UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING APPEAL BOARD

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

FPL'S RESPONSE TO MOTION
CONCERNING CLASS 9 ACCIDENTS

On December 12, 1979, Intervenors filed a motion relating to the further consideration of "Class 9" accidents in this proceeding. Florida Power & Light Company (FPL) hereby files its response in opposition to the motion.[1/]

The motion appears to be based upon the Intervenor's view of the obligations which the Nuclear Regulatory Commission imposed upon itself as a necessary consequence of the measures it directed to be taken in its memorandum and order of last September relating to floating nuclear plants (FNPs).[2/] There, in response to certification of the question by the Appeal Board, the Commission held that "the Licensing Board should be allowed to consider the environmental consequences

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1/ This response is filed in accordance with the schedule established by the Appeal Board during the course of a hearing it was then conducting. Tr. 877-878, December 14, 1979.

2/ Offshore Power Systems (Floating Nuclear Power Plants); Docket No. STN 50-437, __ NRC __, September 14, 1979. The memorandum and order is attached as an "Addendum" to the motion and we cite it here as "__ a."

of Class 9 accidents at the FNPs which Offshore proposes to manufacture." (6a) The Commission went on to state that:

> . . . Our grant of review in this proceeding was limited to the narrow question certified to us by the Appeal Board and it is neither necessary nor appropriate for us to employ this particular adjudicatory proceeding to resolve the generic issue of consideration of Class 9 accidents at land-based reactors. Such a generic action is more properly and effectively done through rulemaking proceedings in which all interested persons may participate.
>
> Therefore, we are not today expressing any views on the question of environmental consideration of Class 9 accidents at land-based reactors which, as the Board noted, present risks different in kind and perhaps in magnitude from those risks presented by FNP. See 8 NRC at 218-19. However, we are concerned about this question and intend to complete the rulemaking begun by the Annex and to re-examine Commission policy in this area. To aid in that re-examination we ask our staff to:
>
> 1. Provide us with its recommendations on how the interim guidance of the Annex might be modified, on an interim basis and until the rulemaking on this subject is completed, to reflect developments since 1971 and to accord more fully with current staff policy in this area; and
>
> 2. In the interim, pending completion of the rulemaking on this subject, bring to our attention, any individual cases in which it believes the environmental consequences of Class 9 accidents should be considered.

(8a; footnote omitted)

The instant motion is based upon the following theory:

> 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.

(Motion, p. 3; emphasis supplied)

Proceeding from this interpretation, the motion asks that this Board direct the NRC Staff to file a proposed supplement to the St. Lucie 2 Final Environmental Statement:

> 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 . . .

(Motion, pp. 1-2) The motion also requests that the Appeal Board direct that a hearing be held, preceded by prehearing procedures, "for a determination of the adequacy of the FES as supplemented." Consequently the request apparently is that such a hearing be conducted even if the FES Supplement merely justifies why consideration should not be given to Class 9 accidents.

Two possible alternatives to the relief described above are suggested in the motion. One would be to stay

"completion of these proceedings until the Commission has received and acted upon" the interim modifications referred to in the FNP Memorandum and Order (Motion, pp. 2, 4). The second would be for this Board to certify to the Commission questions relating to the standards to be applied by the Staff in determining the individual cases in which Class 9 accidents should be considered as well as the procedures for the review of such Staff determinations and how the FNP direction relating to specific proceedings "is to be implemented with respect to pending proceedings." (Motion, p. 2; see also p. 4)

FPL submits that the motion should be denied in its entirety. We demonstrate in greater detail below that the relief primarily requested, as well as the alternatives, are neither legally necessary consequences nor appropriate extensions of the action taken by the Commission in the FNP proceeding. In addition, the Class 9 issue has been finally disposed of in this construction permit proceeding and should not again be addressed in this proceeding. If the Intervenors believe the issue should be considered again with respect to St. Lucie Unit No. 2, they may invoke a different procederal remedy.

