

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION 10/24/78

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD



In the Matter of  
KANSAS GAS AND ELECTRIC COMPANY &  
KANSAS CITY POWER AND LIGHT COMPANY  
(Wolf Creek Generating Station,  
Unit No. 1) )  
Docket No. 482

In the Matter of  
NORTHERN STATES POWER COMPANY  
(MINNESOTA) AND NORTHERN STATES  
POWER COMPANY (WISCONSIN)  
(Tyrone Energy Park, Unit No. 1) )  
Docket No. STN 50-484

In the Matter of  
PUBLIC SERVICE COMPANY OF INDIANA, INC.  
WABASH VALLEY POWER ASSOCIATION, INC.  
(Marble Hill Nuclear Generating Station,  
Units 1 and 2) )  
Docket Nos. STN 50-546  
STN 50-547

In the Matter of  
ROCHESTER GAS & ELECTRIC CORPORATION, et al.  
(Sterling Power Project Nuclear Unit No. 1) )  
Docket No. STN 50-485

In the Matter of  
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, et al.  
(Seabrook Station, Units 1 and 2) )  
Docket Nos. 50-443  
50-444

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NRC STAFF'S RESPONSE TO MOTION  
TO CONSOLIDATE HEARINGS ON RADON

Ecology Action, an intervenor in the Sterling proceeding, representing that it is acting on behalf of intervenors in the four other captioned proceedings has moved the Appeal Board, in a filing dated October 3, 1978, "to consolidate their cases in a single hearing on the matters raised by them in their answers to ALAB-480 (the radon issue)."

STERLING AND TYRONE

As indicated in a previous staff filing,<sup>1/</sup> the Staff believes that there are at least some assertions, in response to ALAB-480, by intervenors in Sterling which are appropriate for further hearing consideration. The Staff is of the same view with respect to Northern Thunder's "Requests Concerning Completing and Supplementing the Perkins Radon Record" (August 4, 1978). For essentially the reasons stated in the subject motion (principally, that the matters to be litigated are basically generic in nature) the Staff is of the view that a consolidated proceeding can and should be held as regards the radon issue in Sterling and Tyrone.<sup>2/</sup>

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<sup>1/</sup> "NRC Staff Filing Regarding Resolution of the Radon Question," dated September 27, 1978.

<sup>2/</sup> In a filing dated September 27, 1978, the Staff noted at page 3, paragraph 4, that the parties in Sterling hoped to finalize a stipulation in that proceeding by October 27, 1978. The parties in Sterling have devoted a substantial amount of time over the past several months to discussions of a possible stipulation. However, because of intervening developments, including the subject motion to consolidate, they are now of the view that further discussions would be fruitless until such time as the Appeal Board rules on (a) whether there will be further hearings in Sterling and (b) if so, whether a hearing in Sterling will be consolidated with any (or all) of the additional proceedings captioned above. The same considerations apply to Tyrone and the parties to that proceeding will, therefore, be unable to present to the Appeal Board presiding there a stipulation by October 27, 1978, the date presently designated by the Appeal Board. (See Appeal Board's Notation Order of September 27, 1978, attached to "NRC Staff Status Report and Motion for Further Extension of Time", dated September 22,

WOLF CREEK

Our position with respect to MACEA's request to supplement the Perkins record in the Wolf Creek proceeding is that such request was not responsive to the requirements established by the Appeal Board in ALAB-480.<sup>3/</sup> Despite MACEA's failure in this regard, the Staff has given careful consideration to various alternative methods of resolving the radon question in the Wolf Creek proceeding. The Appeal Board has indicated that it will not reach the radon question in the uncontested proceedings pending before it until it has "disposed of that issue in one or more of the cases in which it is contested".<sup>4/</sup> Consistent with this statement of view, the Appeal Board could withhold decision on the radon question in Wolf Creek until after the Perkins record is supplemented in Sterling-Tyrone and then apply that record in Wolf Creek.<sup>5/</sup> Should the Appeal Board determine that a

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Footnote 2 continued

1978). In any event, the Staff has already responded (in this and previous pleadings) to Northern Thunder's "Requests Concerning Completing and Supplementing the Perkins Record" and Ecology Action's pleading in response to ALAB-480. Northern Thunder and Ecology Action have indicated that, following issuance of an Appeal Board order, they will proceed to file more specific contentions. The Staff would, thereafter, be prepared to respond to that document and the areas for possible stipulation would be more clearly defined.

- <sup>3/</sup> "NRC Staff Response to MACEA's Request to Supplement Record," August 29, 1978.
- <sup>4/</sup> Virginia Electric and Power Company (North Anna, Units 1 and 2), ALAB-491, slip op., August 25, 1978, at 9. n. 12. See also: Public Service Company of Indiana (Marble Hill), ALAB-493, slip op., August 30, 1978, at 31-32.
- <sup>5/</sup> That course was previously urged by the Staff with respect to the New England Coalition on Nuclear Pollution in Seabrook (NRC Staff Filing Regarding Resolution of the Radon Question, September 27, 1978) and Save the Valley-Save Marble Hill in the Marble Hill proceeding. (NRC Staff Filing Regarding Resolution of the Radon Question, September 27, 1978). This position was premised upon commitment by the respective intervenors not to seek suspension of the construction permits as a result of any resultant delay in resolving the radon question. That proviso would also apply to MACEA.

consolidation of Sterling and Tyrone is appropriate, the option also exists to permit the participation of MACEA as a part of consolidated intervenors in such a proceeding. This procedure would have the advantage of clarifying the nature of MACEA's participational rights in the consolidated proceeding and would avoid the potential for a follow-on proceeding to Sterling-Tyrone. The Staff would have no objection to either procedure, but believes the second option to be preferable in that it would avoid possible future argument over the applicability of the record adduced in Sterling-Tyrone to the Wolf Creek proceeding.

#### MARBLE HILL

in a September 27, 1978 Staff pleading which was filed jointly in the Sterling and Marble Hill proceedings, the Staff noted that the Marble Hill intervenor, STV-SMH, had failed to comply with the requirements of ALAB-480 with respect to its request to supplement the Perkins record in the Marble Hill proceeding and, therefore, was not entitled to a hearing on the radon question in that proceeding. For the reasons stated above, however, with respect to Wolf Creek, we believe it would appropriate to either permit STV-SMH to participate as a consolidated intervenor in any proceeding that might be ordered or to hold the record open in Marble Hill until after a record is created in Sterling-Tyrone and then apply that record to Marble Hill.



SEABROOK

Finally, with respect to Seabrook, there is apparently some mis-communication between Ecology Action and NECNP, the intervenors in Seabrook. As noted in a recent Staff filing in the Seabrook proceeding,<sup>6/</sup> the Applicants, the Staff and NECNP had agreed on a different procedure acceptable to them for consideration of the radon question in Seabrook. The Staff understands that counsel for NECNP will directly inform the Appeal Board in Seabrook with respect to NECNP's position in this matter.

CONCLUSION

For the reasons stated above, the Staff respectfully requests the Appeal Board to rule expeditiously on the motion to consolidate.

Respectfully submitted,

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Dated at Bethesda, Maryland  
this 24th day of October, 1978.

<sup>6/</sup> "NRC Staff Filing Regarding Resolution of the Radon Question," dated September 27, 1978.



CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO MOTION TO CONSOLIDATE HEARINGS ON RADON", in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 24th day of October, 1978:

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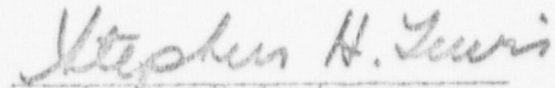
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