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February 1, 1985

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USNRC

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 )  
ILLUMINATING COMPANY )

Docket Nos. 50-440  
50-441

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o c

(Perry Nuclear Power Plant,  
Units 1 and 2) )

APPLICANTS' MOTION FOR SUMMARY DISPOSITION  
OF CONTENTION A

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

Evacuation time estimates have not been reviewed by state or local organizations and adverse weather conditions have not been considered.

"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. Accordingly, the instant motion is timely, and Contention A 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 require the preparation of "an analysis of the time required to evacuate \* \* \*." 10 C.F.R. Part 50, App. E, § IV. The standards embodied in the emergency planning regulations are 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.10.1 provides that plans shall include:

1. Time estimates for evacuation \* \* \* based on a dynamic analysis \* \* \* for the plume exposure pathway emergency planning zone (See Appendix 4).

Appendix 4 to NUREG-0654 sets forth the regulatory acceptance criteria for evacuation time estimate studies ("ETEs"). Appendix 4 specifies:



Two conditions -- normal and adverse -- are considered in the analyses. Adverse conditions would depend on the characteristics of a specific site and could include flooding, snow, ice, fog or rain. \* \* \* These conditions will affect both travel times and capacity. More than one adverse condition may need to be considered. That is, a northern site with a high summer tourist population should consider rain, flooding, or fog as the adverse condition as well as snow with winter population estimates.

NUREG-0654, at 4-6 to 4-7. Appendix 4 further provides, in relevant part:

A review of the draft submittal by the principal organizations (State and local) involved in emergency response for the site shall be solicited and comments resulting from such review included with the submittal.

NUREG-0654, at 4-10.

### 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 A should be granted. Sunflower's allegation that Applicants failed to afford the State and the Counties an opportunity to review the ETE is simply

incorrect. To the contrary, offsite emergency planning/response officials have played an important role in the development of the ETE -- far beyond a mere "review" of the document. McCandless Affidavit, ¶ 3. The ETE itself reflects the role of county officials (officials from the Ashtabula, Lake, and Geauga County Disaster Services Agencies and Sheriffs' Departments) in the determination of preparation and mobilization times and vehicle occupancy rates. Id., ¶ 3.

Further, before beginning work on the Perry ETE (in early October 1983), HMM personnel met individually with representatives of each of the three counties (including the three DSA Directors). The meetings covered the basic ETE methodology, and the general input data and assumptions for the computer simulation model for the ETE, as well as the model output and the time/weather condition scenarios to be modeled. All meeting participants were in agreement with the information presented. Id., ¶ 4. Then, in mid-October, HMM personnel again met with the officials (including the DSA Directors) of the three counties, to review the area-specific data and assumptions for use in the ETE. All those in attendance at the meetings concurred in the results to date, as well as the proposed plans and procedures for continued work on the ETE. Id., ¶ 5. Finally, copies of the March 1984 draft of the ETE were provided to the DSA Directors of each of the three counties, and to the Ohio Disaster Services Agency. The agencies'

comments will be reflected in the next revision of the ETE. The comments will be submitted to the NRC with the next revision of the ETE. Id., ¶ 6. Thus, there is no substantive merit whatsoever to the first part of Contention A.

The second part of Contention A similarly lacks merit. The sole basis for Sunflower's assertion that the ETE has "failed credibly to address the effects of adverse weather (i.e., a thunderstorm) on a summer Sunday evacuation" is a reference to NUREG-0887, Supplement No. 4 to the Staff's Safety Evaluation Report ("SSER 4"), at 13-16, and a quotation from NUREG-0654 that a northern site with a high tourist population should consider adverse summer weather conditions. Applicants responded to the NRC's comments in SSER 4 by revising Applicants' onsite emergency plan to include the March 1984 draft of the ETE, which expressly addresses the effects of a thunderstorm on a summer Sunday evacuation. See PNPP Plan, Rev. 3, Appendix D. Thus, HMM actually considered two adverse weather scenarios in the preparation of the ETE -- capacity and travel speed reductions of 20% (to represent sudden summer Sunday thunderstorm conditions) as well as capacity and travel speed reductions of 30% (to represent winter snowstorm conditions).2/ McCandless Affidavit, ¶ 7.

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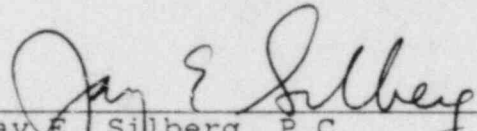
2/ The adverse weather scenario assumptions for the Perry ETE were selected based upon discussions with local officials (including the three County DSA Directors). The assumptions employed are consistent with those used in NRC-approved analyses conducted by HMM for other sites with comparable meteorology. McCandless Affidavit, ¶ 8.

In summary, contrary to Sunflower's claims, state and local organizations have reviewed the ETE, and the ETE does indeed reflect a summer Sunday thunderstorm scenario (as well as winter snowstorm conditions).

#### IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on either the issue of whether state and local officials have reviewed the ETE, or whether the ETE included both summer and winter adverse weather scenarios, Applicants' Motion For Summary Disposition of Contention A should be granted.

Respectfully submitted,

  
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Dated: February 1, 1985