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There remain pending in this case, however, two limited matters for our resolution. These are (1) the environmental consequences of radon emissions during the mining and milling of uranium to fuel the plant and (2) the stability of the applicant's electrical grid. The Commission instructed us to hear the former;^{6/} we expressly retained jurisdiction to consider the latter when we otherwise affirmed the decision below.^{7/} Intervenors filed the motion now before us in open hearing while we were taking evidence on the second question.

The applicant and the staff remind us of intervenors' previous unsuccessful attempt to inject the "Class 9" issue into this case and point out that rejection of this contention was expressly upheld on judicial review.^{8/} Those parties add that we have no authority to admit the contention in any event. Pending completion of a rulemaking proceeding contemplating the establishment of a new general policy on this

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subject, the Commission has reserved to itself the right to decide whether Class 9 accidents may be considered in proceedings involving land-based plants.^{9/}

Intervenors concede that only the Commission can say whether Class 9 questions are to be taken up. They nevertheless assert that we retain sufficient "jurisdiction" to trigger that determination either by (1) instructing the staff to advise the Commission whether the issue should be considered^{10/} or (2) "certifying" that question directly to the Commission.^{11/} They ask that we adopt one course or the other and stay completion of these proceedings until the Commission acts.^{12/}

^{9/} Offshore Power, supra fn. 1, 10 NRC at ___ (slip opinion at 9-10); accord, Public Service Co. of Oklahoma (Black Fox Station, Units 1 & 2), ALAB-573, 10 NRC ___ (slip opinion at 29-32) (December 7, 1979).

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^{12/} The relief sought by intervenors' amended prayer is an order from us:

"1. staying completion of these proceedings until the Commission has received and acted upon the staff's recommendations with respect to class 9 accident consideration at the St. Lucie site or has adopted a new general policy;

"2. directing the staff to advise the Commission within 30 days of the reasons why it believes the consequences of class 9 accidents should or should not be considered in this case and granting the other parties 30 days after that advice is given to submit their views on the question to the Commission; and
(FOOTNOTE CONTINUED ON NEXT PAGE)

2. Our action on the intervenors' motion is controlled by Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), ALAB-513, 8 NRC 694 (1978). In that case as in this one, a licensing board authorized a construction permit after deciding a contention adversely to an intervenor. There as here, we approved the trial board's ruling and a court of appeals ultimately upheld the Commission's affirmance of our decision.^{13/} The Seabrook intervenors later sought on grounds of supervening developments to resurrect the issue previously interred by the board. As do intervenors in this case, they argued that we were free to act because the existence of discrete if unrelated issues still open before us meant that the proceeding was not final. We squarely rejected that argument. We held in Seabrook that after we had relinquished jurisdiction over a cause except for limited purposes,

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"3. 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 should be considered,' the procedures by which such staff determinations are to be reviewed, and how the Commission's order in Offshore is to be implemented.

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where the appellate process was otherwise completed we could not admit new contentions unrelated to those purposes. There must be an end to litigation sometime.

Save for the added factor that these intervenors have had a petition for certiorari denied as well, the case at bar is on all fours with Seabrook.^{14/} It therefore heralds the result we must reach. In the absence of a rational and direct link to the limited matters over which we retain jurisdiction, we are without authority to consider new or reopened issues at this stage of the proceeding. Accord, Virginia Electric and Power Co. (North Anna Station, Units 1 & 2), ALAB-551, 9 NRC 704, 708-09 (1979). We perceive no such relationship between the pending radon and grid stability issues and the environmental consequences of Class 9 accidents. We therefore may not accede to intervenors' request to take up that issue now.

This does not leave intervenors remediless. The staff acknowledges in its brief (p. 8) that a Commission regulation, 10 C.F.R. §2.206, "permits a petition to be filed with the Director of Nuclear Reactor Regulation who has discretionary authority to grant the relief sought subject to Commission

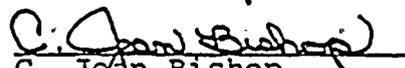
^{14/} And is distinguishable from Black Fox (on which intervenors rely), where the licensing board proceeding was only half completed. ALAB-573, supra fn. 9, 10 NRC at (slip opinion at 32).

review." See, e.g., Public Service Co. of Indiana (Marble Hill Station, Units 1 & 2), DD-79-10, 10 NRC 129, 134 (1979). We must leave intervenors to pursue that path.

