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February 5, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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OFFICE OF SECRETARY
DOCKETING & SERVICE
PLANNING

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 G

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 G. As discussed herein, there is no genuine issue as to any fact material to Contention G, and Applicants are entitled to a decision in their favor on Contention G 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 G";
2. "Affidavit of John J. Mauro" on Contention G ("Mauro Affidavit");
3. "Affidavit of Floro D. Miraldi, M.D. on Contention G" ("Miraldi Affidavit"); and
4. 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 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 Sunflower Alliance, Inc., et al. ("Sunflower") 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 G 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 G alleges:

Emergency plans should include the availability of potassium iodide (KI) for emergency workers and the public.

"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 G 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)(10), require, in relevant part, that:

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

In addition, 10 C.F.R. § 50.47(b)(11) requires, in relevant part, that:

[m]eans for controlling radiological exposures, in an emergency, are established for emergency workers.

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 J.10.e specifies, in relevant part, that offsite plans shall include:

Provisions for the use of radioprotective drugs, particularly for emergency workers and institutionalized persons within the plume exposure EPZ * * *.

Criterion J.10.f further provides:

State and local organizations' plans should include the method by which decisions by the State Health Department for administering radioprotective drugs to the general population are made during an emergency and the pre-determined conditions under which such drugs may be used by offsite emergency workers.

The Appeal Board has stated that neither the NRC regulations on emergency planning nor NUREG-0654 require the availability of KI for offsite emergency workers or the public.

Union Electric Co. (Callaway Plant, Unit 1), ALAB-754, 18 N.R.C. 1333, 1334 (1983).

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 G should be granted. Sunflower in its Contention G asserts that the state and county emergency plans should provide for the use of potassium iodide (KI) by offsite emergency workers and the public. As discussed below, NRC regulations do not mandate the use of KI for offsite emergency workers or the public; decisions regarding KI use are

the prerogative of state and local governments; the State of Ohio's position, endorsed by the three counties within the EPZ, is that KI should not be employed; and this decision is reasonable and appropriate in light of the costs and benefits of KI use.

The Commission's regulations (specifically, 10 C.F.R. §§ 50.47 (b)(10) and (b)(11)) do not require that KI be provided for use by offsite emergency workers or the general public. NUREG-0654 includes a recommendation that KI be provided for offsite emergency workers. However, federal policy on KI has evolved over the years since publication of NUREG-0654; and that document no longer fully and accurately reflects the current federal regulatory position. See Mauro Affidavit at ¶¶ 12-22.

Current federal policy on KI recognizes that decisions on the provision of KI to offsite emergency workers and the public are the prerogative of the responsible state and local governments. See id. The Appeal Board in Callaway has stated:

Generally speaking, the Commission bases its decision regarding the adequacy of emergency plans on a review of findings and determinations made by the Federal Emergency Management Agency (FEMA), which is responsible for reviewing offsite emergency plans. In turn, FEMA leaves to state governments the decision regarding the distribution of KI. A FEMA interim policy guidance statement on the use of potassium iodide, dated December 1, 1982, indicates:

Each state has a responsibility for formulating guidance to define if and when potassium iodide is used as a thyroid blocking agent for emergency workers,

institutionalized persons, and the general public. Where States elect not to include KI in their preparedness posture either for emergency workers or institutionalized persons, the plans should state under whose authority the decision was made and the rationale for the decision.

Similarly, the Federal Radiological Preparedness Coordinating Committee, which is comprised of representatives of numerous Federal agencies, including FEMA, the NRC, and the Environmental Protection Agency, states:

It is recognized that the decision to use KI for thyroid blocking to protect the health and safety resides with the State and local health authorities. Therefore, with the exception of the NRC licensee's personnel located on-site during the accident, the decision for use of KI during an actual emergency by all other individuals for whom the use of KI is recommended are the responsibility of those authorities. In addition, because the factors bearing on the desirability of stockpiling and distributing KI for thyroidal blocking of the general population within the Emergency Planning Zone for the Plume Exposure Pathway depend heavily on local conditions, this matter is a decision for State and local authorities to make.

ALAB-754, 18 N.R.C. at 1335 (footnotes omitted).

