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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PENNSYLVANIA POWER AND LIGHT COMPANY
ALLEGHENY ELECTRIC COOPERATIVE, INC.

(Susquehanna Steam Electric Station,
Units 1 and 2)

Docket Nos. 50-387
50-388

NRC STAFF RESPONSE SUPPORTING APPLICANTS' MOTION
FOR PARTIAL SUMMARY DISPOSITION OF CONTENTION 1
(FUEL CYCLE DOSES) AND NRC STAFF MOTION FOR SUMMARY
DISPOSITION OF A PORTION OF CONTENTION 1



I. INTRODUCTION

On August 28, 1981, the Applicants filed a "Motion for Partial Summary Disposition of Contention 1 (Fuel Cycle Doses)" (Motion). In that Motion the Applicants ask the Licensing Board for summary disposition in their favor on that portion of Contention 1 which relates to the doses to the public which will result from the release of radionuclides during the fuel cycle required for the Susquehanna plant. The Applicants assert that the portion of Contention 1 which concerns the magnitude of doses to the public presents no genuine issue of material fact and that Applicants are entitled to a decision in their favor as a matter of law.

The NRC Staff supports the Applicants' Motion. The Staff concludes that the Applicants' Motion and its supporting documentation clearly demonstrates the absence of any genuine issue of material fact with regard to the magnitude of doses to the public resulting from the release

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of radionuclides during the fuel cycle for the facility and that the Board should dismiss that portion of Contention 1 as a matter of law.

In addition, the Staff asserts that the portion of Contention 1 which relates to the radiological health effects of all isotopes (other than radon-222 and technetium-99) which will be released during the fuel cycle required for the Susquehanna plant presents no genuine issue of material fact. Contention 1 consists of two parts. The first section which deals with the health effects of radon-222 and technetium-99 will be dealt with elsewhere.^{1/} The second section alleges:

The radiological health effects of all isotopes other than Radon-222 and Technetium-99 which will be released during the fuel cycle required for the Susquehanna plant have been misrepresented and underestimated. In particular, the health effects of each long-lived isotope which will be released from the fuel cycle for Susquehanna should be reassessed. The appropriately determined effects must be factored into the cost-benefit balance for the operation of the plant.

The Staff believes that it is entitled to summary disposition in its favor on this portion of Contention 1 as a matter of law.

Section II of this pleading will discuss generally the law applicable to motions for summary disposition. Section III will set forth the Staff's reasons for supporting the Applicants' Motion and for its own position that the portion of Contention 1 relating to the radiological health effects of isotopes (other than radon-222 and technetium-99) raises no genuine issue of material fact. Attached to

^{1/} The Applicant on August 7, 1981 filed a motion for summary disposition on the quantity and health effects of releases of radon-222 during the fuel cycle required for the Susquehanna plant. The Staff filed a response supporting the Applicants' motion on August 27, 1981.

this filing is the Affidavit of Reginald L. Gotchy and a Statement of Material Facts as to Which There Is No Genuine Issue to be Heard.

II. GENERAL POINTS OF LAW

The Commission's Rules of Practice provide for summary disposition of certain issues on the pleadings where the filings in the proceeding show that there is no genuine issue as to any material fact and that the movant is entitled to a decision as a matter of law. 10 CFR §2.749. Because the Commission's summary disposition rule is analogous to Rule 56 of the Federal Rules of Civil Procedure (summary judgment), Federal court decisions interpreting Rule 56 may be relied on for an understanding of the operation of the summary disposition rule.^{2/} In Adickes v. Kress & Co., 389 U.S. 144, 157 (1970), the Supreme Court held that the party seeking summary judgment has "the burden of showing the absence of a genuine issue as to any material fact."^{3/} To meet this burden, the movant must eliminate any real doubt as to the existence of any genuine issue of material fact.^{4/} To further this goal, the summary disposition rule provides that all material facts, set out in the statement which must accompany summary disposition motions, will be deemed to be admitted unless controverted by the opposing party. 10 CFR § 2.749(a).

^{2/} Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974).

^{3/} See also Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-433, 6 NRC 741, 752-54 (1977).

^{4/} Poller v. Columbia Broadcasting Co., 368 U.S. 464, 468 (1962); Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627 (1944).

Any other party may serve an answer supporting or opposing the motion for summary disposition. 10 CFR § 2.749(a). Attached to a motion opposing summary disposition must be a separate, short, and concise statement of the material facts as to which it is contended that there exists a genuine issue to be heard. 10 CFR § 2.749(a). A material fact is one which may affect the outcome of the litigation.^{5/} The opposing party need not show that it would prevail on the issues but only that there are genuine material issues to be tried.^{6/} A party opposing the motion, however, may not rely on mere allegations but instead must demonstrate by affidavit or otherwise that a genuine issue exists as to a material fact.^{7/} Furthermore, the record and affidavits supporting and opposing the motion must be viewed in the light most favorable to the party opposing the motion.^{8/} Finally, the proponent of a motion for summary disposition must meet its burden of establishing that it is entitled to judgment as a matter of law even if the opponent of such a motion fails to submit evidence controverting the conclusions reached in

^{5/} Mutual Fund Investors Inc. v. Putnam Mgt. Co., 533 F. 2d 620, 624 (9th Cir. 1977).

^{6/} American Manufacturers Mut. Ins. Co. v. American Broadcasting - Paramount Theaters, Inc., 388 F. 2d 272, 280 (2d Cir. 1976).

