the vision-impaired thus do not support the enforcement action which Petitioners urge.

D. Identification of Perry As Nuclear Plant

The Concerned Citizens further criticized the October 1986 Perry emergency public information handbook because the introductory letter in that handbook "merely referred to \* \* \* the 'Perry Power Plant' with no mention of the word 'nuclear'." Petition at 4. See also Petition at 6. However, as explained in Licensees' Response, Petitioners cannot seriously contend that the October 1986 handbook obscured the fact that Perry is nuclear power plant. Indeed, the plant was identified as a nuclear plant on the cover of that handbook (as well as elsewhere throughout the handbook). In any event, as Licensees noted further, the introductory letter of the 1988 Calendar moots Petitioners' concern by referring to the "danger from radiation" associated with Perry, and explains that radiation can be harmful to your health. Licensees' Response at 15-16. See also Licensees' Response at 21.

FEMA noted that "the reference \* \* \* would be more specific if the facility was referred to as the 'Perry Nuclear Power Plant' rather than the Perry Power Plant; however, this by itself is not seen as justification for revising and redistributing \* \* \* [new emergency public information materials]. Previous editions and the 1988 edition of the Perry \* \* \* [emergency public information materials] refer to radiation and nuclear energy and reference is made to the Perry Plant as a nuclear power plant

in numerous sections of the 1988 \* \* \* calendar." FEMA 2/16/88 Response at 3. The preparation of the 1989 Calendar will give consideration to FEMA's views on ensuring that Perry is recognized to be a nuclear power plant. Third Affidavit, ¶ 5. Nevertheless, as FEMA recognizes, the 1988 Calendar adequately identifies Perry as a nuclear plant. Thus, FEMA's observations on the identification of Perry as a nuclear plant cannot serve as a basis for enforcement action in this case.

E. Inclusion of Emergency Agency Names,  
Addresses and Phone Number In Introductory Letter

Petitioners further contended that the introductory letter of the Perry emergency public information materials should include not only the names, but also the addresses and phone numbers, of the various emergency management agencies. Petition at 6. But, as indicated in Licensees' Response, there is no regulatory basis for Petitioners' position, which constitutes nothing more than impermissible "editing." Licensees' Response at 23. FEMA therefore did not advise the NRC to require the Perry emergency public information materials to be revised as Petitioners advocate. However, FEMA did recommend that consideration be given to including the names, addresses and phone numbers of the emergency management agencies in the introductory letter to future editions of the emergency public information materials. FEMA 2/16/88 Response at 3.

While FEMA's recommendation will be considered in the preparation of the 1989 Calendar (Third Affidavit, ¶ 5), Licensees note that all the relevant information about the various emergency management agencies (names, addresses, phone numbers) is already consolidated in one place in the 1988 Calendar<sup>4/</sup> -- on the back cover of the calendar, a location even more prominent than the introductory letter on which Petitioners focus. FEMA's recommendation on this point therefore provides no basis for enforcement action against Licensees.

F. Highlighting 24-Hour  
TV and Radio Stations

Petitioners specifically challenged the typography and graphic design of the list of 24-hour radio and TV stations included in the Perry emergency public information materials. Petition at 7. But, as explained in Licensees' Response, Petitioners' comments constitute proscribed "editing" in its purest form, and should be rejected for that reason alone. Moreover, FEMA's

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<sup>4/</sup> FEMA notes simply that "[t]he addresses of the appropriate local emergency management agency [sic; agencies] are found on the 'Special Needs Information Card.'" FEMA 2/16/88 Response at 3. There are two problems with this statement. First, the Special Needs Card included with the 1988 Calendar did not include the agencies' addresses (although the Special Needs Cards in the 1989 Calendar will be pre-addressed). See Licensees' Answer at 12. Second, and more importantly, all the relevant information on the state and local agencies -- not just their addresses -- was consolidated in the Calendar at another location which (as discussed above) FEMA did not reference.

overall evaluation of the 1988 Calendar praised the typography and graphic design of the calendar. See Licensees' Response at 28-29.

FEMA's review of Petitioners' concerns concluded:

Whether or not the asterisks and the footnotes should be larger or the words "not on for 24-hours each day" should be in all caps or underlined for emphasis is an issue the authors of the \* \* \* [emergency public information materials] can consider in future revisions \* \* \*.

