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STAFF 9/3/81



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 SUMMARY DISPOSITION OF CONTENTION 2 (SOURCE TERM)

I. INTRODUCTION

On August 13, 1981, the Applicants filed a "Motion for Partial Summary Disposition of Contention 2" (Motion). In that Motion, the Applicants move the Board for summary disposition in their favor of that portion of Contention 2 which questions the magnitude of the low level radioactive releases, specifically cesium-137 and cobalt-60, from the Susquehanna facility into the Susquehanna River. The Applicants assert that the referenced portion of Contention 2 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 amount of cesium-137 and cobalt-60 to be released from the Susquehanna plant into the Susquehanna River and that the Board

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should dismiss that portion of Contention 2 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 the pertinent portions of Contention 2 raise 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.^{1/} Thus, 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."^{2/} To meet this burden, the movant must eliminate any real doubt as to the existence of any genuine issue of material fact.^{3/} To further this goal, the summary disposition rule provides that all material facts, set out in the statement which must

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

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

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

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.^{4/} The opposing party need not show that it would prevail on the issues but only that there are genuine material issues to be tried.^{5/} 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.^{6/} Furthermore, the record and affidavits supporting and opposing the motion must be viewed in the light most favorable to the party opposing the motion.^{7/} 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

^{4/} Mutual Fund Investors Inc. v. Putnam Mgt. Co., 533 F. 2d 620, 624 (9th Cir. 1977).

^{5/} American Manufacturers Mut. Ins. Co. v. American Broadcasting - Paramount Theaters, Inc., 388 F. 2d 272, 280 (2d Cir. 1976).

^{6/} 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).

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

controverting the conclusions reached in documents submitted in support of the motion.^{8/}

III. STAFF ARGUMENT

Contention 2, in pertinent part, alleges that the risks of low-level radiation which will result from the release of radionuclides from the facility have not been adequately assessed and factored into the cost-benefit balance for the plant. The Staff believes that this contention, insofar as it relates to the quantity of cesium-137 and cobalt-60 to be released into the Susquehanna River, raises no genuine issue of material fact.

After reviewing the Applicants' Motion and the accompanying documents including a supporting Affidavit by John C. Dodds, the Staff believes that the information presented by the Applicants is true and the Staff supports their position.^{9/} (Affidavit of Charles Lee Miller (Miller Affidavit at 2)). To calculate the radioactive effluent source terms for a plant, the Staff uses the BWR-GALE computer code. (Miller Affidavit at 2). The computer code identifies the effluent waste streams in boiling water reactors and

^{8/} Cleveland Electric Illuminating Co., (Perry, 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. 689, 693 (D.N.J. 1975); *Aluminum Co. of America v. Burlington Truck Lines, Inc.*, 342 F. Supp. 166, 175 (N.D. Ill. 1972).

^{9/} Dr. Miller, in his Affidavit, does explain that the Applicants erroneously stated that the "GALE" computer code was developed by the Battelle Pacific Northwest Laboratories. In fact, that code was developed by the NRC Staff. (Miller Affidavit at 2).

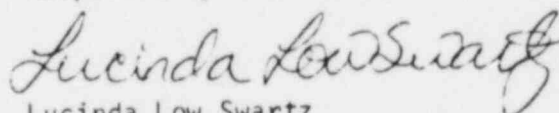
calculates the estimate of the quantities of radioactive effluents that will be released. (Miller Affidavit at 2). The code is based on the best available data which is generated from operating reactors, field tests, laboratory tests, and plant specific design considerations incorporated to reduce quantities of radioactive materials released to the environment. (Miller Affidavit at 3).

Table 4.11 of the FES (NUREG-0654) shows the results from the GALE code. It shows that, on the average, 0.01 Ci/yr of cobalt-60 and 0.036 Ci/yr of cesium-137 are estimated to be released in the liquid effluent. (Miller Affidavit at 3-4). The values for cobalt and cesium are slightly higher than those reported by the Applicants but are on the same order of magnitude. (Miller Affidavit at 4).

IV. CONCLUSION

Based on the foregoing, the Staff believes that it has been clearly demonstrated that the quantities of cesium-137 and cobalt-60 to be released in liquid effluents from the Susquehanna facility have been adequately assessed. Thus, the Staff believes that summary disposition in favor of Applicants of that portion of Contention 2 which relates to the quantities of cesium-137 and cobalt-60 to be released from the facility 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 8th day of September, 1981.