

Mike Collins

Staff 9/14/81

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 No. 50-387  
50-388

NRC STAFF RESPONSE SUPPORTING APPLICANTS' MOTION  
FOR PARTIAL SUMMARY DISPOSITION OF CONTENTION 2 (RADIOACTIVE DOSES)

I. INTRODUCTION

On August 25, 1981, the Applicants' filed a "Motion for Partial Summary Disposition of contention 2 (Radioactive Doses)" (Motion). In that Motion, the Applicants ask the Licensing Board for summary disposition in their favor on that portion of Contention 2 which relates to the potential doses to the public which may result from the release of radioactive materials from the Susquehanna Steam Electric Station. The Applicants assert that the portion of Contention 2 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.<sup>1/</sup>

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<sup>1/</sup> The Applicants, in addition to the present motion, filed a Partial Motion for Summary Disposition on August 13, 1981 on that portion of Contention 2 which relates to the magnitude of the releases from the facility. The Staff, however, filed on September 3, 1981 a "Motion for Summary Disposition of a Portion of Contention 2." This Motion asks the Board to dispose of the entire part of Contention 2 which relates to the risks of low-level radiation resulting from the release of radionuclides from the facility into the Susquehanna River.

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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 of radionuclides from the facility and that the Board should dismiss that portion of Contention 2 dealing with the magnitude of doses 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 concluding that a portion of Contention 2 raises no genuine issue of material fact.

## 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. As 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.<sup>2/</sup> Thus, in Adickes v. Kress & Co., 389 U.S. 144, 157 (1970), the Supreme Court held that the

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<sup>2/</sup> Alabama Power Company (Joseph M. Farley, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974).

party seeking summary judgment has "the burden of showing the absence of a genuine issue as to any material fact."<sup>3/</sup> To meet this burden, the movant must eliminate any real doubt as to the existence of any genuine issue of material fact.<sup>4/</sup> 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).

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.<sup>5/</sup> The opposing party need not show that it would prevail on the issues but only that there are genuine material issues to be tried.<sup>6/</sup> A party opposing the motion, however, may not rely on mere allegations,

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<sup>2/</sup> See also Cleveland Electric Illuminating Co. (Perry, Units 1 and 2), ALAB-433, 6 NRC 741, 752-54 (1977).

<sup>3/</sup> Poller v. Columbia Broadcasting Co., 368 U.S. 464, 468 (1962); Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627 (1944).

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

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

but instead must demonstrate by affidavit or otherwise that a genuine issue exists as to a material fact.<sup>7/</sup> Furthermore, the record and affidavits supporting and opposing the motion must be viewed in the light most favorable to the party opposing the motion.<sup>8/</sup> 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 documents submitted in support of the motion.<sup>9/</sup>

### III. STAFF ARGUMENT

Contention 2, in pertinent part, alleges that the risks of low-level radiation which will result from the release of radionuclides, particularly cesium-137 and cobalt-60, into the Susquehanna River have not been adequately assessed and factored into the cost benefit

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<sup>7/</sup> 10 CFR § 2.749(b); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980). See also Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-654, 14 NRC \_\_\_\_\_ (1981). There, the Appeal Board held that the burden of demonstrating the existence of a genuine issue of material fact will not be satisfied by anything short of the documented opinion of one or more qualified authorities. Slip Op. at 6.

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

<sup>9/</sup> Cleveland Electric Illuminating Co., (Perry, Units 1 and 2), ALAB-433, 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. 689, 693 (D.N.J. 1975); Aluminum Co. of America v. Burlington Truck Lines, Inc., 342 F. Supp. 166, 175 (N.D. Ill. 1972).

analysis. The Staff believes this contention, insofar as it relates to the magnitude of doses to the public resulting from the release of radionuclides, raises no genuine issue of material fact.

After reviewing the Applicants' Motion and an affidavit by Frazier L. Bronson which supports the Motion, the Staff believes the Applicants have correctly set forth the material facts not open to dispute. The doses to the maximally exposed individual from liquid radioactive releases cited by the Applicants are less than the annual dose design objectives contained in 10 CFR Part 50, Appendix I. (Affidavit of Edward F. Branagan, Jr. (Branagan Affidavit), at 1-2). Further, the Applicants' estimate of population doses within a 50-mile radius of the facility due to exposure to radioactive liquid releases from the Susquehanna, Units 1 and 2 (i.e., about 0.06 person-rem) is a small fraction (less than 0.001 percent) of the corresponding population dose from natural background radiation (i.e., about 160,000 person-rem). (Branagan Affidavit at 3). The Staff also estimated population doses within a 50-mile radius of the facility due to exposure to liquid radioactive releases and reached similar conclusions (see FES, Table 4.8 and discussion on p. 4-21). (Branagan Affidavit at 3).

Dr. Branagan submitted an earlier affidavit concerning the merits of this aspect of Contention 2.<sup>10/</sup> That affidavit addressed the amount of radionuclides to be released to the Susquehanna River from the facility, the potential doses the public may receive from those releases, and the possible risks to the public health from those doses.

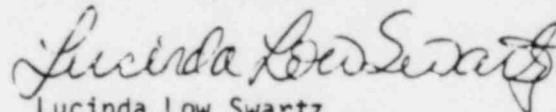
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<sup>10/</sup> Branagan Affidavit at 3.

IV. CONCLUSION

Based on the foregoing, the Staff believes that it has been clearly demonstrated that there are no genuine issues of material fact with respect to the magnitude of the doses to the public resulting from the release of radioactive liquid effluents to the Susquehanna River. Thus, the Staff believes that summary disposition in favor of Applicants of that portion of Contention 2 relating to potential doses to the public 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 14th day of September, 1981