FEMA 2/16/88 Response at 4. Further consideration will be given to this point in the preparation of the 1989 Calendar. Third Affidavit, ¶ 5. However, as FEMA emphasized:

The 1988 \* \* calendar as well as previous \* [emergency public information materials], does distinguish between the television and radio stations that operate on a 24-hour per day basis. \* \* \* The 1988 \* \* \* calendar is informative as written. Residents living in the area are likely to be familiar \* \* \* with those stations that operate on a 24-hour per day basis.

FEMA 2/16/88 Response at 4. Accordingly, Petitioners' reliance on FEMA's views on this matter is simply misplaced.

#### G. Emphasis on Availability of Portable Radios

Petitioners also asserted that the October 1986 emergency public information handbook should have been given greater emphasis to the need in an emergency for portable radios. Petition at 7. Again, Licensees pointed out that Petitioners' criticisms

were mere "editing", with no regulatory basis whatsoever. Moreover, as Licensees pointed out, both the October 1986 handbook and the 1988 Calendar included multiple references to battery-powered radios. Thus, there is no factual basis for Petitioners' criticisms. Licensees' Response at 26-27.

FEMA noted that the asserted need for greater emphasis on the importance of portable radios "is also one that can be considered by the authors of the \* \* \* [emergency public information materials] when they undertake future revisions." FEMA 2/16/88 Response at 4. The preparation of the 1989 Calendar will include consideration of this matter. Third Affidavit, ¶ 5. However, as FEMA emphasized, highlighting the convenience of portable radios in an emergency is "not required in Federal guidance." FEMA 2/16/88 Response at 4. Thus, FEMA's observations on the point provide no support for the enforcement action which Petitioners advocate.

#### H. Further Discussion of Level of Radioactive Material Used In Plant and Potential Health Effects

Petitioners criticized those sentences in the October 1986 Handbook which state:

The law requires emergency plans for every nuclear plant. These plants have been making electricity for over 25 years. In all that time, no member of the public has been hurt.

Petition at 8. Petitioners advocated deletion of the sentences, replacing them with:

The Perry nuclear power plant contains intensely radioactive material under high pressure. A large leak would require people nearby to take prompt action to avoid injury or even death.

Petition at 8.

Although Petitioners expressed concern that the quoted language of the handbook would engender complacency in the public, Licensees explained that the adequacy of public response to an emergency is determined by the situation-specific information disseminated at the time of an emergency, not by the content of pre-emergency public information materials. Licensees noted that Petitioners' criticisms -- including their recommended replacement text -- are also objectionable as impermissible "editing" of the Perry emergency public information materials.<sup>5/</sup> Licensees' Response at 30-31.

As to Petitioners' recommended text, FEMA noted simply that it could be "considered by the authors of the \* \* \* [Perry emergency public information materials] during the next annual revision." FEMA 2/16/88 Response at 4. However, FEMA did not concur in Petitioners' criticisms of the existing text. See FEMA 2/16/88 Response at 4. Consideration will be given to FEMA's views in the preparation of the 1989 Calendar. Third Affidavit,

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<sup>5/</sup> Petitioners did point out an ambiguity in the language they challenged, however. In response to the Chernobyl accident, the text of the 1988 Calendar was clarified to expressly state that "no member of the public has been hurt as a result of an accident at a U.S. nuclear power plant." See Licensees' Response at 31; FEMA 2/16/88 Response at 4.



¶ 5. But, in any event, those views clearly do not support the initiation of enforcement action in this case.

I. Clarification of Destinations  
of Evacuees

Petitioners also maintained that the recommendation in the October 1986 handbook to "[g]o to someplace at least 10 miles away from the plant" if advised to evacuate should be revised to advise evacuation to a location at least 15 miles from the plant. Petition at 11. However, as Licensees explained, evacuees may evacuate either to a Care Center or to motels or homes of friends or family which may or may not be from 10 to 15 miles from the plant. Licensees' Response at 42.

FEMA did not dispute that evacuees may choose to stay within the area from 10 to 15 miles from the plant. But FEMA did note that page 6 of the 1988 Calendar states simply that, if advised to evacuate, persons should "proceed to a care center." As FEMA recommended (at page 8 of FEMA's 2/16/88 Response), preparation of the 1989 Calendar will give consideration to revising this sentence to be more consistent with page 7 of the 1988 Calendar, which states:

You can go to a place of your choice.  
This may be to a friend or relative.  
You may want to stay at a care center.

Third Affidavit, ¶ 5. However, FEMA did not find it necessary to recommend that any changes to the emergency public information

materials be required. Thus, FEMA's views provide no support for enforcement action here.

