UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Hdqtrs. PDR

November 29, 1978

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: James L. Kelley, Acting General Counsel

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - DISCUSSION OF SECY-A-78-79, REVIEW OF ALAB-500 and ALAB-489: OFFSHORE POWER SYSTEMS (FLOATING NUCLEAR POWER PLANTS), 3:55 P.M., MONDAY, NOVEMBER 20, 1978, COMMISSIONERS' CONFERENCE ROOM, D. C. OFFICE (SEE ALSO 10/27/78 MEMO, J. KELLEY AND K. PEDERSEN TO COMMISSION)
(OPEN TO PUBLIC ATTENDANCE)

The Commission* was briefed on possible Commission review of whether Class 9 accidents should be included in Environmental Impact Statements for floating nuclear power plants. The Commission did not reach a decision at this meeting.

Chairman Hendrie requested:

1. that the original Draft Order contained in SECY-A-78-79 be revised to reflect the following changes:

   a. that the sentence on page 1 of the Order, beginning: "In that connection the Commission wishes the staff...," be inserted at the end of the second paragraph of the Order;

   b. that the last paragraph of the Order attached to the October 27, 1978 memo replace the last paragraph of the Order contained in SECY-A-78-79. (OGC)

   (Subsequently, OGC circulated the revised Order to the Commission on November 22, 1978).

Commissioner Ahearne indicated that he had differing views and provided them subsequently (see attached).

Attachment:
As stated

*Commissioner Kennedy was not in attendance.

cc:
Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissoner Bradford
Commissioner Ahearne
Director, Policy Evaluation
Director, Congressional Affairs
Director, Public Affairs

CONTACT:
R. Tweed (SECY)
4-1410

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[Majority Opinion (?)]

Dissent (?):

In its order certifying the Class 9 question to the Commission, the Appeal Board stated,

> To be sure, as NRDC suggests, a fuller record might assist in deciding what policy the Commission should adopt. However, the question is not what the policy ought to be but, rather, what policy governs OPS' pending application. That question is manifestly ripe now.

Offshore Power Systems (Floating Nuclear Power Plants), ALAB-500, 8 NRC ____ (September 29, 1978) (slip opinion at 3). Contrary to this view, I believe the question before us is not what the Commission's policy on Class 9 accidents is but what it ought to be.

Apparently, the only guidance from the Commission itself on consideration of Class 9 accidents was given in 1971 when Annex A to Appendix D, 10 CFR Part 50, was published as part of a proposed rule and in 1974 when the Commission refused to include this Annex in the regulations since "[t]he proposed Annex is still under consideration by the Commission." 39 FR 26279 (July 18, 1974) (statements of consideration for 10 CFR Part 51). This state of affairs allowed the staff considerable latitude in its accident analyses since the Annex was not made a binding regulation but was merely "useful as interim guidance until such time as the Commission takes further action." In addition, the preface specifically stated "other accident assumptions [besides those presented in the tables of the annex] may be more suitable for individual cases." 36 FR 22851 (December 1, 1971).

However, the policy on treatment of Class 9 accidents appears to have been developed further through application of the Annex. The Staff apparently has consistently taken a position in the past that Class 9 accidents were excluded on a strict probability basis. Regardless of consequences, an accident was excluded from consideration if the probability of occurrence was sufficiently low. This approach became established and was affirmed by both appeal boards and Federal courts of appeals. See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC ____ (August 2, 1978). Now Staff appears to be shifting its position from a strict probability approach to a "risk" approach. See e.g., "NRC Staff Answer to Applicants' 'Motion for Reconsideration and, in the Alternative, Certification to the Commission'" at pp. 13-15 (September 21, 1978). Under some undefined "special circumstances." Staff now feels consideration of Class 9 accidents is appropriate.

It is time for the Commission to involve itself in this question. It is appropriate for the Commission to decide whether Class 9 accidents should be analyzed from a strict probability or a risk perspective. However, it is not a question of what we really meant all along. The Commission gave some general guidance which has been interpreted and applied by the Staff. The Commission must now focus on the issues which have developed as a result of that application and make a decision on what the policy ought to be.

This question has a significance beyond Offshore Power Systems. As Staff pointed out, the Appeal Board's resolution of the matter leads to some "theoretical inconsistency." Staff answer, supra. It is inconsistent to argue floating nuclear plants (FNP) should be evaluated on a risk basis, while land-based plants should be evaluated on a strict probability basis. Consequently, I believe this issue should be addressed immediately by the Commission on a generic level. Although the Staff assures us inconsistencies are legally defensible, I would prefer to develop a consistent approach if possible.

Further development of Annex A and its status as a proposed rule are currently being considered by the Staff. However, the Commission should not wait for the results of this analysis before taking action. It has been reported to the Commission that details of this rule, which was proposed in 1971, will "come from the solution of Generic Task A-33.* . . . The present target for completion of Task A-33 is 1/81. The rule would be developed after this date." "Information Report," SECY-78-584 (November 9, 1978) (emphasis added). I do not believe the "interim guidance" of the Annex can remain unexamined until the Staff completes its analysis of the situation. I would request the Staff provide to the Commission its present recommendations on whether the Annex should be modified or replaced with some other proposal pending completion of Task A-33.

While the Commission is examining this issue on a generic basis, I would instruct the Staff to bring to the Commission's attention any cases in which it feels Class 9 accidents should be considered.

In the meantime, it is necessary to make a decision for the OPS case. I would prefer not to deal with the issue in the abstract. Consequently, I would remand this case to the Licensing Board for development of a record on the nature of the consequences of a Class 9 accident at a floating nuclear plant with the specific objective of

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*See "NRC Program for the Resolution of Generic Issues Related to Nuclear Power Plants," NUREG 0410 (January 1, 1978).

exploring the factual basis for Staff's position that the consequences of a Class 9 for a FNP are so different from those of the typical land-based plant that they should be considered. In essence, I would instruct the Board to define specific issues through consideration of "Applicant's Motion to Plead a Matter in Controversy and Establish a Discovery and Hearing Schedule for Such Matter" dated September 5, 1978, (along with any other similar motions) with a further instruction that the case is to be referred to the Commission upon completion of the record on those issues. At that time, the Commission could better address the appropriateness of a strict probability approach to analyzing Class 9 accidents as opposed to risk assessment which takes into account both probability and consequences.