1. The history and status of this proceeding. The construction permit for St. Lucie Unit No. 2 was issued on May 2, 1977, in consequence of two decisions of the Commission. One was a partial initial decision of the Licensing Board on environmental and site suitability matters which authorized the issuance of a limited work authorization to FPL. 1 NRC 101 (February 28, 1975), as supplemented 1 NRC 463 (April 25, 1975). This was affirmed in part and reversed (with respect to the consideration of alternative sites) in part by the Appeal Board in ALAB-335, 3 NRC 830 (June 29, 1976); and the Intervenors appealed the decision to the United States Court of Appeals for the District of Columbia Circuit (No. 76-1709).[3/]

On April 19, 1977, the Licensing Board, after having heard the remanded alternative sites issue and the remaining undecided construction permit issues, released its initial decision authorizing the issuance of the permit. 5 NRC 1038.[4/] That decision was affirmed by the Appeal Board on October 7, 1977. ALAB-435, 6 NRC 541. Intervenors sought discretionary review by the Commission under 10 CFR § 2.786(b),

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3/ Because of the outstanding alternative sites issue, the limited construction activities authorized by the partial initial decision were stayed by order of the Court of Appeals on October 21, 1976. In the same order the Court directed that the appeal in No. 76-1709 be held in abeyance.

4/ Thereafter, on May 12, 1977, the Court of Appeals dissolved the stay of construction it had issued on October 21, 1976, and directed that the appeal in No. 76-1709 no longer be held in abeyance.

but their petition was denied when the time for review by the Commission expired on December 25, 1977.

The Intervenors then filed a second appeal in the Court of Appeals (No. 78-1149) which consolidated both appeals and affirmed them in one decision on December 26, 1978. 589 F.2d 1115. The Court of Appeals denied a petition for rehearing on January 15, 1979.[5/] On October 1, 1979, Intervenors' petition for a writ of certiorari was denied by the United States Supreme Court, 100 S.Ct. 55, and a petition for rehearing was denied on November 26, 1979. 48 U.S.L.W. 3357 (November 27, 1979).

The "Class 9" issue was fully litigated and finally decided in the course of the proceedings described above. On June 5, 1974, while prehearing procedures were being conducted by the Licensing Board, the Intervenors filed a "proposed refined statement of matters in controversy," contending, among other things, that FPL had failed "to consider Class 9 accidents as part of their design basis." In its comments on the refined statement, FPL objected to the contention on the ground, among others, that the Commission's regulations did not require plants to be designed to withstand the consequences of a Class 9 accident, and

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5/ The judgment and accompanying memorandum of the Court of Appeals are reproduced in the Appendix hereto, together with the order denying rehearing. Pursuant to Local Rule 13(c), the memorandum was not included in the reported opinions of the Court and is not to be cited as a precedent under Rule 8(b). "However, counsel may refer to such orders, and memoranda, for such purposes as application of doctrines of res judicata, collateral estoppel, and law of the case, which turn on the binding effect of the judgment, and not on its quality as precedent." Local Rule 8(f).

that no attempt had been made to meet the "Shoreham test" of "a reasonable possibility of the occurrence of a particular type of accident generically regarded as being in Class 9 . . . ."[6/]

Thereafter, on June 25, 1974, the Commission Staff and the Intervenors filed a "Stipulation and Joint Motion" containing a joint statement of the issues those parties thought to be appropriate contentions in the proceeding. The document also described issues the Intervenors wished considered, but which the Staff thought should not be litigated in the proceeding. Therefore it included (p. 12) an expression of the Staff's view that the Class 9 issue should not be litigated because there had been "no showing of reasonable possibility" of a Class 9 accident at St. Lucie 2, as required by the Shoreham decision. FPL concurred in that view,[7/] but Intervenors replied that:

6/ "Applicant's Comments on Intervenors' Proposed Refined Statement of Matters in Controversy," June 18, 1974, p. 2. The Shoreham test referred to was that set forth in Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 833-36 (1973), affirmed by unpublished order sub nom. Lloyd Harbor Study Group v. Atomic Energy Commission (D.C. Cir., No. 73-2266, November 11, 1976), vacated on other grounds sub nom. Long Island Lighting Co. v. Lloyd Harbor Study Group, 435 U.S. 964 (1978).

7/ "Response of Applicant to Stipulation and Joint Motion," June 28, 1974, p. 15.

> . . . having read the Shoreham decision [they] respectfully take exception to that holding in that the argument supporting the decision does not logically uphold the result.8/

Nevertheless, in its "Prehearing Conference Order #3," dated July 12, 1974, the Licensing Board ruled as follows:

> As to statement on Contention 1.7 (page 12, Joint Motion) Board agrees that there has been no showing of a reasonable possibility of class 9 accident at St. Lucie and therefore an issue relating to a class 9 accident is denied.