Motion dismissed for want of jurisdiction; treating the submissions as a show cause petition and responses, the papers are referred to the Director of Nuclear Reactor Regulation for his consideration under 10 C.F.R. §2.206.^{15/}

It is so ORDERED.^{16/}

FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board

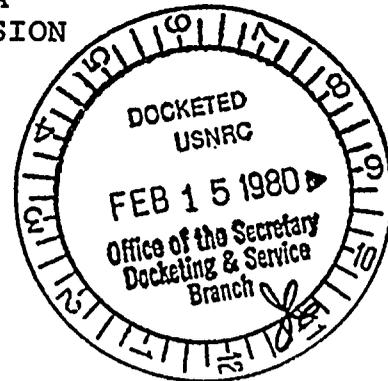
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Michael C. Farrar, Chairman
Richard S. Salzman
Dr. W. Reed Johnson



SERVED FEB 15 1980

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

Docket No. 50-389

Messrs. Terence J. Anderson and Martin Harold Hodder,
Miami, Florida, for the intervenors.

Messrs. Harold F. Reis, Washington, D. C., and Norman
A. Coll, Miami, Florida, for the applicant.

Mr. William D. Paton for the Nuclear Regulatory
Commission staff.

MEMORANDUM AND ORDER

February 14, 1980

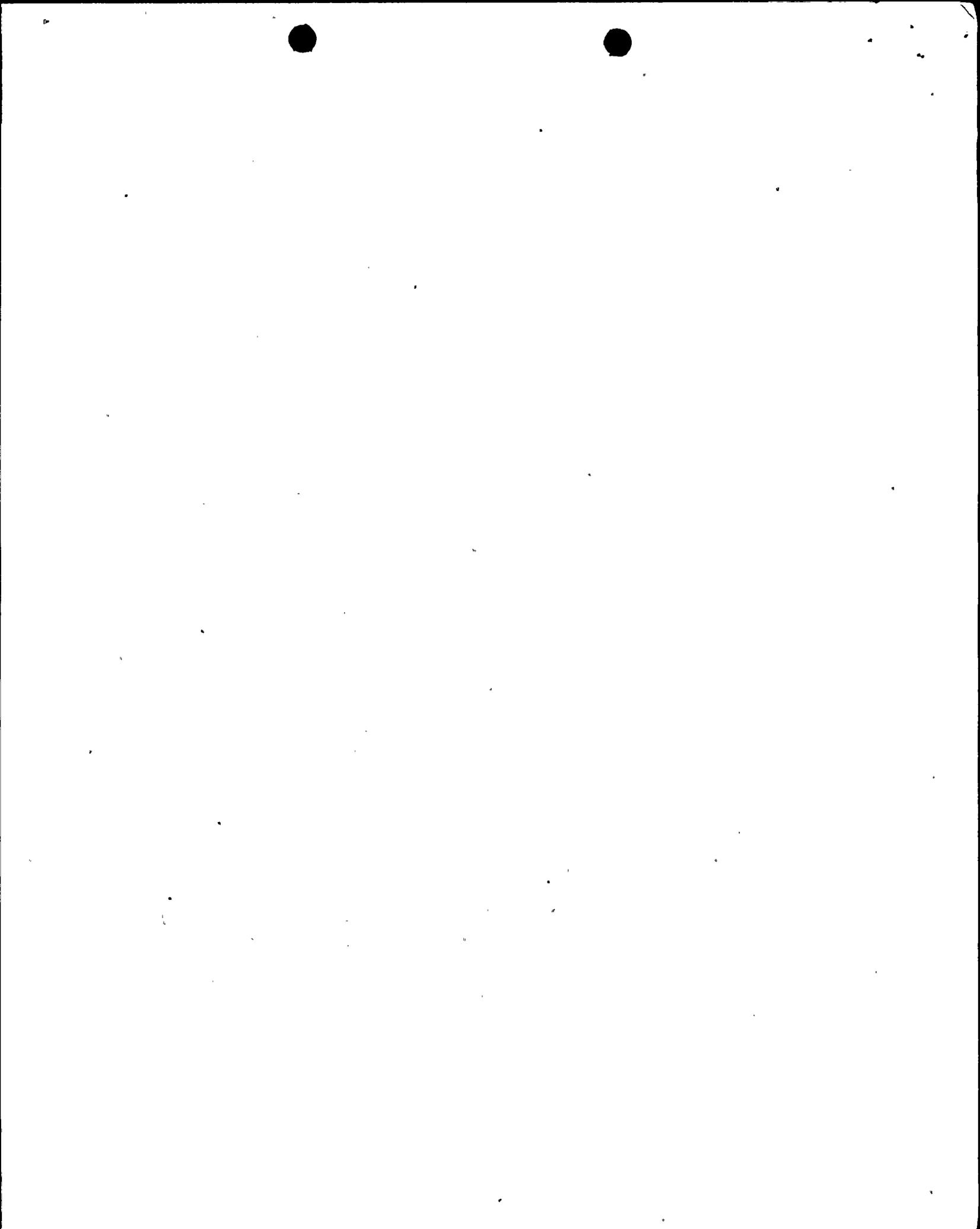
(ALAB-579)

