

Reg. Cert.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

CONSUMERS POWER COMPANY
(Midland Plant, Units 1 and 2)

12/5/78

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Docket Nos. 50-329
50-330
(Remand Proceeding)

NRC STAFF RESPONSE TO COMMISSION MEMORANDUM
AND ORDER DATED NOVEMBER 6, 1978 -- (REGARDING RADON)

Introduction

In a Memorandum and Order issued in this proceeding on November 6, 1978, (Order) the Commission stated, inter alia, that "the environmental effects of radon are in issue here because the Commission has deleted the radon term from Table S-3"^{1/} (Order, page 3). The Commission further stated, however, that "the generic nature of this issue leads us to conclude that the interests of the parties will best be served by structuring the Licensing Board's review of this issue in accordance with the procedure set out by the Appeal Board in ALAB-480."^{2/} (Id., at page 3). Pursuant to the Order, the Secretary of the Commission on November 17, 1978, served the

^{1/} 43 Fed. Reg. 15613 (1978)

^{2/} Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-480 (May 30, 1978).

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radon evidentiary record and decision in the Perkins^{3/} proceeding on the parties to this proceeding. The Order further provides that within 21 days after such service the parties may request in writing that the Licensing Board (a) receive additional written evidence on the radon question; (b) call for a further hearing on the Perkins record; or (c) consider objections to any aspect of the Perkins radon proceeding. The Order provides that the request shall set forth with specificity the respects in which the Perkins record is deemed to be incomplete, inaccurate, or objectionable, as well as precisely how such defects should be remedied.

For the reasons set out below, the Staff is of the view that the Licensing Board in this proceeding need not (a) receive additional written evidence on the radon question; and (b) need not call for a further hearing on the Perkins record, in the absence of an appropriate showing that the record is incomplete in some significant way. In addition, the Staff has no objections to any aspect of the Perkins radon proceeding.

^{3/} Duke Power Company (Perkins Nuclear Station, Units 1, 2 and 3), Docket Nos. STN 50-488, 50-489, 50-490. Reivew of that record is presently pending before the Appeal Board.

The Commission's Order provided that parties could file a memorandum with this Licensing Board addressed to two questions: (a) whether the Perkins evidentiary record supports the generic findings and conclusions of the Perkins Licensing Board respecting the amount of the radon emissions in the mining and milling process and resultant health effects; and (b) whether the radon emissions and resultant health effects are such as to tip the NEPA balance against continued construction of the Midland plant.^{4/} (A party who has filed a request to supplement the evidentiary record adduced in Perkins could choose to defer the submission of a memorandum on these two questions pending the outcome of his request and any supplementation of the record which may be ordered.)

The first question we address in response to (a) above is whether the Perkins evidentiary record supports the generic findings and conclusions of the Perkins Licensing Board respecting radon emissions in the mining and milling process and the resultant health effects. The Staff believes that the Perkins record is adequate to support these findings. All sides to the issue were effectively represented and the Licensing Board (including Dr. Jordan, who had earlier raised the radon issue) took an active role in

^{4/} In confronting this question, the party could either accept the Perkins Licensing Board's generic findings or employ his own analysis of the Perkins record.

developing the record. We also submit that these findings are equally as applicable to the effects of the fuel cycle supporting the Midland facility as that supporting Perkins.

With respect to "the amount of radon emissions," the Perkins Licensing Board in the Partial Initial Decision (PID) dated July 14, 1978 recognized the limitations in available data and the conservative nature of estimates, for example, with respect to open pit mines (Perkins PID para. 12-17) and with respect to stabilization of tailings piles (Perkins PID para. 31-32). However, in view of the very small nature of the health effects described in the testimony accepted by the Perkins Board, these limitations in emission data were not of significance to the Perkins Board's conclusion that radon releases and impacts therefrom are insignificant in striking the cost-benefit balance for the Perkins facilities.