8 AEC 117, 124-125. The Intervenors excepted to this ruling and briefed the exception,9/ but this Board affirmed. ALAB-335, 3 NRC 830, 841 (1976).

The Class 9 issue was central to Intervenors' case when they sought judicial review.10/ The issue was also fully

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8/ "Intervenors Response to Applicants Response to Stipulation and Joint Motion," dated July 5, 1974, p. 7.

9/ "Intervenors Exceptions to the ASLB Partial Initial Decision (Dated February 28, 1975) as Supplemented," May 2, 1975, p. 1; "Intervenors Briefs on Exceptions 2-45 and Motion for Additional Time to Brief Exceptions," July 3, 1975, pp. 1-2.

10/ See "Petitioners Brief on Partial Initial Decision" filed in D.C. Cir. No. 76-1709, February 15, 1978, pp. 3, 14-19; "Petitioners Reply Brief to Respondents, U. S. Nuclear Regulatory Commission and United States of America," July 24, 1978, pp. 2-5.

addressed in the Government's Brief.[11] Pursuant to Rule 28(i) of the Federal Rules of Civil Procedure, FPL's Brief (p. 18) adopted those portions of the Government's Brief. Each of the briefs specified that the Class 9 issue was a "question presented" or one of the "issues presented for review."[12] The memorandum of the Court of Appeals affirming the decision expressly deals with and disposes of the issue in the first and third paragraphs. See Appendix hereto. The petition for rehearing filed in the Court of Appeals and the petition for a writ of certiorari were devoted solely to the Class 9 issue, as was the petition for rehearing filed in the Supreme Court.[13]

When it issued ALAB-435, affirming the initial decision, the Appeal Board sua sponte asserted and retained jurisdiction over one issue, steam generator tube integrity. 6 NRC at 544-546. It later amended ALAB-435 to cover matters relating to grid stability,[14] and on April 11, 1978, the Commission

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11/ See Brief for "Respondents United States Nuclear Regulatory Commission and the United States of America" in Nos. 76-1709 and 78-1149, pp. 1, 3-4, 7-9.

12/ See Intervenors "Brief on Partial Initial Decision," p. 2; Government Brief, p. 1; and FPL's Brief, p. 1.

13/ See Petition for Rehearing and Suggestion for Rehearing En Banc filed in D.C. Cir. Nos. 76-1709 and 78-1149 on January 10, 1979; Petition for Writ of Certiorari and Petition for Rehearing filed in Hodder et al. v. United States Nuclear Regulatory Commission et al., Supreme Court of the United States, October Term, 1978, No. 78-1652.

14/ See Appeal Board order issued in this proceeding on October 28, 1977.

itself directed that the records be reopened to consider issues relating to radon releases in all "cases pending before Appeals Boards . . . ." Philadelphia Electric Company et al., ALAB-480, 7 NRC 796, 799, 802 n. 4 (1978). However in ALAB-537, 9 NRC 407, 417 (1979), the Appeal Board expressly terminated its jurisdiction over the steam generator tube issue, leaving open to the exercise of Appeal Board jurisdiction only the grid stability and radon issues.

2. Final disposition of the Class 9 issue. From the foregoing, it is clear that the Class 9 issue in this proceeding has been fully litigated and finally decided -- both within the Commission and in the courts. Once a decision has become final because the time for Commission review has expired, both the licensing boards and the Appeal Board lose jurisdiction over the proceeding. 10 CFR § 2.717(a); Houston Lighting and Power Company et al. (South Texas Project Unit Nos. 1 and 2), ALAB-381, 5 NRC 582, 590-591 (1977); Washington Public Power Supply System (WPPSS Nuclear Project Nos. 3 and 5), ALAB-501, 8 NRC 381 (1978); Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-530, 9 NRC 261 (1979). As the Appeal Board stated in the South Texas proceeding, "the total regulatory scheme does not contemplate the resurrection of a terminated construction permit proceeding [even] in the event of a later material change in circumstances." 5 NRC at 591. It went on to state:

> To the contrary, even assuming there to have been supervening developments bringing into legitimate question either the warrant for the construction permit or the need for its modification, this path would appear to be totally foreclosed. Under our regulatory scheme, if the person were not prepared to abide the arrival of the operating license stage, his remedy would lie in seeking the issuance of an order -- not by a licensing board but by the appropriate official on the NRC Staff -- which would trigger a show cause proceeding (i.e., one of the types of proceedings expressly provided for in the Rules of Practice).

