

February 1, 1985

DOCKETED  
USNRCUNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARDOFFICE OF SECRETARY  
ING & SERVICE  
BRANCH

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

APPLICANTS' MOTION FOR  
SUMMARY DISPOSITION OF CONTENTION M

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 M. As discussed herein, there is no genuine issue as to any fact material to Contention M, and Applicants are entitled to a decision in their favor on Contention M 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 M";
2. "Affidavit of Richard R. Bowers on Contention M" ("Bowers Affidavit");
3. "Affidavit of Ronald W. Smith on Contention M" ("Smith Affidavit"); and
4. 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 M 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 M alleges:

Independent Data Monitoring Systems should be installed within all counties in the Emergency Planning Zone (EPZ).

"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 M 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, at 10 C.F.R. § 50.47(b)(8) and (9), require that:

[a]dequate emergency facilities and equipment to support the emergency response are provided and maintained.

[a]dequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

These planning standards 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). Evaluation Criteria H.7 states that

Each organization, where appropriate, shall provide equipment for offsite radiological monitoring equipment in the vicinity of the nuclear plant. (emphasis added)

Evaluation Criterion I.7 states that:

Each organization shall describe the capability and resources for field monitoring with the plume exposure Emergency Planning Zone which are an intrinsic part of the concept of operations for the facility.

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 M should be granted. The contention claims that "independent [radiation] data monitoring



systems" should be installed in all counties within the plume exposure pathway EPZ.<sup>2/</sup> Sunflower's initial filing made clear that it wanted each of the three plume exposure pathway counties to install their own fixed radiation monitoring systems. Sunflower Alliance's Particularized Objections to Proposed Emergency Plans in Support of Issue No. 1, dated August 20, 1984, at 17-18.

As a starting point, it is clear that the State of Ohio has a substantial radiation monitoring capability, independent of the off-site radiation monitoring capability provided by Applicants. Smith Affidavit, ¶¶ 3-9. This capability includes three field monitoring teams, each fully equipped and capable of monitoring high, mid and low range gamma radiation, alpha and beta radiation, as well as air sampling for radioiodine and particulates. Id., ¶¶ 5, 7. The teams have communications capabilities with county emergency operation centers and the plant Emergency Operations Facility. Id., ¶ 6. By moving from point to point (using predesignated monitoring points), the teams' measurements form a picture of any radiation plume. Id., ¶ 5. The teams are sufficient in number, equipment and communications capability to effectively track the radiation plume independent of Perry Plant's radiation monitoring capability. Id., ¶ 8.

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<sup>2/</sup> Although the language of the contention itself refers to "all counties within the Emergency Planning Zone (EPZ)", it is clear that (as in the case of Contention 0), "any application of this contention beyond the 10-mile area is outside the scope of Issue I." January 10, 1985 Memorandum and Order, at 6.

In addition, Federal agencies also have radiation monitoring capability which is independent of both the State and Applicants. Id., ¶ 9.

There is not, as Sunflower would argue, any regulatory requirement or guidance calling for the installation of independent radiation monitoring systems within the three counties. No NRC regulation calls for such systems. See, e.g., 10 C.F.R. §§ 50.47(b)(8) and (9), which require "adequate emergency facilities and equipment" and "adequate ... systems and equipment" to assess and monitor off-site consequences.

Nor do the Evaluation Criteria of NUREG-0654 include such a requirement. Criterion H.7 calls for each organization, where appropriate, to provide for off-site radiation monitoring equipment. This criterion does not require fixed monitoring as Sunflower would require. Nor does it demand that each off-site county have such equipment. Only where it is appropriate is such equipment required. As described above, the strong, independent radiation monitoring capability of the State of Ohio makes it appropriate for the counties to rely on that capability, without the necessity of providing their own. Similarly, Criterion I.7, which calls for each organization to describe the capability and resources for field monitoring, does not require each county to have its own capability and resources. Smith Affidavit, ¶ 3. It is appropriate for the counties to describe the field monitoring capability by referring to that of the State, as was done by the three

counties and found acceptable by the Federal Emergency Management Agency. Smith Affidavit, ¶ 4, n.1.

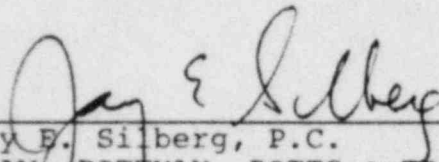
Wholly apart from the existence of an independent radiation monitoring capability and the lack of regulatory guidance requiring each county to have its own monitoring capability, the Affidavit of Richard Bowers demonstrates that the kind of fixed radiation monitoring capability sought by Sunflower is impractical and less effective than the monitoring capability already provided. More than 100 fixed monitoring locations would be needed for the Perry plume exposure pathway EPZ. Bowers Affidavit, ¶ 2. The repair, maintenance and cost of such a system would be substantial. Id. FEMA recommends against such a system. FEMA-REP-2, Guidance on Off-Site Emergency Radiation Monitoring Systems (September 1980); Bowers Affidavit, ¶ 2. Mobile monitoring teams are more effective in evaluating radiation releases because they can follow the plume, measure it precisely, and locate it accurately. Bowers Affidavit, ¶¶ 3, 5.

Finally, CEI, NRC and the State of Ohio have fixed radiation monitoring systems in the nature of thermoluminescent dosimeters arrayed in rings throughout the plume exposure pathway EPZ. Id., ¶ 6. The NRC and State systems are independent radiation monitoring systems as called for by the contention.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of independent radiation monitoring systems, Applicants' Motion For Summary Disposition of Contention M should be granted.

Respectfully submitted,



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