The validity of the Perkins Board findings as to generic consideration of radon emissions is also supported by the findings on this issue by the Black Fox Licensing Board (PID dated July 24, 1978, para. 96-125).^{5/} In that proceeding, Intervenor used a different expert witness, Dr. Robert Pohl, whose general area of challenge had a somewhat different focus from that of Perkins Intervenor's witness and thus elicited generally more detail

^{5/} Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2) Docket Nos. STN 50-556 and STN 50-557. Review of that record is also pending before the Appeal Board.

on issues of stabilization of piles and release from piles. Nonetheless, the conclusions of the Black Fox Licensing Board with respect to amounts of radon emission are quite similar overall to that of the Perkins Board and support the same conclusion that the resultant health effects are not significant in striking the cost-benefit balance.

On this basis, with due recognition to the limitations in available data and the conservative nature of various estimates, the Staff proposes that this Licensing Board adopt the findings of the Perkins Licensing Board on radon emissions and the resultant health effects. The Perkins Partial Initial Decision does have certain passages (for example, the background discussion in paragraph (1)) which are specific to the Perkins record. In all material respects, however, the Perkins Partial Initial Decision is applicable to these proceedings and should be adopted by this Board.

In response to (b) above we discuss the question of whether the radon emissions and resultant health effects as established in the Perkins record are such as to tip the NEPA balance against continued construction of the Midland facility.^{6/} The Perkins record demonstrates that the increase in natural background radiation associated with the mining and milling of an annual fuel requirement ("AFR") is so small, particularly in view of fluctuations in natural background radiation, as to be completely undetectable. (Perkins PID para. 51). Based upon its review of the evidence

^{6/} See ALAB-60, 5 AEC 261 (1972); See also Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 535, fn. 14 at p. 536-537 (1978). The S-3 rule was not in existence at the time this case was initially decided.

adduced, the Perkins Licensing Board concluded that there would be only a very minimal resulting impact on health effects. (Perkins PID para. 49). There was ample basis for the Perkins Licensing Board's conclusion, therefore, that the impact of the incremental radon is not significant. (Perkins PID para. 51). This very small incremental impact could not tip the cost-benefit balance against continued construction of the Midland facility unless the record in this proceeding indicated that the costs and benefits were virtually in equipoise. The Licensing Board, the Appeal Board, and the Commission in this proceeding have previously found, however, a clear need for the facility. (LBP-77-57, paras 71 and 72, 6 NRC 482, at 498; ALAB-458, 7 NRC 155, at 166-167; Order, p. 5.) Given a clear case of need, the cost-benefit balance in these proceedings would not be tipped by the tiny increments associated with radon release from the uranium fuel cycle.^{7/}

^{7/} In ALAB-509, dated December 1, 1978, the Appeal Board asked for additional briefs on this matter.

Conclusion

For the reasons set forth above, we request the Licensing Board to adopt the findings of the Perkins Licensing Board on radon emissions and resultant health effects. Based upon a consideration of the level of incremental impacts involved and the cost-benefit balance in this case, we further request the Licensing Board to find that the balance is not tipped against continued construction of the Midland facility.

Respectfully submitted,

for William J. Bordenick
Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of December, 1978.

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)	(Remand Proceeding)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with §2.713(a), 10 CFR Part 2, the following information is provided.

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Name of Party	- NRC Staff U.S. Nuclear Regulatory Commission Washington, D. C. 20555

Bernard M. Bordenick

Bernard M. Bordenick
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of December, 1978.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Midland Plant, Units 1 and 2)) (Remand Proceeding)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO COMMISSION MEMORANDUM AND ORDER DATED NOVEMBER 6, 1978 -- REGARDING RADON" and "NOTICE OF APPEARANCE OF BERNARD M. BORDENICK" dated December 8, 1978, in the above-captioned proceeding, have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 8th day of December, 1978.

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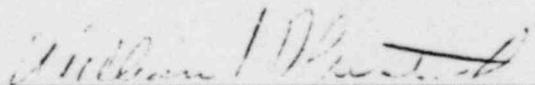
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