5 NRC at 593; footnote omitted.

Here the Class 9 issue was decided by the Licensing and Appeal Boards; the Commission permitted the time for review to pass; and judicial review of the Class 9 issue was conducted pursuant to 28 U.S.C. § 2342, which applies only to "final orders." The South Texas, WPPSS and Marble Hill decisions demonstrate that if jurisdiction over the grid stability and radon issues had not been retained, the Appeal Board would have had no authority whatsoever to reopen the issue.

Other precedent makes it clear that the retention of authority over those issues does not change the result. Directly in point is Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-513, 8 NRC 694 (1978). There a party sought to reopen the record of a construction permit proceeding on the issue of financial qualifications after

"finality [had] attached to the resolution of the question in this proceeding . . ." by virtue of affirmance by the Commission and by the Court of Appeals for the First Circuit. The Appeal Board still had before it the "entirely discrete issue" of alternative sites pursuant to an earlier Commission directive. The Board held that the pendency of the latter issue did not "preserve our jurisdiction over other, unrelated questions . . .," including the issue earlier resolved.

Shortly thereafter, in Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-551, 9 NRC 704 (1979), a similar issue was raised in the context of an operating license proceeding in which all but three discrete issues had been finally decided. In that proceeding, the Staff had informed the Appeal Board of the existence of a "significant new development," as it was required to do in all pending cases, concerning the "current practice of relying on non-safety grade equipment to mitigate the severity of anticipated operational occurrences." 9 NRC at 706. With respect to the question whether it had jurisdiction to consider the issue, the Appeal Board held that the authority vested in adjudicatory boards to raise new issues must be limited by the principle of finality which governs NRC proceedings to the same extent as any other proceedings, and once review of an issue has been terminated, the Appeal Board loses all jurisdiction over it.

The Board also held that its authority to consider the new non-safety grade equipment issue turned upon "the existence of a 'reasonable nexus' between that issue and one of the issues over which we have retained jurisdiction." 9 NRC at 709. However, the issue involving Class 9 accidents is not a new issue in the proceeding. Rather, review of that issue has been completed. This Board has, therefore, lost jurisdiction over it. The fact that the Board has retained authority over the grid stability and radon issues does not modify this result.

The motion totally ignores the line of authority just discussed. It argues that the Appeal Board should exercise jurisdiction over the Class 9 issue simply "[b]ecause the order was entered prior to completion of these proceedings . . .," citing Philadelphia Electric Company et al. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-480, 7 NRC 796 (1978) as authority. (Motion, pp. 2-3) There the Appeal Board held that the Comission "wishes the radon question to be reexamined in every pending proceeding . . . ." 7 NRC at 802, n. 4. However, this is but an example of the exercise by the Commission of authority similar to that of the Appeal Board, "to raise sua sponte issues which were neither presented to nor considered by the licensing board." ALAB-551 supra, 9 NRC at 707. We are not presented here with such an issue, but rather with one which has been finally decided.

3. The FNP decision. It is clear that the Commission's FNP decision does not "order" or even authorize the Appeal Board to reopen the Class 9 issue in this proceeding. Prior to the issuance of the FNP decision, the Commission's policy, as established in the proposed "Annex"[15/] to its environmental regulations, was that Class 9 accidents need not be considered in individual licensing proceedings. The policy has been repeatedly upheld both by the Appeal Board and the courts. See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 209-210 (1978), and cases there cited. The impact of that decision, as confirmed by the Commission, was simply to provide for consideration of such accidents "in licensing proceedings concerning offshore plants. . . ." Public Service Company of Oklahoma et al. (Black Fox Station, Units 1 and 2), ALAB-573, slip op. pp. 30-31 (December 7, 1979).[16/] However, the Commission's FNP decision clearly states that it is addressed only to offshore reactors. "The existing policy on Class 9 accidents was not set aside . . ." for land-based plants. (supra, at p. 31) Nor were Licensing or Appeal Boards even authorized to conduct Class 9 proceedings with respect to land-based plants. To the contrary, as the Appeal Board held in Black Fox, "the Commission has

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15/ 36 Fed. Reg. 22851-52 (December 1, 1979).

