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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of:

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al	Docket Nos.	50-443 OL 50-444 OL

(Seabrook Station, Units 1 and 2)

SAPL'S OBJECTION TO THE APPLICANTS' NINETEENTH MOTION FOR SUMMARY DISPOSITION (CONTENTION SAPL SUPP. III)

Pursuant to 10 C.F.R §2.749, the Seacoast Anti-Pollution League hereby objects to the Applicants' Nineteenth Motion for Summary Disposition.

The Applicants' Motion is nothing more than a general summary of the data included in §5.9.4 of the Final Environmental Statement. The Motion does not meet the Applicants' burden of demonstrating an absence of any genuine issues of material fact.

The Applicants' "statement of material facts as to which there is no dispute" is an insufficient basis for summary disposition. That statement indicates that the Staff has "responded" to the NRC Policy Statement of June 13, 1980. It does not address the legal and factual issues of compliance and adequacy which SAPL raised in its own Motion for Summary Disposition. (Filed February 11, 1983).

I. CONSEQUENCE ANALYSIS

In that Motion, SAPL pointed out that "no where in the FES is there an estimate of the consequences from a single major accident."

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(See SAPL's Motion, page 2.) That failure is inconsistent with the Policy Statement for the reasons set forth in the Motion.

It is important to note that the Policy Statement serves to implement the requirements of the National Environmental Policy Act of 1969. One of those requirements, as set forth in binding Council on Environmental Quality Regulations, is for the Commission to disclose the "worst case" consequences of a Class 9 accident where certain regulatory criteria apply.

Those criteria are found at 40 C.F.R §1502.22(b):

> If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not known (e.g. the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence.

This regulation applies. The "information relevant to adverse impacts" in this case is the cumulative economic, health, and environmental impact of a Class 9 core melt accident. The means to obtain this information involve substantial levels of uncertainty and are therefore "beyond the state of the art" of current analytical capability. The Commission recognized these uncertainties in its Policy Statement:

> "In promulgating this interim guidance, the Commission is aware that there are and will likely remain for some time to come many uncertainties in the application of risk assessment methods,. . .On the other hand, the Commission believes that the state of the art is sufficiently advanced that a beginning should now be made in the use of these methodologies in the regulatory process, and that such use will represent a constructive and rational forward step in the discharge of its responsibilities." (45 Fed. Reg. 40103, Column 2)

It is clear that due to these uncertainties, the "state of the art" in providing definitive consequences of Class 9 accidents has not been attained. It has only reached a stage sufficient to "make a beginning". Consequently, the Commission Staff is required to "weigh the need for the action against the risk of possible adverse impacts". 40 C.F.R. §1502(b).

Since the Commission has "proceeded", it must include a worst case analysis. That analysis has not been performed and is not included in the FES. The CEQ requirement for this analysis was recently upheld in Sierra Club v. Sigler, 695 F.2d 957 (5th Cir., 1983). In Sigler, the court ordered that the "worst case" analysis for a super tanker oil spill be performed notwithstanding its extremely remote probability of occurrence.

The court based its decision on a detailed analysis of NEPA's "common law", its legislative history, and the CEQ regulations.

Since NEPA is essentially silent on problems of uncertainty, federal courts have examined the issue on a case by case basis. Implicit in the courts' "rule of reason" approach has been the "overriding duty of compliance with impact statement procedures to the fullest extent possible". Scientists Institute for Public

Information, Inc. v. Atomic Energy Commission, 481 F.2d at 1079, 1092 (D.C. Cir., 1973).

The court also found support for a worst case analysis in the NEPA legislative history. See Sigler, supra, page 70, footnote 9. That support was indicated by Congress' recognition of man's limited understanding of the environmental consequences of his actions. The court reasoned that in spite of this awareness, Congress mandated full disclosure of environmental consequences. See Senate Committee on Interior and Insular Affairs, National Environmental Policy Act of 1969, S.Rep. 296, 91st Congress, 1st Session, 9-10 (1969).