J. Explanation of Procedures for Pick-Up  
of Evacuated Hospital and Nursing Home Patients

In its review of pages 6 and 7 of the 1988 Calendar, FEMA noted that page 6 advises evacuees, "Do not try to pick up children or relatives in schools, hospitals or nursing homes. Such facilities have their own evacuation procedures." See FEMA 2/16/88 Response at 8. Page 8 of the 1988 Calendar explains how parents can learn the location of evacuated school children:

Evacuating and receiving schools are listed on pages 14 and 15. Local radio and TV stations will tell you the name of the school. You can also get this information at referral points. They are listed on pages 12. Or, the information is available from your school district.

FEMA recommends that consideration be given to the addition of a corresponding statement about how persons can learn the location of evacuated hospital and nursing home patients. FEMA 2/16/88 Response at 8. FEMA's recommendation will be considered in the preparation of the 1989 Calendar. Third Affidavit, ¶ 5. However, FEMA did not consider it necessary to require that the emergency public information materials be revised to include an explanation of procedures for the pick-up of evacuated hospital and nursing home patients. FEMA therefore does not support the commencement of the enforcement proceedings which Petitioners seek.

K. Information on Care  
of Livestock

Petitioners also challenged the section of the October 1986 handbook on care of livestock in an emergency. See Petition at 13. However, as indicated in Licensees' Response, Petitioners' proposed changes constituted "editing" and were wholly lacking in regulatory basis. The Perry emergency public information materials already advise farmers to plan ahead for an emergency, and remind farmers to listen to radio and TV for more detailed, situation-specific instructions in the event of an actual emergency. Even more information would be available through the Agricultural Field Station -- a central station outside the EPZ, where County Cooperative Extension Agents would provide information to farmers in the event of an emergency. Moreover, the 1988 Calendar includes the following additional information:

Federal and state agencies will do follow-up surveys of farm products to check for contamination. For more information, contact your county Cooperative Extension Service.

Finally, as Licensees further noted, FEMA's overall evaluation of the 1988 Calendar expressly approved the information for farmers included in the calendar. See Licensees' Response at 46-47.

FEMA's review of Petitioners' concerns discussed the text of the 1988 Calendar with approval, and did not mandate any changes. Instead, FEMA noted simply that, "The exact wording of this section or any remaining 2.206 issues can be addressed \* \* \* during

the next annual revision." FEMA 2/16/88 Response at 9. Consideration will be given to FEMA's views in the preparation of the 1989 Calendar. Third Affidavit, ¶ 5. Accordingly, no enforcement action is warranted.

L. Confusion of Ionizing and Non-Ionizing Radiation

Petitioners further asserted that the Perry emergency public information materials should distinguish between ionizing and non-ionizing radiation, and recommended specific changes to the 1988 Calendar to resolve their concerns. See Petition at 11, 13-14; Concerned Citizens' Reply at 3.

FEMA requested that EPA Region V review Petitioners' allegations. FEMA 2/16/88 Response at 9. While the EPA reviewer favored rewriting the language in question, the reviewer concluded that the revisions could be made within a reasonable time frame without consequence. EPA Letter at 1.

As discussed in Licensees' Response, strict technical accuracy is simply not required in emergency public information materials. And Petitioners' proffered re-write is merely "editing." See Licensees' Response at 48; Licensees' Answer at 10. Still, in the spirit of accommodation, Petitioners' suggested language will be incorporated in the next revision of the Perry emergency public information materials. Licensees' Answer at 10. Particularly in light of this action, EPA's recommendation cannot support enforcement action here.

M. Safety of Exposure to  
Low Levels of Radiation

Petitioners also criticized the section of the Calendar entitled "Dangerous Levels," contending that it "falsely asserts that doses of radiation less than 25 rems are harmless." Petitioners' Reply at 3-4. While the EPA reviewer too was concerned that the language of the calendar could be interpreted as stating that low exposures are safe (and therefore favored revisions), the reviewer concluded that the 1988 Calendar would not compromise implementation of emergency plans. EPA letter at 1.

As Licensees noted, the 1988 Calendar clearly does not state that doses of radiation less than 25 rems are harmless. Instead, the calendar states simply that long-term health effects have been observed only in those exposed to 25 rems or more. Licensees' Answer at 11. Moreover, as Licensees pointed out, Petitioners' proposed language for revision of this section constitutes prohibited "editing." Licensees' Answer at 11. Nevertheless, again in the spirit of accommodation, the section entitled "Dangerous Levels" will be deleted in the next revision of the Perry emergency public information materials. Licensees' Answer at 11. Thus, again, particularly in light of this accommodation, EPA's views provide no basis for enforcement action here.