16/ See errata filed in the Black Fox dockets on December 17, 1979.

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."[17/] Ibid.

Intervenors, nevertheless, assert that the Commission has "abandoned any generic prohibition against consideration of class 9 accidents . . ." and note that it has directed the Staff to bring to its attention individual cases in which the Staff believes Class 9 accidents should be considered. They go on to argue that the Commission "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." (Motion, pp. 2-3)

Intervenors' assertion that the Commission has abandoned any generic prohibition against consideration of Class 9 accidents is plainly erroneous. As the Appeal Board stated in Black Fox, the Class 9 policy "was not set aside" except with respect to offshore plants. In light of the fact that the Commission is "rethinking the policy," it is entirely appropriate for the Commission to direct that it be advised of the cases, if any, that the Staff believes should now be excepted

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17/ The fact that the Commission has announced its intention to hold rulemaking proceedings on the Class 9 issue is another reason the issue should not be considered in a specific adjudication. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 84 (1974).

from the policy. It would be an absurdity to limit the Staff's discretion in this respect. Indeed, any Commission instruction to the Staff would amount to no more than the adoption of some kind of interim policy, an action the Commission has not yet taken.[18/]

In connection with the Commission's FNP and the Black Fox decisions, we note that the Appeal Board directed the Staff to make a recommendation to the Commission as to whether the Class 9 issue should be considered in that proceeding. We submit that a similar direction would be inappropriate here. The Board issued the direction in Black Fox because:

> The proceeding before the Licensing Board is now half completed. Manifestly, if that Board is to reexamine the ramifications of Class 9 events, the time to instruct it to do so is now, not after the record closes and its decision issued.

Slip op at p. 32. No such consideration exists here. The Class 9 issue has been finally ruled upon and the decision has already issued.

4. Available relief. All of the forms of relief suggested by the Intervenors turn upon the argument that some kind of consideration of Class 9 accidents is now required in this proceeding because of the FNP decision. We submit that we have demonstrated that this is incorrect. For that reason,

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18/ The NRC Staff has provided the Commission with an initial response to the Commission's request for "recommendations on how the interim guidance of the Annex might be modified on an interim basis . . . ." (8a) See "Class 9 Accident Considerations," SECY-79-594, October 31, 1979.

neither the primary relief requested in the motion nor any of the suggested alternatives should be granted. The motion should therefore be denied. In accordance with this Board's request, we also address the question "whether there is any other avenue of relief open within the Commission." (Tr. 868)

We believe the answer to this question has been supplied in the South Texas and Seabrook proceedings. Intervenors are free under 10 CFR § 2.206 to request the Director of Nuclear Reactor Regulation to institute a show cause proceeding under 10 CFR § 2.202 to revoke or suspend the construction permit. ALAB-381, 5 NRC at 588; ALAB-513, 8 NRC at 696. By making this suggestion we do not admit or suggest that the merits of such a petition would warrant its grant. As did the Appeal Board in Seabrook, we merely point out that the Intervenors are "now in the wrong forum."

Respectfully submitted,

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Dated: January 16, 1980

APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1709 September Term, 1978

Martin Harold Hodder, et al.,
Petitioners

v.

U.S. Nuclear Regulatory Commission
and United States of America,
Respondents

Florida Power & Light Company,
Intervenors

And Consolidated Case No..78-1149

BEFORE: McGowan and Wilkey, Circuit Judges; Flannery*, Judge, United States District Court for the District of Columbia

O R D E R

Upon consideration of petitioners' motion for leave to file a petition for rehearing and/or suggestion for rehearing en banc, time having expired, no opposition having been filed thereto, and it appearing that petitioners' petition for rehearing and/or suggestion for rehearing en banc is lodged with the Clerk's Office, it is

ORDERED, by the Court, that the motion of petitioners Hodder, et al. for leave is granted and the Clerk is directed to file petitioners' lodged petition and/or suggestion and to enter same on the docket.