^{7/} 10 CFR § 2.749(b). Virginia Electric Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-548, 11 NRC 451, 453 (1980).

^{8/} See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-74-36, 7 AEC 877 (1974).

documents submitted in support of the motion.^{9/}

III. STAFF ARGUMENT

Contention 1, in pertinent part, alleges that the radiological health effects of all isotopes (other than radon-222 and technetium-99) which will be released during the fuel cycle required for the Susquehanna facility have been misrepresented and underestimated. The Staff believes that this portion of Contention 1 raises no genuine issue of material fact.

The Staff has reviewed the Applicants' Motion and the Affidavit of Dr. Morton J. Goldman which accompanies and supports the Motion. (Affidavit of Reginald L. Gotchy (Gotchy Affidavit) at Paragraph 2). The dose estimates per referenced reactor year (RRY) which Dr. Goldman cites are comparable to those developed by the Staff and provided in the FES (NUREG-0564, pp. 4-31 to 4-32). (Gotchy Affidavit at Paragraph 3). The Staff agrees with the Applicants that the estimates are reasonably conservative and therefore fully supports the Applicants' Motion concerning the issue of potential population dose commitments for all radioisotopes (other than radon-222 and technetium-99) which may be released during the fuel cycle required for operation of the Susquehanna facility. (Gotchy Affidavit at Paragraph 3).

^{9/} Cleveland Electric Illuminating Co., (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 7 NRC 741, 753-54 (1977). Courts have, however, granted motions for summary judgment even though certain facts have been disputed when the disputed facts were found not material to the resolution of the legal issues presented. *Riedel v. Atlas Van Lines*, 272 F. 2d 901, 905 (8th Cir. 1959), cert denied, 362 U.S. 942 (1960); *Newark Morning Ledger Co. v. U.S.*, 416 F. Supp. Lines, Inc., 342 F. Supp. 166, 175 (N.D. Ill. 1972).

The potential public health effects from fuel cycle releases of radionuclides other than radon-222 and technetium-99 have been studied by the Staff and reported in both the S-3 Hearing and GESMO Hearing records. (Gotchy Affidavit at Paragraph 4). The potential public health effects of fuel cycle releases of radionuclides have been found to be inconsequential and incapable of significantly affecting the cost-benefit balance for the operation of the station. (Gotchy Affidavit at Paragraph 4).

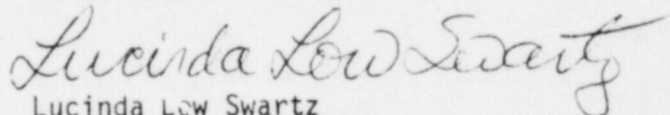
The potential public health effects estimates are summarized in the FES (NUREG-0564) as 0.08 to 0.12 cancer deaths per RRY over periods of time ranging from 100 to 1,000 years. (Gotchy Affidavit at Paragraph 4). The most recent and authoritative guidance on the potential risks from exposure to low-level radiation comes from the 1980 BEIR III Report. (Gotchy Affidavit at Paragraph 4). The recommendations of that report, however, do not significantly change the Staff risk estimates presented in the earlier S-3 Hearing and GESMO Hearing. (Gotchy Affidavit at Paragraph 4).

Other recent independent estimates of population doses and impacts from the nuclear fuel cycle demonstrate that generating one RRY of electrical power from the nuclear fuel cycle for all radionuclides (excluding radon-222) may result in less than one human health effect (cancer and genetic effects) per RRY over time spans up to 500 years into the future. (Gotchy Affidavit at Paragraph 5). All of these independent reviews support the Staff assessments contained in the FES. (Gotchy Affidavit at Paragraph 5).

IV. CONCLUSION

Based on the foregoing, the Staff believes that it has clearly demonstrated that the potential doses to the public as a result of releases of radionuclides (excluding radon-222 and technetium-99) during the fuel cycle required for the facility have been adequately assessed. Further, the Staff asserts that the potential health effects of those doses have been studied and have been found to be inconsequential. Thus, the Staff believes that summary disposition in favor of Applicants of that portion of Contention 1 which relates to doses and summary disposition in favor of the Staff of that portion of Contention 1 relating to potential health effects of radionuclides (excluding radon-222 and technetium-99) released during the fuel cycle should be granted as a matter of law in accordance with 10 CFR § 2.749.

Respectfully submitted,



Lucinda Low Swartz
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 10th day of September, 1981.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO
GENUINE ISSUE TO BE HEARD

1. The potential health effects from fuel cycle releases of radionuclides other than radon-222 and technetium-99 have been studied by the Staff and reported in both the S-3 Hearing and GESMO Hearing records (Gotchy Affidavit at Paragraph 4).
2. The potential public health effects of full cycle releases of radionuclides have been found to be inconsequential and incapable of significantly affecting the cost-benefit balance for the operation of the station (Gotchy Affidavit at Paragraph 4).
3. The potential public health effects estimates are summarized in the FES (NUREG-0564) as 0.08 to 0.12 cancer deaths per RRY over periods of time ranging from 100 to 1,000 years. (Gotchy Affidavit at Paragraph 4).
4. Recent independent estimates of population doses and impacts from the nuclear fuel cycle demonstrate that generating one RRY of electrical power from the nuclear fuel cycle for all radionuclides (excluding radon-222) may result in less than one human health effect (cancer and genetic effects) per RRY over a timespan up to 500 years into the future. (Gotchy Affidavit at Paragraph 5).