N. Accuracy of Stated Limits  
on Radiological Releases

Referencing the Final Environmental Statement ("FES") for Perry, Petitioners also challenged the statement in the 1988 Calendar that ["b]y law, a nuclear plant may not expose the public to more than five millirems a year." See Petition at 14; 1988 Calendar at 16.

The EPA reviewer noted that Petitioners' reference to "guidelines for normal operation" of 25 millirems per year is a reference to EPA's limit at 40 C.F.R. Part 190, which is actually a limit for all fuel cycle operations. The reference in the calendar is a reference to the NRC's more restrictive design objective established in 10 C.F.R. Part 50, Appendix I. EPA Letter at 2. See also Licensees' Response at 49-50. Thus, Petitioners have simply misinterpreted the FES's discussion of permissible levels of radiation. The EPA reviewer tentatively suggested that it might be more accurate to refer to the NRC operating license as the basis for the five millirem figure, but conceded that its "research into the legal limit for operation has not yielded a consistent answer." EPA Letter at 2. But, in any event, the EPA concluded that the existing text would not adversely affect public health and safety. EPA Letter at 1.

Nevertheless, once again in the spirit of accommodation, the last paragraph of the section of the 1988 Calendar entitled "Sources of Radiation" will be deleted in the 1989 Calendar and will be replaced with the following language:

Radiation levels at nuclear plants are checked constantly. The law limits levels released from a plant. If you would like more information on radiation, write to The Illuminating Company, Perry Plant, Community Relations Section, P.O. Box 97, Perry, Ohio 44081.

Third Affidavit, ¶ 6. Thus, particularly with this commitment, EPA's comments provide no support for the enforcement proceedings which Petitioners seek.

O. Format of EPZ Map

The initial Petition filed by Concerned Citizens criticized the EPZ map included with the October 1986 handbook, asserting that it was "entirely too cumbersome." Petition at 17. Licensees' Response noted that the criticism was in fact "editing," and that the map included with the handbook was only the size of a standard road map. But, in any event, as Licensees further noted, the map in the 1988 Calendar (which FEMA has approved) is reduced in size and printed on facing pages, mooted Petitioners' concerns. Licensees' Response at 57-58.

FEMA agreed with Licensees that the relative merits of the separate fold-out EPZ map included with the October 1986 handbook versus the map incorporated into the 1988 Calendar are largely a matter of personal preference, and left the matter for resolution "by the authors of the Perry \* \* \* [emergency public information materials] when they do their annual revisions." FEMA 2/16/88 Response at 13. Preparation of the 1989 Calendar will include

consideration of the matter. Third Affidavit, ¶ 5. Thus, FEMA's views on the format of the EPZ map provide no basis for enforcement action.

P. Scope of Special Needs Card

Petitioners contend that the category "Special Needs Transportation" on the "Special Needs Information Card" should be clarified to expressly include "those who do not drive and do not have a car." Accordingly to Petitioners, this clarification is necessary because the phrase "Special Transportation" generally "tends to connote specialized vehicles to accommodate the handicapped such as vans with chair lifts etc." Petition at 18.

As explained in Licensees' Response, Petitioners' concern is premised on the assumption that the "Special Needs Information Card" is intended to elicit responses from "those who do not drive and do not have a car." That assumption is incorrect. As the pre-emergency public information materials indicate, those who do not drive or have a car are encouraged to ride with neighbors or friends. If this is not possible, they are directed to proceed to one of the listed pickup points, where transportation would be provided by emergency management authorities. There is no pre-registration required for this type of transportation assistance. See Licensees' Response at 59-60.

While the preparers of the Special Needs Card intended to elicit responses only from persons whose disabilities would



necessitate special transportation assistance in an emergency, FEMA thought that the card could be read more broadly:

One could also conclude that an individual who does not drive or own a car would also fill out this card. It is obvious that the card, taken in total, is a request to have anyone who may require special help during an evacuation fill out this card and mail it to their County Emergency Management Agency.

FEMA 2/16/88 Response at 13. Although FEMA did not consider it necessary to make any recommendation whatsoever on this point, the Special Needs Card for inclusion with the 1989 Calendar will be revised to clarify that responses are necessary only from those whose physical or mental disabilities would necessitate special assistance in an emergency. Third Affidavit, ¶ 7.

