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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 DD

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

The Applicant's emergency operation facility is located contrary to the criteria and guidance provided by the NRC.

"Memorandum and Order (Admissibility of Contentions on Emergency Plans and Motion To Dismiss)" (January 10, 1985), at 7.

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 DD 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, at 10 C.F.R. § 50.47(b)(8), require, in relevant part, that:

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

The regulations also require, in relevant part, that:

Adequate provisions shall be made  
\* \* \* for emergency facilities \* \* \*,  
including:

\* \* \*

A licensee \* \* \* near-site emergency  
operations facility from which  
effective direction can be given and  
effective control can be exercised  
during an emergency.

10 C.F.R. Part 50, App. E, § IV.E.8.

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 H.2 provides:



Each licensee shall establish an Emergency Operations Facility from which evaluation and coordination of all licensee activities related to an emergency is to be carried out and from which the licensee shall provide information to Federal, State and local authorities responding to radiological emergencies in accordance with NUREG-0696, Revision 1.

### III. ARGUMENT

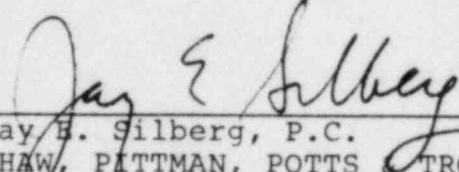
Applying the Commission's summary disposition standards to the facts of this case, it is clear that the instant motion for summary disposition of Contention DD should be granted. The Emergency Operations Facility ("EOF") for the Perry facility is located consistent with NRC criteria and guidance. Hulbert Affidavit, ¶ 7. The EOF is sited about 1,970 feet from the Unit 1 reactor building and about 1,800 feet from the Unit 2 reactor building. Id., ¶ 3. It is well outside the Unit 1 security boundary and where the Unit 2 security boundary will be. Id., ¶ 4. The only NRC regulatory guidance on the minimum distance of an EOF from the plant is that it should be outside the plant security boundary. Generic Letter No. 82-33, Supp. 1 to NUREG-0737 (December 17, 1982); Hulbert Affidavit, ¶ 4. The two NRC guidance documents cited by Sunflower, NUREG-0814 and NUREG-0696, establish different requirements for EOF's located within 10 miles and beyond 10 miles from the plant, but do not require specific NRC approval for locations closer than 20 miles to the plant. Hulbert Affidavit, ¶ 5. Sunflower is also incorrect in claiming that the EOF location will jeopardize

county decision-makers by forcing them to come to the Perry EOF in the event of any accident. Those officials convene in their respective Emergency Operations Centers, not at the EOF. Id., ¶ 6. For all these reasons, Sunflower's contention is therefore incorrect in claiming that the Perry EOF is located inconsistent with NRC criteria and guidance.

#### IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of whether the Perry EOF is located consistent with NRC criteria and guidance, Applicants' Motion For Summary Disposition of Contention DD should be granted.

Respectfully submitted,

  
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