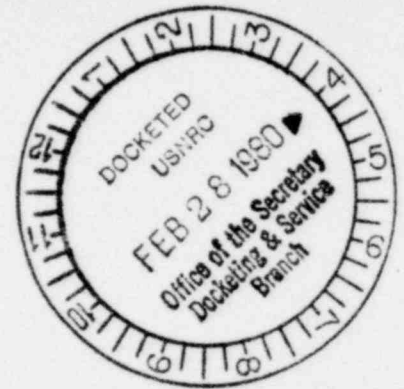


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before the Commission

In the Matter of the Application)
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

RESPONSE OF THE STATE OF OKLAHOMA TO
APPLICANTS' "MOTION TO DISMISS CLASS 9 INQUIRY"

FOREWARD COMES NOW the State of Oklahoma (herein "Oklahoma"), since February 27, 1979 an Interested State participant in the above-captioned cause, and makes reply to the MOTION TO DISMISS CLASS 9 INQUIRY filed February 11, 1980 by Public Service Company of Oklahoma, Associated Electric Cooperative and Western Farmers Electric Cooperative (hereinafter referred to collectively as "Applicants").

I.

Applicants filed the instant motion on February 11, 1980, together with: (1) a response to the STAFF STATEMENT OF POSITION ON NEED TO CONSIDER CLASS 9 EVENTS PURSUANT TO DIRECTION IN ALAB-573, and (2) a MOTION TO STRIKE RESPONSE OF THE ATTORNEY GENERAL (sic) TO ALAB-573. Oklahoma anticipates Applicants will have a similar objection to Oklahoma's participation in the instant Motion and hereby adopts the argument and authorities set forth in the RESPONSE OF THE STATE OF OKLAHOMA TO

APPLICANTS' MOTION TO STRIKE RESPONSE OF THE ATTORNEY GENERAL TO ALAB-573 in support of this State's right to participate in the instant inquiry.

II.

Applicants' argument in support of this motion is basically premised upon the contention that the Atomic Safety and Licensing Appeal Board (hereinafter "Appeal Board") misconstrued the injunction from the Commission to the Staff in the Offshore Power Systems¹ case to:

"...bring to our attention, any individual cases in which it believes the environmental consequences² of Class 9 accidents should be considered."²

Fundamental to Applicants' argument is the contention found in both Staff's³ and Applicants'⁴ statements of position that there is no need to consider Class 9 environmental consequences in the instant case because there are no "special circumstances" justifying such an inquiry. As pointed out in Oklahoma's response to the Staff's statement of position, such

¹In the Matter of Offshore Power Systems (Floating Nuclear Power Plants) CLI-____, ____ NRC ____, (mimeo, September 14, 1979).

²Id., (mimeo, at 10).

³STAFF STATEMENT OF POSITION ON NEED TO CONSIDER CLASS 9 EVENTS PURSUANT TO DIRECTION IN ALAB-573, filed January 7, 1980.

⁴APPLICANT'S RESPONSE TO INQUIRY BY APPEAL BOARD CONCERNING THE NEED TO CONSIDER THE CONSEQUENCES OF CLASS 9 ACCIDENTS IN THIS PROCEEDING, filed February 11, 1980.

reasoning really misses the point of what concerned the Appeal Board in ALAB-573.⁵ It is submitted that the question posed before the Commission is not whether "special circumstances" exist which would justify the Atomic Safety and Licensing Board to inquire concerning Class 9 environmental consequences because that test is firmly rooted in the very proposed policy the Commission is in the process of reconsidering right now. The question, it is submitted, is whether special circumstances exist that would excuse the instant Construction Permit application from the same regulatory scrutiny that will be applied to other Construction Permit applications should the Commission determine the policy espoused in the proposed "Annex" to 10 CFR, Part 50, Appendix D, is no longer appropriate for defining the scope of the environmental impact analysis.

Oklahoma would submit the Appeal Board was clearly concerned in ALAB-573 whether the Class 9 environmental issue could be addressed in a timely fashion if not raised at this juncture. The Appeal Board determined that under the proposed policy which currently controls the scope of litigation it was clear the Licensing Board did not err in not considering Class 9 environmental impact in its analysis. Since it clearly considered said proposed policy a settled matter, certification of a question of law on that subject to the Commission would have been inappropriate. Instead it interpreted the Commis-

⁵ See Oklahoma's Response, filed February 6, 1980, part I, pp. 2-8.

sion's statement in Offshore Power Systems quoted above to require the Staff to inform the Commission whether the Staff believed it necessary, under the instant circumstances, to make a timely Class 9 environmental analysis or else be foreclosed by the issuance of the Initial Decision authorizing issuance of a Construction Permit to the Applicants. Unfortunately, the Staff's Statement of Position totally addresses the question from the perspective of the Annex's proposed policy. As was noted in our response to Staff's Statement of Position, the Appeal Board effectively "grandfathered" the instant application from Class 9 environmental impact analysis pending further Commission action.⁶

Misconstruing as is does the Appeal Board's reason for directing the Staff to report its position to the Commission concerning this proceeding, the instant motion by Applicants should be denied.

III.

Applicants also assert that the Class 9 issue is not ripe for Commission action. They note that the Licensing Board has pending before it certain safety-related Class 9 issues.

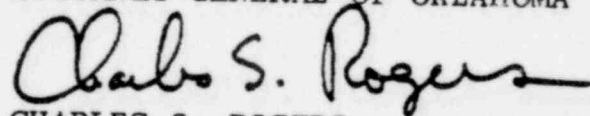
It is submitted that Applicants again have missed the point of the Appeal Board's action. The Appeal Board was considering Class 9 environmental analysis policy which was,

⁶ Oklahoma's "Response to Staff Statement...", p. 7.

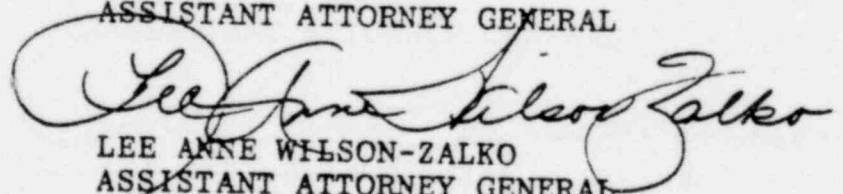
in part, the subject of the initial phase of the Construction Permit proceeding. The safety-related Class 9 issues presently pending before the Licensing Board are a different matter from the instant question of timely Class 9 environmental impact analysis. The safety-related Class 9 issues were apparently accepted pursuant to the recognized exception to the proposed Annex's Class 9 policy, i.e., that "special circumstances" exist that make a Class 9 safety-related analysis appropriate. Applicants are correct that the Class 9 safety-related issues are not presently before the Commission. Applicants are incorrect in their assertion that Class 9 environmental issues should not be considered while the safety-related issues are pending before the Licensing Board. Their motion, to the extent it finds foundation in the above contention, should also be denied.

Respectfully submitted,

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I, Charles S. Rogers, Assistant Attorney General for the State of Oklahoma, do hereby certify that copies of the following documents: RESPONSE OF THE STATE OF OKLAHOMA TO APPLICANTS' "MOTION TO STRIKE RESPONSE OF THE ATTORNEY GENERAL TO ALAB-573" and RESPONSE OF THE STATE OF OKLAHOMA TO APPLICANTS' "MOTION TO DISMISS CLASS 9 INQUIRY," were filed in the above-captioned proceeding and a copy of each was served to the following persons at the indicated addresses by deposit in the United States mail, first class postage prepaid, this 26th day of February, 1980:

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