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February 5, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)

Docket Nos. 50-440 OL
50-441 OL

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

APPLICANTS' MOTION FOR
SUMMARY DISPOSITION OF CONTENTION O

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 O. As discussed herein, there is no genuine issue as to any fact material to Contention O, and Applicants are entitled to a decision in their favor on Contention O 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 O";

3. "Affidavit of John Baer on Contention O" ("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).

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 O 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,^{1/} Contention O alleges:

Emergency plans do not adequately set forth plans and procedures for reentry and recovery of property or the means for relaxing protection measures, within the 10-mile EPZ.

"Memorandum and Order (Admissibility of Contentions on Emergency Plans and Motion To Dismiss)" (January 10, 1985), at 6. The Board stated, however, that "any application of this contention beyond the 10-mile area is outside the scope of Issue I." Id.

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 with the Board and parties, February 1, 1985. Accordingly, the instant motion is timely, and Contention O is ripe for summary disposition.

^{1/} 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)(13), require, in relevant part, that:

[g]eneral plans for recovery and
reentry are developed.

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 M.1 provides, in relevant part, that offsite emergency response organizations shall develop:

* * * general plans and procedures for
reentry and recovery and describe the
means by which decisions to relax
protective measures (e.g., allow
reentry into an evacuated area) are
reached.

* * *

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 0 should be granted.

Contention 0 claims that the emergency plans fail to adequately set forth plans and procedures for reentry and recovery of property or the means to relax protective measures within the plume exposure pathway EPZ. Sunflower provided no specific support or argument in support of its claim. See Sunflower Alliance's Particularized Objections to Proposed Emergency Plans in Support of Issue No. 1, dated August 20, 1984, at 19.

It must first be recognized that detailed recovery/reentry plans are not required by NRC regulation or guidance. Section 50.47(b)(13) of 10 C.F.R. calls for "general plans for recovery and reentry" Similarly, Criterion M.1 of NUREG-0654 recommends "general plans and procedures for recovery and reentry" Baer Affidavit, ¶ 2.

The reason why general plans for recovery and reentry are adequate is that time is not a constraint during the recovery/reentry phase. Since the public has been evacuated and removed from the radiation hazard, the emergency planners have time to develop specific recovery/reentry actions. Baer Affidavit, ¶ 2. As explained by the Atomic Safety and Licensing Board in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-82-39, 15 N.R.C. 1163, 1207 (1982):

The NRC regulation requires that "general" plans for recovery and reentry be developed. In recognition of the expected sequence and pace of events following an evacuation, the regulation does not contemplate the kind of detail in planning required for an emergency response.

The Intervenor's position is that the plans are either insufficient or nonexistent, and that the Applicants consider ad hoc planning alone to be sufficient. We find little support for this position in the record.

Unlike evacuation, reentry should not (at least in most cases) be constrained by time. Those things that will have to be done before the return of people to their homes is advisable will depend on the radiological conditions that exist in the area evacuated. In this sense, plans must -- and should -- be ad hoc. The offsite authorities would be the same for emergency response and recovery-reentry operations, so it is not a matter of organizing from scratch. Plans have been made and responsibilities assigned, so far as practicable, for determining levels of radiation or contamination. Levels of contamination will be assessed by the Applicants and the State Office of Emergency Services in order to determine whether they meet State standards for reentry. Local jurisdictions would presumably follow the State's guidance.

The degree of reentry/recovery planning for the Perry plume exposure pathway EPZ is at least as extensive as that found acceptable by the San Onofre licensing board. The State of Ohio's plan provides that the Recovery and Reentry Committee, composed of State and Federal representatives, is activated by the Ohio Department of Health and makes recovery/reentry recommendations for the affected areas. Baer Affidavit, ¶ 4. Decontamination would be supervised by the

Ohio Disaster Services Agency, which would also provide radiological survey teams. Id., ¶ 5. The State plan adopts the US EPA's criteria as the standards for allowing reentry. Id., ¶ 6.

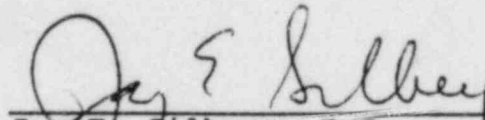
As set forth in their plans, the three counties within the plume exposure pathway EPZ rely upon the State to identify contaminated areas and coordinate decontamination and reentry activities with the State. Baer Affidavit, ¶ 7. The county plans also address relaxation of protective measures. Id., ¶ 8.

Based upon the evidence, there can be no dispute that the State and county plans adequately address recovery and reentry planning. Id., ¶ 9.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of reentry/recovery planning and relaxation of protective measures, Applicants' Motion For Summary Disposition of Contention 0 should be granted.

Respectfully submitted,



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