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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

FILE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)

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

Docket Nos. 50-440 *OL*
50-441 *OL*

APPLICANTS' MOTION FOR
SUMMARY DISPOSITION OF CONTENTION I

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 I. As discussed herein, there is no genuine issue as to any fact material to Contention I, and Applicants are entitled to a decision in their favor on Contention I 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 I";
2. "Affidavit of Daniel D. Hulbert on Contention I" ("Hulbert Affidavit");
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 I 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/}

^{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.

Contention I alleges:

Applicant's emergency plan contemplates that an evacuation would not take place beyond a 5-mile radius of the Perry plant.

"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 I 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.

B. Substantive Law

The Commission's emergency planning regulations, at 10 C.F.R. § 50.47(b)(10), require, in relevant part, that:

A range of protective actions have been developed for the plume exposure pathway for * * * the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place * * *.

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 J.10.m provides, in relevant part, that a licensee's plans shall include:

[t]he bases for the choice of recommended protective actions from the plume exposure pathway during emergency conditions. This shall include * * * evacuation time estimates.

(Emphasis supplied). 10 C.F.R. § 50.47(c)(2) specifies, in relevant part:

Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles (16 km) in radius * * *.

III. ARGUMENT

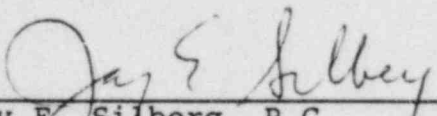
Applying the Commission's summary disposition standards to the facts of this case, it is clear that the instant motion for summary disposition of Contention I should be granted. Sunflower claims that the Perry Emergency Plan does not contemplate evacuation beyond 5 miles. The Hulbert Affidavit demonstrates that this claim is incorrect. The Perry Emergency

Plan and the off-site emergency plans all have adopted a plume exposure pathway EPZ of about 10 miles, as called for in 10 C.F.R. § 50.47(c)(2). Hulbert Affidavit, ¶ 3. The primary method by which Applicants determine protective action recommendations compares projected doses (calculated from radiological release rate and meteorological information) to the US EPA Projected Action Guidelines, and thus does not limit the evacuation recommendations to 5 miles. Hulbert Affidavit, ¶ 5. An alternate procedure in the Perry Emergency Plan compares potential releases (based on plant information) with pre-established curves. While the specific recommendations associated with the curves extend only to 5 miles, the Plan specifically states that the recommended protective actions may be extended based on particular conditions. Hulbert Affidavit, ¶ 7. To avoid confusion, the alternate procedure is being amended to specifically state that possible protective action recommendations may range to the full 10 mile plume exposure pathway EPZ. Hulbert Affidavit, ¶ 7. The three county plans each contemplate protective actions for the entire plume exposure pathway EPZ. Hulbert Affidavit, ¶ 6. It is clear that the Perry Emergency Plan and the off-site plans contemplate evacuation beyond 5 miles. Hulbert Affidavit, ¶ 9. Sunflower's contention is therefore incorrect.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of whether the Perry Emergency Plan contemplates evacuation beyond 5 miles, Applicants' Motion For Summary Disposition of Contention I should be granted.

Respectfully submitted,



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