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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
SERVICE
BRANCH

In the Matter of

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY

(Perry Nuclear Power Plant,
Units 1 and 2)

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Docket Nos. 50-440 OL
50-441 OL

APPLICANTS' MOTION FOR
SUMMARY DISPOSITION OF CONTENTION Z

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

The plans do not provide decontamination protection for bus drivers during an emergency.

"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 Z 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)(11), require, in relevant part, that:

Means for controlling radiological exposures, in an emergency, are established for emergency workers.

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), Evaluation Criteria K.3.a which states in part:

Each organization shall make provisions for distribution of dosimeters, both self-reading and permanent record devices.

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 2 should be granted.

Sunflower's contention argues that the emergency plans do not provide decontamination protection for bus drivers during an emergency. As shown by the Affidavit of John Baer, bus drivers do not require decontamination protection such as goggles and respirators. Baer Affidavit, ¶ 8. There is no regulatory requirement or guidance that calls for such equipment. Id., ¶ 3. The bus drivers will have both self-reading dosimeters and permanent record dosimeters and will be trained in their use. Id., ¶¶ 4, 5. Bus drivers, as well as other emergency workers, will read their dosimeters at least once every hour. Id., ¶ 5. If the dosimeter shows any radiation exposure, the county emergency procedures require the driver to report to a

monitoring and decontamination station (outside the plume exposure pathway EPZ) for monitoring and, if necessary, decontamination. Id.

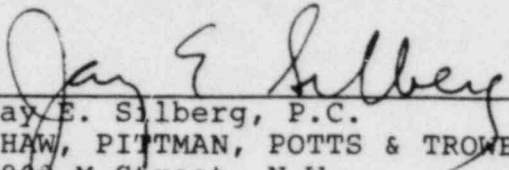
A number of other factors reduce the chance that bus drivers will be exposed to any radiation hazard. First, the emergency plans are written so that evacuation can be completed before there has been any significant release of radioactivity. Id., ¶ 7. Second, bus drivers stay in the plume exposure pathway EPZ only long enough to load their buses and drive out, which is a shorter period than most other emergency workers. Id. Third, each bus will have its own radio to allow the driver to receive and transmit radiological information. Id. And finally, the State and CEI off-site radiation monitoring teams will be taking radiation measurements which can be relayed to the bus drivers through the emergency management communication channels. Id.

For all these reasons, it is clear that bus drivers have adequate radiation protection and that protective equipment such as goggles, respirators and protective clothing is not needed.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of decontamination protection for bus drivers, Applicants' Motion For Summary Disposition of Contention Z should be granted.

Respectfully submitted,


Jay E. Silberg, P.C.
SHAW, PITTMAN, POTTS & TROWBRIDGE
1800 M Street, N.W.
Washington, D.C. 20036
(202) 822-1000

Counsel for Applicants

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