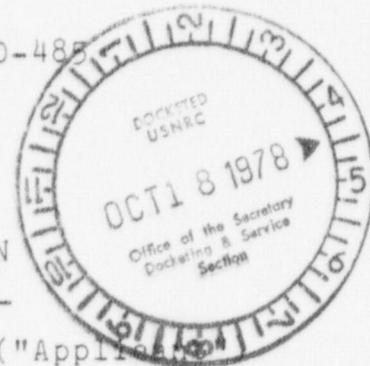


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

NRC PUBLIC DOCUMENT ROOM

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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



APPLICANT'S ANSWER IN OPPOSITION TO MOTION
TO CONSOLIDATE HEARINGS ON RADON

Rochester Gas & Electric Corporation ("Applicant")
hereby answers the October 3, 1978 "Motion to Consolidate
Hearings on Radon" of Ecology Action. Applicant opposes
Ecology Action's motion.

I.

Representation

In its motion Ecology Action, purporting to speak
for intervenors in four other NRC licensing proceedings,
requests that these proceedings be consolidated with the
Sterling proceeding "in a single hearing" for the purpose
of addressing the radon-222 issue. No evidence is supplied
that Ecology Action is authorized by these other intervenors
to represent them. In particular, we understand that the
parties in Seabrook, one of the proceedings for which
consolidation is proposed, have reached a stipulation that
provides for an entirely different treatment of the radon
issue. In the light of this, we believe that Ecology
Action's motion should not be entertained in the absence of

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written evidence that it is authorized to speak in behalf of parties in other proceedings.

II.

There is Nothing to Consolidate

No determination has been made to date whether a hearing on radon-related issues will be held in this or in any other proceeding for which consolidation is requested, nor has there been any determination of the scope of issues involved in any hearing which might be held. In the Wolf Creek and Marble Hill proceedings, virtually no attempt was made by intervenors in those proceedings to show that they are entitled to a hearing on radon. In Seabrook, the intervenors have not even requested a hearing on radon. In Tyrone, although intervenors have attempted to make a showing that the Perkins record needs to be supplemented and that further hearings are needed, it is by no means clear that there will be further hearings, or if there are that the issues determined to be litigable in that case will have counterparts in the Sterling proceeding. Implicit in Ecology Action's proposal is the idea that consolidation would save the time and resources of the parties in the various proceedings. But this could only be possible if (1) significant time and resources would otherwise be expended in each of the other proceedings, and (2) the proceedings have common issues. Unless and until these two conditions are met, consolidation makes no sense at all,

as it can only serve to increase the overall time and effort expended by the Commission and the parties. In our experience, the development of a coordinated presentation by parties in various proceedings takes substantial time and effort beyond the preparation of a single case. Furthermore, consolidation could well increase travel requirements, and create scheduling problems. Finally, time will be taken by issues and procedural complications which would not otherwise occur. For example, the manner of treatment of the various site-specific or plant-specific issues will have to be dealt with.

To conclude, Ecology Action's motion should be denied outright, but in no event should positive action on the motion even be considered a possibility unless and until (1) the Appeal Board has ruled on each intervenors' response to ALAB-480 on its own merits, and it is determined that more than one intervenor has made a case for a hearing, and (2) it is determined what issues will be allowed in each hearing and that there are in fact common issues.

III.

Consolidation is Unnecessary and Undesirable

In the first place, the Atomic Safety and Licensing Appeal Boards, in ALAB-480, have already rejected a very similar NRC Staff proposal for consolidation, concluding that it is "self evident" that "consolidation. . .

would be unworkable and, as to many (if not all) of [the responding] parties, unfair." Mimeo at 13. ALAB-480 further stated that: "Each appeal board will deal with the radon question independently." Mimeo. This Appeal Board should adhere to those views.

Curiously, in the period leading to ALAB-480, Ecology Action opposed the notion of consolidation as proposed by the Staff. Having changed its position, Ecology Action now gives as the "main reason" for this change that the device established in ALAB-480 in which the Perkins record is used as a "base case" amounts to a de facto consolidation, and that "it is only fair to continue that way". Motion, pp. 1-2. This is a total non sequitur. The Appeal Boards intended the Perkins device to be a substitute, not an incentive, for consolidation. It appears that the number of contested radon hearings in cases on appeal will be a very small portion of the seventeen such cases which have been reopened on radon. This, according to the terms of ALAB-480, eliminates the concerns which led the Staff to propose consolidation in the first place.

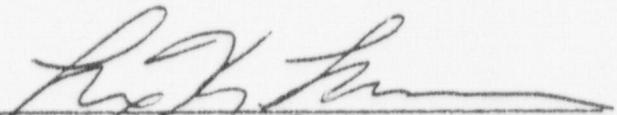
IV.

Conclusion

The Commission Rules of Practice provide that consolidation may be ordered "on motion and for good cause shown" if it is found that such action "will be conducive to the

proper dispatch of . . . [Commission] business and to the ends of justice". A consolidated hearing as proposed by Ecology Action would be time consuming and inefficient and would demand more time and resources of the parties and the Commission than treatment of the radon issue in the individual proceedings. Ecology Action's motion should be denied.

Respectfully submitted,
LeBOEUF, LAMB, LEIBY & MacRAE

By 
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October 18, 1978

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that I have served the document entitled "Applicant's Answer in Opposition to Motion to Consolidate Hearings on Radon" dated October 18, 1978, by mailing first-class and postage prepaid copies thereof to each of the following persons this eighteenth day of October, 1978.

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