The court found that the CEQ regulations concerning EIS preparation were, in fact, a codification of judicially created NEPA principles. It cited a CEQ statement that:

> "The purpose of the analysis is to carry out NEPA's mandate for full disclosure to the public of the potential consequences of agency decisions, and to cause agencies to consider these potential consequences when acting on the basis of scientific uncertainties or gaps in available information." See Sigler, supra, at 71, citing "Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18,026, 18,032 (1981)(Answer to question 20b).

SAPL wishes to emphasize that the CEQ requirement specifically concerns potential consequences, not merely probable consequences.

Another factor in the court's decision was the cost of performing the worst case study and the availability of the required data. See Sigler, supra, 969. In SAPL's Motion for Summary Disposition, the affidavit of Professor ~~David~~ Kaufmann states that:

> "The lack of estimates of the consequences from a single major accident could be corrected by running the CRAC 2 code with SST 1 release. . ."

Such is not a task beyond the means of the Commission Staff in terms of available data. In addition, it is not overly exorbitant in terms of cost. See Sigler, supra, at 671.

The Interim Policy Statement of course must be interpreted and applied to be consistent with the CEQ regulations and must function accordingly. "Weighting" impacts and consequences in association with their probabilities does not meet the applicable regulatory and statutory requirements. SAPL asserts that the staff's treatment of severe accident analyses in the FES does not comply with the IPS, and is prima facia evidence in support of summary disposition favorable to SAPL. Should SAPL's motion not be granted, there would, at the very least, remain numerous legitimate issues of material fact to be resolved after a full hearing on the merits.

II. PROBABILISTIC RISK ANALYSIS ASSUMPTIONS

In its motion, SAPL challenged the validity of the assumptions used in Staff's formulation of the probabilistic risk analyses. It is SAPL's position that these assumptions demonstrate the prima facia inadequacy of the PRA. Consequently, their invalidity supports SAPL's Motion for Summary Disposition. Should that motion be denied, they would at least raise numerous issues of material fact to be resolved after a full hearing on the merits.

SAPL wishes to note that neither the Applicants' Motion for Summary Disposition (filed February 11th) nor its response to SAPL's motion addresses or refers in any way to SAPL's challenges of the PRA assumptions. Therefore, the Applicants have not met their burden

of demonstrating the lack of genuine issues of material fact. See Cleveland Electric Illuminating Company, et al (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977).

III. EXTERNAL FACTORS

Similarly, the Applicants have failed to meet their burden concerning a meaningful discussion of sabotage as an "external event".

In its Response to SAPL's Motion for Summary Disposition (filed March 9, 1983), the Applicants imply that by stating something is beyond the state of the art, the staff has in effect "discussed" external events which will contribute to risk at the plant. The Applicants clearly misperceive SAPL's position. As we stated in our Motion:

> "It is entirely possible for the Commission to undertake a reasonable discussion of the possible consequences of a sabotage attack without engaging in a probabilistic risk analysis." (See SAPL's Motion, page 6.)

The PRA state of the art does not preclude this discussion.

In addition, SAPL contends that merely saying external events would not be different in kind from those resulting from "internal events" is not a discussion either. If the drafters of the Policy Statement thought such were the case, they would not have spelled out their external event discussion requirement.

IV. QUANITATIVE UNCERTAINTY ANALYSIS

SAPL maintains that the Staff's explanation of quantitative uncertainties supports summary disposition favorable to SAPL. However, should our motion be denied, significant issues of material fact must be resolved by the Board after a hearing on the merits.

V. CONCLUSION

The Applicants' Motion for Summary Disposition fails in numerous respects to demonstrate the absence of any genuine issues of material fact. Accordingly, the record should be reviewed by the Board in the light most favorable to parties opposing the Motion. See Cleveland Electric Illuminating Company, et al (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-54 (1977). Therefore, SAPL respectfully requests that the Board deny the Applicants' Motion for the reasons stated above.

Respectfully submitted,
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