

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before The Atomic Safety And Licensing Board

In the Matter of)
PENNSYLVANIA POWER AND LIGHT CO.)
ALLEGHENY ELECTRIC COOPERATIVE, INC.)
(Susquehanna Steam Electric Station,)
Units 1 and 2)

Docket Nos. 50-387
50-388

NRC STAFF'S ANSWER SUPPORTING APPLICANTS' MOTION
FOR SUMMARY DISPOSITION OF CONTENTION 7(b)

1. INTRODUCTION

On August 31, 1981, Applicants' Motion for Summary Disposition of Contention 7(b) was served on the NRC Staff. In that motion Applicants move the Board for summary disposition in their favor of contention 7(b). Contention 7(b) alleges that the "cracking of stainless steel piping in BWR coolant water environments due to stress corrosion cracking has yet to be prevented or avoided." Applicants assert that there is no genuine issue to be heard with respect to contention 7(b) and that Applicants are entitled to a decision in their favor as a matter of law.

The NRC Staff supports Applicants' motion. The Staff has concluded that Applicants' motion and supporting documentation clearly demonstrate the absence of any genuine issue of material fact regarding the prevention of stress corrosion cracking of stainless steel piping in BWR coolant water environments. The Board should grant Applicants motion.

The law applicable to motions for summary disposition is discussed in Section II of this pleading. The Staff's reasons for concluding that

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there is no genuine issue of material fact to be heard regarding contention 7(b) are discussed in Section III.

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.^{1/} 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 mandatorily accompanying summary disposition motions, will be deemed to be admitted unless controverted by the opposing party. 10 CFR § 2.749(a).

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

^{2/} See also Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, 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).

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/} Once a motion for summary disposition has been made and supported by affidavit, a party opposing the motion may not rely on mere allegations, but instead must demonstrate by affidavit or otherwise that a genuine issue exists as to a material fact. 10 CFR 2.749(b); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 453 (1980). 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/} Furthermore, the record and affidavits supporting and opposing the motion must be viewed in the light most favorable to the party opposing the motion.^{6/} 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

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

submit evidence controverting the conclusions reached in documents submitted in support of the motion.^{7/}

III. STAFF ARGUMENT

Contention 7(b) alleges that the cracking of stainless steel piping in BWR coolant water environments due to stress corrosion cracking has yet to be prevented or avoided. The Staff believes that there is no genuine issue of material fact remaining to be heard regarding the prevention of stress corrosion cracking of stainless steel piping in BWR coolant water environments and thus that contention 7(b) should be summarily disposed of in Applicants' favor.

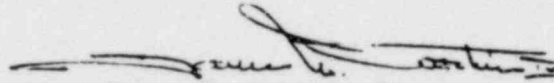
The NRC Staff and the General Electric Company have studied and identified the causes of intergranular stress corrosion cracking. (Affidavit of Felix B. Litton at paragraphs 6 and 7). The Staff, after reviewing the results of those studies, has issued generic guidance that sets forth methods acceptable to the Staff for reducing the occurrence of intergranular stress corrosion cracking in BWR piping. (Litton at paragraph 8). The Applicants' have developed and implemented a program for prevention of intergranular stress corrosion cracking in BWR stainless steel piping that conforms to the Staff's guidance. (Litton at paragraphs 9 and 10).

^{7/} 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. 689, 693 (D.N.J. 1975); *Aluminum Co. of America v. Burlington Truck Lines, Inc.*, 342 F. Supp. 166, 175 (N.D. Ill. 1972).

IV. CONCLUSION

For the reasons set forth above, the Staff believes that Applicants' motion for summary disposition in their favor of contention 7(b) should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James M. Cutchin IV", written over a horizontal line.

James M. Cutchin IV
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 22nd day of September, 1981.