Q. Efforts to Encourage EPZ  
Businesses to Disseminate  
Emergency Information Materials  
To Transients

Based on the results of their survey of motels, gas stations and phone booths in the EPZ, Petitioners dispute the availability of emergency public information for transients. Petition at 18-19, Appendix C. However, while Petitioners apparently surveyed for "decals," Licensees' Response pointed out that the present system for provision of pre-emergency public information does not rely upon stickers. See Licensees' Response at 60. Instead, as discussed herein in Section III.B, pre-emergency information is now being provided to transients through the phone

directory, through distribution of the calendar to motels throughout the EPZ (for placement in guest rooms), and through the posting of signs in known transient areas (such as beaches and campgrounds) in the EPZ. See Licensees' Response at 60-61; Licensees' Answer at 7 (FEMA review of signed statements of EPZ motel operators confirming receipt of copies of insert for posting in telephone directories in individual motel rooms); Third Affidavit, ¶ 4 (FEMA spot check of signs at recreation areas in EPZ).

In telephone conversations with FEMA, representatives of Licensees emphasized that Licensees cannot force the proprietors of private businesses to make information available to transients. Licensees can only make all reasonable good faith efforts to provide the information to EPZ businesses and encourage businessmen in turn to make it available to transients. FEMA indicated that it understands Licensees' position, and encourages Licensees and local emergency management officials "to continue efforts with these proprietors so that more of them will make this [emergency] material/information available." FEMA 2/16/88 Response at 14. Licensees and local officials will continue their efforts in this area. Third Affidavit, ¶ 8.

Finally, it is important to recognize that -- even if transients have received no pre-emergency public information -- their response in an emergency would not be impaired. It is the information disseminated at the time of an emergency, not

pre-emergency public information materials, which determines the adequacy of public response. Thus, persons without access to printed emergency public information materials would not be at greater risk than the rest of the community in the event of an emergency at Perry. See Licensees' Response at -62. Thus, FEMA's recommendation that Licensees and local officials continue to encourage EPZ businesses to provide emergency public information materials to transients simply does not warrant enforcement action.

R. Efforts To Ensure Emergency Information  
Included In Future Phone Directories

In addition, Petitioners noted that emergency public information was inadvertently omitted from one of the three telephone directories for the Perry area, the Ohio Bell directory for Painesville. Petition at 19.

Licensees' Response noted that there is no regulatory requirement that emergency information be included in phone directories. Licensees' Response at 63. Indeed, Licensees' Response explained that, even if there were no information in the phone directory, the response of transients in an emergency would not be impaired. Licensees' Response at 63-64; Licensees' Answer at 8. In any event, as Licensees' Response indicated, Ohio Bell made a special mailing to all directory holders, to remedy the omission. In addition, CEI reprinted the two pages and inserted

the reprint into the Ohio Bell directories at phone booths in the EPZ. CEI also provided copies of the reprint for insertion into the directories in motel rooms in the EPZ. See Licensees' Response at 63-64; Licensees' Answer at 5-7.

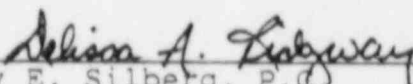
FEMA was satisfied with these efforts to remedy the omission of the information from one of the phone directories, but recommended that "efforts be made to ensure this problem does not happen in the future." FEMA 2/16/88 Response at 15. CEI's internal procedures already have been formalized to ensure coordination between the utility and the various telephone companies so that emergency public information is not omitted from future editions of the phone directories. Indeed, the 1988-89 Ohio Bell directory for the Painesville area has been distributed, and it includes the two pages of emergency information. Third Affidavit, ¶ 9. Thus, FEMA's recommendation on this point clearly can provide no basis for enforcement action in this case.

#### IX. Conclusion

As discussed above, the Concerned Citizens' reliance on the various FEMA and EPA recommendations as a basis for enforcement action is unavailing. Based on its review of the 1988 Calendar, FEMA concluded that none of Petitioners' concerns adversely affected public health and safety and, therefore, that immediate action was unwarranted. Indeed, FEMA expressed reservations concerning only two of the many issues raised -- "receiving schools"

and posting of emergency information signs in public recreation areas. These two issues already have been resolved to FEMA's satisfaction. As to the remainder of the FEMA and EPA recommendations, FEMA suggested merely that Licensees and state and local officials consider them in the next revision of the Perry emergency public information materials. Clearly, Petitioners cannot point to the FEMA and EPA recommendations as evidence of a "substantial health and safety issue" to warrant the initiation of enforcement proceedings against Licensees. Accordingly, the Concerned Citizens' petition must be denied.

Respectfully submitted,

  
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