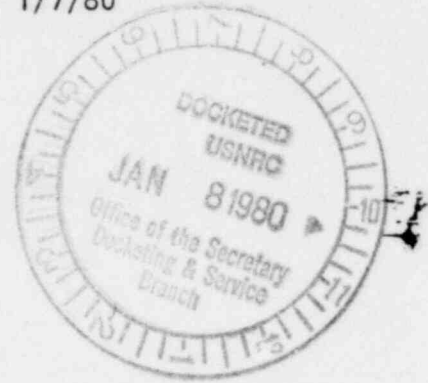


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of)
PUBLIC SERVICE COMPANY OF OKLAHOMA,)
ASSOCIATED ELECTRIC COOPERATIVE, INC.)
AND)
WESTERN FARMERS ELECTRIC COOPERATIVE,)
INC.)
(Black Fox Station, Units 1 and 2))

Docket Nos. STN 50-556
STN 50-557

STAFF STATEMENT OF POSITION
ON NEED TO CONSIDER CLASS 9
EVENTS PURSUANT TO DIRECTION IN ALAB-573

STATEMENT

The Atomic Safety and Licensing Appeal Board (R. Salzman, Chairman) issued a Decision (ALAB-573) on December 7, 1979, in the matter of Public Service Company of Oklahoma, et al., (Black Fox, Units 1 and 2). The Decision was rendered as a result of Applicants' and Intervenors' appeals taken from a Licensing Board's Partial Initial Decision, LBP-78-26, 8 NRC 102, Modified 8 NRC 281 (1979), supporting the issuance of a Limited Work Authorization (LWA) subject to certain conditions for the protection of the environment. In its Decision, the Appeal Board affirmed the Licensing Board's Decision on all substantive issues but certified an Appendix I question, not relevant here, to the Commission.

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In addition, the Appeal Board ruled upon an issue raised by the Intervenors for the first time during the course of the appeal, which asserted that the Commission's recently issued policy statement (" . . . Policy Statement on Reactor Safety Study and Review by Lewis Panel") had withdrawn the rationale for refusing to consider Class 9 events, and thus the Licensing Board's Decision which failed to consider such events was defective.^{1/}

In its ruling upon this issue, the Appeal Board noted that the Commission's Offshore Power Systems Decision^{2/} had confirmed that the existing policy on Class 9 accidents had not been set aside by that Decision, but that the Commission was nonetheless "rethinking the policy," and that in the interim the Staff was directed to "bring to [the Commission's] attention any individual cases in which [the Staff] believe[d] the environmental consequences of Class 9 accidents should be considered."^{3/} In addition, observing that the Commission had "reserved to itself the right to decide whether such matters are to be considered in any given case until it adopts a new general policy," the Appeal Board directed the NRC Staff to advise the Commission within 30 days of its position on whether the "consequences of Class 9 accidents should or should not be considered in this case." Id. at 31-32.

1/ Supplemental Motion and Brief of Intervenors (March 6, 1979).

2/ Offshore Power Systems (Floating Nuclear Plants), CLI-79-9, 10 NRC ____ (September 14, 1979).

3/ ALAB-573, slip. op. at 31.

The Commission's directive in the Offshore Power System Decision does require the Staff to bring to the Commission's attention any individual cases in which the Staff believes the environmental consequences of Class 9 accidents should be considered. The Commission's decision, however, does not require the Staff to inform the Commission of individual cases in which the environmental consequences of Class 9 accidents need not be considered. However, since this present matter involves evolving Commission policy of substantial importance, the Staff has chosen to respond with this Statement of Position rather than to raise procedural issues of this nature in a petition for review pursuant to 10 C.F.R. § 2.786. The Staff does believe, however, that because of the difference in understanding between the Staff and the Appeal Board as to specifically what information the Commission was requesting in its Offshore Power Systems Decision,^{4/} and the role that the Commission desires to play in the consideration of Class 9 issues, that it would be helpful for the Commission to provide the Staff and the Boards with further guidance on the treatment of Class 9 consequences in ongoing licensing procedures pending the completion of rulemaking.