Per Curiam

FOR THE COURT:

George A. Fisher

GEORGE A. FISHER
Clerk

*Sitting by designation pursuant to Title 28 U.S.C. § 292(a).

NOT TO BE PUBLISHED - SEE LOCAL RULE 8 (f)

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1709 September Term, 19 78

Martin Harold Hodder, et al., Petitioners

v.

U.S. Nuclear Regulatory Commission
and United States of America, Respondents

Florida Power & Light Company, Intervenor

78-1149

Martin Harold Hodder, et al., Petitioners

v.

U.S. Nuclear Regulatory Commission
and United States of America, Respondents

Florida Power and Light Co., Intervenor

PETITIONS FOR REVIEW OF ORDERS OF THE NUCLEAR REGULATORY COMMISSION

Before: McGOWAN and WILKEY, Circuit Judges, and FLANNERY,* United States District Judge for the District of Columbia

J U D G M E N T

These causes came on to be heard on petitions for review of orders of the Nuclear Regulatory Commission and were argued by counsel. On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court, that the orders of the Nuclear Regulatory Commission under review herein are hereby affirmed, for the reasons set forth in the attached memorandum.

Per Curiam
For the Court

George A. Fisher
Clerk

Bills of costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

1840 045

*Sitting by designation pursuant to 28 U.S.C. §292(a).

MEMORANDUM

Petitioners seek review of two decisions of the Nuclear Regulatory Commission authorizing intervenor Florida Power and Light Company to construct an 850 megawatt nuclear power reactor at Hutchinson Island, Florida. In No. 76-1709, petitioners challenge an NRC Atomic Safety and Licensing Appeal Board decision affirming a decision of the Atomic Safety and Licensing Board permitting limited construction work at the site over petitioners' objections that population density and distribution were not in accordance with the NRC's own regulations, and that the NRC's failure to examine the environmental effects of major nuclear accidents constituted a violation of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, et seq. (1976). In No. 78-1149, challenge is brought to an Appeal Board decision that the NRC's examination and consideration of alternative sites for the proposed project complied with NEPA.

Petitioners' claim on the regulations issue is that Hutchinson Island itself should be considered a "population center" within the meaning of 10 C.F.R. part 100. We disagree. The notion of a population "center" implies some centralized grouping or concentration of residents, not the type of dispersed populace as is present on Hutchinson Island. See New England Coalition on Nuclear Pollution v. United States Nuclear Regulatory Commission, Nos. 77-1219, et al., slip op. at 7 (1st Cir., August 22, 1978).

Petitioners' claim on the accidents issue has been foreclosed by previous decisions in this court. It is well settled that, because of the extreme improbability of their occurrence, the NRC need not consider the environmental effects of so-called "Class 9" accidents. Carolina Environmental Study Group v. United States, 510 F.2d 796, 798-800 (D.C. Cir. 1975). It is true that Carolina was decided prior to the publication in final draft of the Reactor Safety Study, WASH-1400 (1975), that found a probability of Class 9 accidents significantly greater than had been indicated by the previous study, WASH-740 (1957). Carolina, however, has been reaffirmed by decisions of this court subsequent to the publication of the 1975 study. Lloyd Harbor Study Group, Inc. v. NRC, No. 73-2266 (D.C. Cir., Nov. 29, 1978); Aeschliman v. NRC, 547 F.2d 622, 632 n.21 (D.C. Cir. 1976), rev'd on other grounds sub nom. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519 (1978). These decisions accord with the reasoned and consistent view of the NRC. Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831 (1973).

On remand from a previous decision of the Appeal Board, ALAB-355, 3 NRC 830 (June 20, 1976), the NRC's staff conducted an investigation of six actual alternative sites, including Hutchinson Island. The Appeal Board concluded that this analysis gave adequate consideration to possible alternative sites. Florida Light and Power Co. (St. Lucie Nuclear Power Project, Unit No. 2), 5 NRC 1038, 1050 (1977). We affirm this conclusion,

finding it supported by substantial evidence in the record taken as a whole. See Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY & LICENSING APPEAL BOARD

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of "FPL's Response to Motion Concerning Class 9 Accidents," captioned in the above matter, together with the Appendix thereto, were served on the following by deposit in the United States mail, first class, properly stamped and addressed, on the date shown below:

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January 16, 1980