On December 12, 1979, the intervenors once again moved
for consideration of "Class 9" accidents ^{1/} in this proceeding.

1/ "The term 'Class 9 accidents' stems from a 1971 AEC
proposal to place nuclear power plant accidents in
nine categories to take account of such accidents in
preparing environmental impact statements. That pro-
posal was put forward for comment in a proposed 'An-
nex' to the Commission's regulations implementing
NEPA. 36 Fed. Reg. 22851-52 (December 1, 1971). The
nine categories in that 'Annex' were listed in in-
creasing order of severity. 'Class 9' accidents
involve sequences of postulated successive failure
more severe than those postulated for the design basis
of protective systems and engineered safety features.
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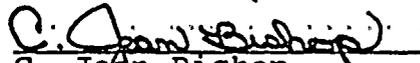
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOM SAFETY AND LICENSING APPEAL PANEL
WASHINGTON, D.C. 20555

February 14, 1980

MEMORANDUM FOR: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

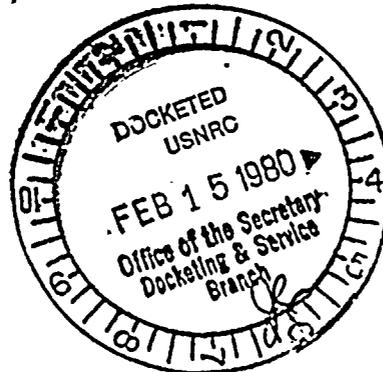
FROM: C. Jean Bishop
Administrative Secretary
ASLAP

RE: FLORIDA POWER & LIGHT COMPANY (St. Lucie
Nuclear Power Plant, Unit No. 2) Docket
No. 50-389

Pursuant to ALAB-579, the Appeal Board has referred for your consideration under 10 C.F.R. §2.206 intervenors' motion to consider the environmental consequences of Class 9 accidents at the St. Lucie plant. Copies of the relevant documents are attached.

Enclosures: (1) Intervenors' motion of Dec. 12, 1979
(2) Applicant's response of Jan. 17, 1980
(3) Staff response of Jan. 18, 1980
(4) Intervenors' reply of Feb. 5, 1980
(5) ALAB-579 of Feb. 14, 1980

cc (w/o enclosures):
All parties
Docketing & Service Branch



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this
15th day of Feb 1980.

Leah T. Downing
Office of the Secretary of the Commission

* 2 documents

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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)
(St. Lucie Plant, Unit 2))
)

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Washington, D.C. 20555

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