The position of the State of Ohio, as set forth by the State Director of Health, is that KI should not be issued for offsite emergency workers or the general population. Miraldi Affidavit at ¶ 2; State of Ohio Plan for Response to Radiological Emergencies at Licensed Nuclear Facilities (Edition of 1984) ("State Plan"), § II.J.3.c. The rationale for the State's public health policy decision is stated in the State Plan at § III, Letter No. 12. The three counties have followed

the State's advice concerning KI. Lake County Emergency Response Plan for the Perry Nuclear Power Plant (Rev. 3, October 1984), § K-04; Ashtabula County Radiological Emergency Preparedness Plan (May 10, 1984), § J.5; Geauga County Radiological Emergency Response Plan (Change No. 2 dated July 1984), § J-7.

The Ohio policy on KI currently is under review. The Director of the Radiological Health Program of the Ohio Department of Health is empaneling an "Ad Hoc Committee on Potassium Iodide" to review the present policy and make recommendations to the Ohio Department of Health. Miraldi Affidavit at ¶ 3.

As discussed in the Mauro Affidavit, there are numerous, complex technical issues associated with the use of KI for offsite emergency workers and the public; and any decision by a state or local government to employ or not to employ KI offsite must be based on a balancing of the costs and benefits of such a program. Mauro Affidavit at ¶¶ 23-24.

Although there is little disagreement that KI, if properly used, would be effective in reducing the internal dose to the thyroid gland from inhaled or ingested radioiodine, the benefits of this protective action are questionable. Id. at ¶ 25. First, studies have shown that the probability of a large release of radioiodine following a core melt accident is much lower than previously thought. Id. at ¶ 9. Second, there is increasing evidence that radioiodine source terms following

severe reactor accidents have been grossly overestimated in the past. Id. at ¶¶ 15, 36. Third, the health consequences of exposure to the thyroid gland from radioiodine are marginal compared to exposure to the whole body from radioiodine and other radionuclides. Id. at ¶ 25. Fourth, studies on the effectiveness of various methods of respiratory protection demonstrate that ad hoc measures (e.g., sheltering, or using wetted towels or sheeting) provide protection against exposure to the thyroid comparable to KI, while protecting other organs as well. Id. at ¶ 11. In sum, the potential benefits of offsite KI use are so small that the transportation risks associated with stockpiling the drug may alone be sufficient to offset them. Id. at ¶¶ 34-35.

The costs of making KI available for use by offsite emergency workers and the public include both economic costs, and potential costs to the public health and safety. Id. at ¶ 26. Economic costs include the purchase price of the drug, periodic replacement costs (every three years), costs for stockpiling, distributing and monitoring the status of the drug, and administrative expenses. Id. at ¶ 27. Public health costs include the numerous potential adverse side effects of KI, including possible effects on newborn children, the elderly, pregnant women, the developing fetus, and people with allergic reactions. Id. at ¶¶ 10, 29-32. In addition to public health effects, the use of KI in an emergency can impact the public

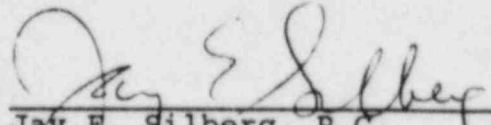
safety by interfering with other, more effective, protective measures, such as shelter and evacuation. Id. at ¶¶ 32-33.

It is precisely because of the considerable uncertainties regarding the merits of offsite use of KI that the decision whether or not to make the drug available is appropriately left for the State of Ohio and county governments. Licensing Boards have stepped lightly where, as here, a state has weighed the costs and benefits of KI, and has made a public health policy decision not to provide it. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 N.R.C. 1211, 1669 (1981), aff'd, ALAB-697, 16 N.R.C. 1265 (1982), ALAB-698, 16 N.R.C. 1290 (1982), and CLI-83-22, 18 N.R.C. 299 (1983). See also, Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 N.R.C. 1020, 1033 (1984) (contention challenging state policy against distributing KI to public rejected based on prior litigation of issue in other proceedings). Indeed, Intervenor can point to no case where a Licensing Board has ordered the provision of KI despite a state's decision not to provide it. In this case, too, the State of Ohio's public health policy decision not to provide KI for emergency workers and the public is reasonable and should not be overruled. Mauro Affidavit at ¶ 38.

IV. CONCLUSION

Because there is no genuine issue of material fact to be heard on the issue of the use of KI, either by offsite emergency workers or the public, Applicants' Motion For Summary Disposition of Contention G should be granted.

Respectfully submitted,



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Dated: February 5, 1985