

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of)

Rochester Gas and Electric Corp.)
Sterling Nuclear Project)
Unit No. 1)

Docket No. STN 50-485

Petition for Review

Ecology Action of Oswego petitions the Commission to review a decision of the Atomic Safety and Licensing Appeal Board (ALAB-562) issued on Sept. 11, 1979 on the issue of radon emissions from uranium mining and milling. The decision affects five applications and seven dockets that have been consolidated in litigation stemming from the Commission's decision of April 14, 1978 deleting radon emissions from Table S-3 and allowing the matter to be considered in individual proceedings. This petition is brought under 10 CFR 2.786.

ALAB-562 is a ruling on a motion by applicants in the five cases for summary disposition of factual issues raised by Ecology Action and other intervenors. The intervenors responded to an invitation by the Appeal Board to identify "deficiencies" in the record of one proceeding on the radon issue — the Perkins record (Docket No. STN 50-488, 489 and 490). The Appeal Board intends to use the Perkins record as the basis for making the decisions on cost benefit balancing for individual plants that were ordered by the Commission in its April 14, 1978 opinion.

Ecology Action requests specifically that the Commission review the Appeal Board's granting of the motion for summary disposition in two areas: the impacts of foreign uranium mining and milling, and the reliability of NRC staff estimates of radon emissions from U.S. uranium mines. The facts we raised do not appear in the Perkins record; if the Appeal Board's decision stands, they will not be considered at all.

The matters of fact and law raised here were presented to the Appeal Board by intervenors in pages 3, 4, 6 and 7 of our response to the applicants' motion for summary disposition (June 25, 1979).

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With respect to the issue of foreign mining and milling, the Appeal Board rejected the notion that the National Environmental Policy Act requires consideration of the impacts of major Federal actions in areas outside the U.S. But the Board agreed with our point that, at the very least, the impacts of foreign uranium mines and mills on the U.S. environment ought to be considered. However, the Board then granted the motion for summary disposition on this issue on the ground that intervenors hadn't identified any specific foreign mines and mills whose radon emissions would affect the U.S.

In the context of this proceeding, this places an unfair burden on intervenors. This whole case has one *raison d'être*: the Commission based its evaluation of the environmental impact of the uranium fuel cycle on estimates that were in error by several orders of magnitude. Having admitted this, the Commission now has the duty of preparing a full and accurate evaluation. If the Appeal Board agrees that impacts of foreign mines and mills on the U.S. are a proper part of the evaluation of radon impacts, then it should order the staff to determine the extent of such impacts.

Furthermore, the Board's requirement that intervenors identify specific mines and mills is discriminatory. The Board has allowed staff and applicants to discuss radon impacts in general. It has ruled that no specific U.S. mines and mills need be identified in considering radon impacts from providing uranium fuel for the specific nuclear plants that are part of this proceeding.

Finally, the staff is aware of expert opinion holding that radon impacts are worldwide. Dr. Robert Pohl of Cornell University, whose work is well known to the staff, has testified in the Black Fox case that radon emissions from U.S. uranium mills will have an impact abroad. It is not mere speculation to say that in general, radon from foreign mines and mills will have an environmental effect in the U.S.

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On the issue of radon emissions from uranium mines, the Board has misconstrued intervenors' position. We argued that the assumption of staff that there is a correlation between ore production and radon emissions from mines is questionable. To support this, we quoted from the staff's own consultants, who said that the assumption of such a correlation was not supported by data and "could lead to erroneous conclusions" about emissions from mines (June 25, 1979 intervenors' response, page 3).

The Board characterized this as an argument that radon emissions per ton of ore can "fluctuate considerably" (ALAB-562, page 24). Then the Board dismissed the issue on the basis of statistics from only seven mines which supposedly showed that the staff's estimate was "conservative."

This simply does not speak to the issue of whether there is any correlation at all between radon emissions from mines and ore production. Since the staff's estimate of radon emissions from mines is based on such a correlation, this question is basic to the entire evaluation of radon impacts.

We believe that our submission, supported by citations from reports of the staff's own consultants, met the test for demonstrating that there is a genuine material issue of fact as to whether the staff's estimates are reliable.

The Commission should review this decision because the issue of radon impacts from foreign mines and mills is an important legal and policy question—how far does NEPA extend?—that will affect many licensing proceedings. The factual question of radon emissions from mines should be reviewed by the Commission because the Appeal Board resolved it in a clearly erroneous manner.

September 27, 1979

Sue Reinert

Sue Reinert
for Ecology Action of Oswego

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I have mailed copies of Ecology Action's petition for review to the following parties:

Jay Silberg
1800 M St. NW
Washington, DC 20036

Harry H. Voigt
1333 New Hampshire Ave. NW
Washington, DC 20006

Troy B. Conner jr.
Suite 1050
1747 Pennsylvania Ave. NW
Washington, DC 20006

Margaret DuFlo
Atomic Safety and Licensing Appeal Board
Nuclear Regulatory Commission
Washington, DC 20555

Stephen Lewis
Nuclear Regulatory Commission
Washington, DC 20555

Bernard Bordenick
Nuclear Regulatory Commission
Washington, DC 20555

David Caccia
RD 2, Box 70 A
Sewell, NJ 08080

Chauncey Kepford
433 Orlando Ave.
State College, Pa. 16801

Sue Reinert
Sue Reinert
for Ecology Action of Oswego

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