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May 27, 1982

Hon. Louis J. Carter  
 Hon. Frederick J. Shon  
 Hon. Oscar H. Paris  
 Administrative Law Judges  
 Atomic Safety & Licensing Board  
 U.S. Nuclear Regulatory Commission  
 Washington, D.C. 20555

Dear Judges Carter, Shon, and Paris:

When the Power Authority of the State of New York (Power Authority) provided this Board with a copy of the judgment in People Against Nuclear Energy (PANE) v. NRC, No. 81-1131 (D.C. Cir. Jan. 7, 1982), it stated that it would submit an analysis of the opinion when issued and its relationship to the facts of record here. On May 14, 1982, the United States Court of Appeals for the District of Columbia Circuit issued its opinion.

PANE obtained judicial review of the Nuclear Regulatory Commission's (NRC's) refusal to consider whether renewed operation of Unit 1 at Three Mile Island (TMI) might cause psychological harm to nearby residents. The Court of Appeals held that potential harms to psychological health and community well-being are environmental impacts cognizable under the National Environmental Policy Act (NEPA), but not under the Atomic Energy Act. Because the factual considerations of TMI are unique, the Court's ruling under NEPA applies only to that site, and the Power Authority's Motion to Exclude Fear As An Issue in This Proceeding (filed Dec. 1, 1981) is unaffected by this opinion.

The two-judge majority of the Court of Appeals determined that the NRC had continuing responsibilities under NEPA with respect to Three Mile Island. First, the Court observed that the accident had a major impact on the mental health of the people living in the region of the plant. Slip op. at 11. Second, the Court highlighted the seriousness of the psychological health

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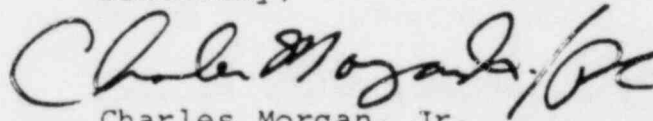
effects that PANE alleged would be perpetuated by a restart of the plant: "intense anxiety, tension, and fear accompanied by physical disorders." Id. at 14. PANE itself asserted that "the accident at TMI-2 in March 1979 was a 'significant new circumstance' that dramatically altered the environmental effects of operating TMI-1." Id. at 24 (emphasis added). The Court agreed when it "conclude[d] that PANE's allegation--in the wake of a unique and traumatic nuclear accident--that renewed operation of TMI-1 may cause medically recognized impairment of the psychological health of neighboring residents is cognizable under NEPA." Id. at 16. "Three Mile Island is . . . the only event of its kind in the American experience," id. at 17; the March 28, 1979 "accident which damaged the reactor, caused acute and widespread anxiety." Id. at 3 (emphasis added).

In addition, the Court specifically recognized that "NEPA does not encompass mere dissatisfactions arising from social opinions, economic concerns, or political disagreements with agency policies." Id. at 16. This distinction is especially important to this proceeding because the contentions proposed by several intervenors rest on feelings of anxiety which, it is alleged, would be significantly reduced by the shutdown of Indian Point.

PANE stated that "the accident at TMI-2 created intense anxiety, tension, and fear, accompanied by physical disorders." Id. at 10 (emphasis added). Here, fear was created not by an accident, but rather by the intervenors who conducted a campaign to induce, instill, or exacerbate a phobia of nuclear power among the residents. See Power Authority's Memorandum of Law in Support of Motion to Exclude Fear As An Issue in this Proceeding at 3-8 (Dec. 1, 1981); Licensees' Response to UCS/NYPIRG First Set of Interrogatories and Addendum Thereto, Response to Interrogatory No. 68, Attachment.

Indian Point has experienced no accident and, consequently, the PANE analysis is not applicable. Additionally, the intervenors are estopped from utilizing as evidence the fear that they created.

Sincerely,

  
Charles Morgan, Jr.

CM, Jr./df  
cc: Official Service List