

12/12/79

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the
Atomic Licensing And Licensing Appeal Board
Michael C. Ferrar, Chairman and presiding officer

In the Matter of)
)
FLORIDA POWER & LIGHT COMPANY) Docket No. 50-389
(St. Lucie Nuclear Power Plant,))
Unit No. 2))

Motion

In view of the Commission's order with respect to land based nuclear reactors, adopted September 14, 1979, intervenors move that this Appeal Board enter an order

1. Directing the staff to file a proposed supplement to the Final Environmental Statement ("FES") in this matter which either

(a) gives consideration to the environmental consequences of possible class 9 accidents at the proposed St. Lucie Unit No. 2 and recommends the weight to be assigned the resulting risk to the human environment in the Commission's determination of the environmental impact of a decision to license construction of the proposed plant at St. Lucie on Hutchinson Island; or

(b) fully justifies why such consideration should not be given in this particular case; and

2. Establishing prehearing and hearing procedures for a determination of the adequacy of the FES as supplemented.

In the alternative, intervenors move that the Appeal Board enter an order either:

1. staying completion of these proceedings until the Commission has received and acted upon the staff recommendations it requested for interim modification of the interim guidance set out in the Annex, or

2. certifying to the Commission as major and novel the questions of the standards to be applied by the staff in determining in which "individual cases . . . the environmental consequences of class 9 accidents environmental should be considered", the procedures by which such staff determinations are to be reviewed, and how the Commission's order of September 14, 1979, is to be implemented with respect to pending proceedings.

In support of this Motion, intervenors submit:

1. On September 14, 1979, the Commission announced its intention to complete generic rule making proceedings specifying the environmental consideration to be given

class 9 accidents with respect to land based nuclear plants and, pending completion of that process, directed the staff to "bring to our attention, any individual cases in which it believes the environmental consequences of class 9 accidents. should be considered." (Offshore Power Systems (Floating Nuclear Power Plants) ___ NRC ___, ___) Addendum, p. 8a* (September 14, 1979).

2. Since the Commission has now abandoned any generic prohibition against consideration of class 9 accidents, it must now either give, or provide a reasoned explanation for its refusal to give, such consideration in each individual case. It cannot delegate unreviewable discretion to the staff.

3. Because the order was entered prior to completion of these proceedings, the revised policy must be applied in these proceedings and it is appropriate for this Appeal Board to retain jurisdiction to dispose of the factual and legal issues. (See, e.g., Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Unit 2 and 3) et al., ALAB-480, 7 NRC 796 (1978) (announcing procedures to be

* To facilitate reference to quoted language, a copy of the Offshore decision is included in the Addendum to this motion.

applied in these and other proceedings pending before Appeal Board with respect to "radon emission" issue) and proceedings herein, ALAB 537, 9 NRC ____ (April 5, 1979) (establishing procedures for resolution of factual issues arising after Initial Decision).)

4. In the alternative, the Appeal Board may wish to stay these proceedings pending consideration of staff recommendations for interim modification to interim class 9 policy. (See Offshore, supra, Addendum at p. 8a, and Memorandum of September 14, 1979, from Samuel Chilk, Secretary, to Lee Gossick, Executive Director for Operations, reproduced in Addendum, p. 9a.)

5. Again, in the alternative, the Appeal Board may wish to certify to the Commission as major and novel the questions arising from the application of the September 14 decision to these proceedings pursuant to 10 C.F.R. §§ 2.730(f) and 2.785(d). (See, Offshore Power Systems (Floating Nuclear Power Plants) ALAB-500, 8 NRC 323 (1978) (procedure applied).)

Respectfully submitted,

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Certificate of Service

I hereby certify that on December 12 , 1979, copies of the foregoing Motion were deposited in the United States mail, properly stamped and addressed to each of persons named in the attached Service List.

15) M. H. H:

Martin H. Hodder
an attorney for intervenors

December 12 , 1979.

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BEFORE THE ATOMIC SAFETY & LICENSING APPEAL BOARD

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(St. Lucie Nuclear Power Plant,)
Unit 2)

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