

January 30, 1985

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

SECRETARY
SERVICE

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

APPLICANTS' MOTION FOR
SUMMARY DISPOSITION OF CONTENTION J

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

^{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.

Emergency action level indicators are incomplete in Applicant's emergency plan.

"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 J 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)(4), require, in relevant part, that:

[a] standard emergency * * * action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee * * *.

The Commission's regulations further provide:

The means to be used for determining the magnitude of and for continually assessing the impact of the release of radioactive materials shall be described, including emergency action levels * * *.

* * *

The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring.

10 C.F.R. Part 50, Appendix E, § IV.B.

Elsewhere, the regulations note:

Emergency action levels (based not only on onsite and offsite radiation monitoring information but also on readings from a number of sensors that indicate a potential emergency, such as the pressure in containment and the response of the Emergency Core Cooling System) for notification of offsite agencies shall be described.

10 C.F.R. Part 50, Appendix E, § IV.C.

The applicable 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 D.1 specifies that:

An * * * emergency action level scheme as set forth in Appendix 1 [of NUREG-0654] must be established by the licensee. The specific instruments, parameters or equipment status shall be shown for establishing each emergency class, in the in-plant emergency procedures. The plan shall identify the parameter values and equipment status for each emergency class.

Criterion D.2 further specifies:

The initiating conditions shall include the example conditions found in Appendix 1 and all postulated accidents in the Final Safety Analysis Report (FSAR) for the nuclear facility.

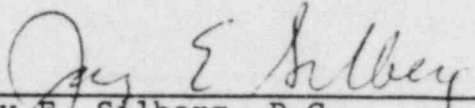
III. ARGUMENT

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 J should be granted. Contention J asserts that Emergency Action Level ("EAL") indications in the Perry Emergency Plan are incomplete. As shown in Mr. Hulbert's affidavit, of the 200 individual EAL indications in Revision 3 of the Plan, 13 were "incomplete." Hulbert Affidavit, ¶ 4. They were incomplete because the detailed technical data needed to determine the missing value was not available when Revision 3 was issued. Id. However, in each of these 13 instances, comparable values were specified in the EAL. Id., ¶ 5. Values for each of the 13 "missing" cases have now been developed and will be included in Revision 4 to the Plan. Id., ¶ 6. Thus, all EAL's in Revision 3 had values associated with them and the 13 "missing" values have subsequently been determined.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of the "missing" EAL values, Applicants' Motion For Summary Disposition of Contention J should be granted.

Respectfully submitted,



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