

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:)

SOUTH CAROLINA ELECTRIC AND GAS)
COMPANY, et al.)

(Virgil C. Summer Nuclear Station,)
Unit 1))

Docket No. 50-395 OL

May 27, 1981

INTERVENOR FUA'S RESPONSE IN OPPOSITION TO
APPLICANTS' MOTION FOR SUMMARY DECISION ON
INTERVENOR BRETT A. BURSEY'S CONTENTION
A10 REGARDING HEALTH EFFECTS

Intervenor Fairfield United Action (FUA) hereby opposes the Applicants' Motion for Summary Decision of Intervenor Brett A. Bursey's Contention A10 Regarding Health Effects on the grounds that there are genuine issues of material fact to be heard, Intervenor Bursey is entitled to litigate those issues before the Board, and the Applicants are not entitled to summary decision under 10 CFR § 2.749.

Attached hereto is a Statement of Material Facts To Which There Is Genuine Issue To Be Heard.

DISCUSSION

In Applicants' Memorandum of Points and Authority . . . , the Applicants cite (at p. 3) Moore's Federal Practice for the proposition that a litigant opposing a motion for summary judgement must be "able to point out to the court something indicating a triable issue of material fact" (6 Moore's Federal Practice 56.15 (4)).

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Applicants proceed in their discussion of the issues raised by Mr. Bursey's contention and his proposed witnesses and their testimony to identify that triable issue of material fact:

. . . the central thesis, or underlying premise, of Intervenor Bursey's proposed witnesses' position is that low level radiation not only causes cancer and genetic damage, but may indeed be even more harmful than higher doses per unit exposure.
(Applicants' Memorandum, p. 8.)

Applicants and their affiant Dr. Leonard D. Hamilton (Affidavit of Leonard Hamilton Concerning the Health Effects of Low Level Radiation) essentially rely upon the conclusions of the Advisory Committee on the Biological Effects of Ionizing Radiation (BEIR), Division of Medical Science, National Academy of Sciences, 1972 report on "The Effects on Populations of Exposure to Low Levels of Ionizing Radiation" (BEIR I) (Applicants' Memorandum, p. 9). Hamilton notes in his Affidavit:

It is important to note that the conclusions of these documents (submitted as summaries of his witnesses' proposed testimony by Mr. Bursey) are not based on the work of the authors themselves, but rather, are premised on their interpretation and conclusions drawn from the work of others, notably, Bross, Mancuso, Stewart and Kneale and Najarian. Accordingly I have focused on those references primarily relied upon by the authors of the documents. The essential point made is that the commonly employed risk estimates based on the BEIR Committee report (1972) ("BEIR I"), as corroborated by UNSCEAR (1977), and the subsequent BEIR Committee report (1980) ("BEIR III"), underestimate the risk of radiation at all levels. (Hamilton Affidavit, p. 3; emphasis added; notes omitted.)

The Applicants and their affiant may not agree with the position maintained by Intervenor Bursey's witnesses, but clearly there is a contest as to the material factual issue of whether the BEIR I and subsequent derivative reports underestimate the risks of low level radiation.

In their decision in Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-31, 12 NRC 264 (1980), the Commission noted that the BEIR I report "contains a 'generally accepted evaluation of the effects of ionizing radiation.'" But the Commission goes on:

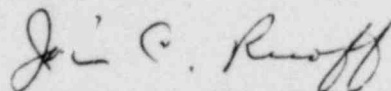
This does not mean that the health effects of Appendix I releases cannot be contested. It only means that litigation regarding these issues need not begin on a clean slate, and that, for example, the BEIR estimates can be relied on in the absence of a contest and may be used, along with other evidence, in ruling on summary disposition motions and rendering initial decisions. (12 NRC at 277; emphasis added, footnote omitted.)

That the risk estimates of the BEIR I report represent the established orthodoxy - today - in government and industry sponsored laboratories does not establish them as true. Intervenor Bursey's Contention A10 and his eminent witnesses challenge the factual basis of that orthodoxy.

CONCLUSION

Based upon the foregoing discussion and the attached Statement of Material Facts To Which Their Is Genuine Issue To Be Heard, FUA maintains that the Applicants have failed to demonstrate the absence of a genuine issue of material fact and urges the Board to dismiss their Motion for Summary Disposition on Intervenor Bursey's Contention A10.

Respectfully submitted,



John C. Ruoff, Ph.D.
Authorized Representative

For Intervenor
Fairfield United Action

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INTERVENOR FUA'S
STATEMENT OF MATERIAL FACTS TO WHICH THERE IS GENUINE ISSUE
TO BE HEARD RESPECTING INTERVENOR BRETT A. BURSEY'S CONTENTION A10

1. The significant nature of the health effects associated with the routine operation of the facility and those associated with the uranium fuel cycle should weigh heavily in the cost-benefit analysis.
2. The Commission in Public Service Co. of Oklahoma (Black Fox Station Units 1 and 2), CLI-80-31, 12 NRC 264, 277 (1980) did not endorse the use of the BEIR report, but only indicated that that report could be relied upon in the absence of contest.
3. The summaries of testimony submitted by Intervenor Bursey's witnesses or Contention A10 place the conclusions of the BEIR report into contest.
4. The BEIR I report and other reports relied upon by the Applicants and by the Staff in preparing the Draft Environmental Statement (DES) underestimate the somatic and genetic effects of low level radiation.
5. Low level radiation not only causes cancer and genetic effects, but may be more harmful than higher doses per unit exposure.

6. The underestimation by the Applicants and Staff of the somatic and genetic effects of the normal operation of the facility and the entire uranium fuel cycle is sufficient to compromise the validity of the Benefit-Cost balance struck at the construction permit stage of this proceeding.