DISCUSSION

In Offshore Power Systems, the Commission stated, "It follows from our existing rules that [Class 9 issues] may be placed in contention at the hearing and that the Board may thereafter impose whatever license conditions

^{4/} In its opinion, the Commission stated that: "In the interim, pending completion of the rulemaking on this subject, [we ask our 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, supra at 10.

are proven to be necessary or appropriate to fulfill our responsibilities under the National Environmental Policy Act."^{5/} The Commission also noted that ". . . at the very least, it is far from certain that the Annex and the policy deriving from it absolutely proscribe any consideration of Class 9 accidents at an FNP."^{6/} Thus, the Commission specifically found that there were situations under existing rules where Class 9 accidents might be considered.^{7/}

Moreover, existing Commission policy and caselaw permit consideration of events which previously may have been considered in the Class 9 category where a party can demonstrate the event has a sufficiently high probability to require consideration.^{8/} For example, a proper contention might be that the Three Mile Island accident is a Class 9 sequence whose environmental consequences should be considered.^{9/}

^{5/} Slip op. at 2.

^{6/} Id. at 7.

^{7/} In Offshore Power, the NRC Staff identified four separate reasons for considering Class 9 accidents in a particular case which the Staff believed were consistent with existing Commission Policy embodied in the Annex. The Commission found it necessary to address only one of those arguments: that the Annex is not controlling on the issue of consideration of Class 9 accidents for an FNP since FNPs were not within the Commission's contemplation when the Annex was issued. The Commission did not consider or reject the Staff's other three arguments. Presumably, those situations are among those that the Commission wanted the Staff to bring to its attention if the Staff thought the environmental consequences of Class 9 accidents should be considered.

^{8/} See e.g., Consumers Power Company (Midland Units 1 and 2), ALAB-123, 6 AEC 331, 347 (1973).

^{9/} See Interim Statement of Policy and Procedure, 44 Fed. Reg. 58559 (October 10, 1979).

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This approach has recently been permitted by a Licensing Board in Susquehanna and seems consistent with the Annex and current Commission policy regarding Class 9 accidents at land-based reactor sites.^{10/} Of course, in Black Fox, Intervenors have not attempted such a showing.

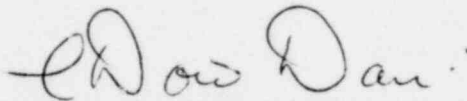
Although the Commission's Offshore Power Systems decision does not require the NRC Staff to inform the Commission of the results of its Black Fox review, the Staff has reviewed the design of the proposed Black Fox Station, the additional requirements that are expected to be imposed on Black Fox as a result of the Three Mile Island evaluation, the population characteristics of the site, and the site characteristic limiting the potential groundwater contamination and has concluded that Black Fox presents no special circumstances under current Commission policy which would warrant consideration of the environmental consequences of Class 9 accidents in the ongoing proceeding. The attached affidavits of Dr. Cecil O. Thomas, Jr., the Licensing Project Manager, and of Mr. Jan A. Norris, the Environmental Project Manager attest to these conclusions.

^{10/} Pennsylvania Power and Light Company (Susquehanna Units 1 and 2), LBP-79-29 NRC, slip op. at 11-13 (October 19, 1979).

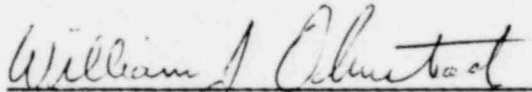
CONCLUSION

For the foregoing reasons the NRC Staff does not believe special consideration needs to be given to the consequences of Class 9 accidents at Black Fox.

Respectfully Submitted,



L. Dow Davis, IV
Counsel for NRC Staff



William J. Olmstead
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 7th day of January, 1980

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