



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

April 8, 1980

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Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Mr. Frederick J. Shon, Member
Atomic Safety & Licensing Board
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Washington, D. C. 20555

Dr. Oscar H. Paris, Member
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322

Dear Members of the Board:

On March 5, 1980, the Board issued an "Order Ruling on Petition of Shoreham Opponents Coalition" (Order). As to Contention 20(d), the Board at page 23 of the Order ruled that:

"* * * Contention 20(d) is dismissed without prejudice to renewal of an adequately particularized contention regarding Class 9 accidents, in the event Staff elects to advise the Commission that Class 9 accidents should be considered in this proceeding. Staff is requested to inform the Board and the parties of its position on the consideration of Class 9 accidents in this case, as promptly as possible." (Emphasis in the original)

The Staff has not yet completed its evaluation as to whether any special circumstances exist which would require consideration of "Class 9" accidents at Shoreham. As requested by the Board, we will advise you of our position in this regard as promptly as possible.

In the interim, I am enclosing, for the information of the Board and parties, copies of (1) the Commission's Memorandum and Order (CLI-80-8) issued on March 21, 1980, in Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2); (2) the Appeal Board's Memorandum and Order, ALAB-587, issued in Black Fox on March 28, 1980; and (3) the Appeal Board's Memorandum and Order, ALAB-588 issued on April 1, 1980 in Public Service Company Electric and Gas Company (Salem Nuclear Generating Station, Unit 1).

Sincerely,

Bernard M. Bordenick
Bernard M. Bordenick
Counsel for NRC Staff

Enclosures as stated

cc (w/ encl. see page 2)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

John F. Ahearne, Chairman
Victor Gilinsky
Richard T. Kennedy
Joseph M. Hendrie
Peter A. Bradford

In the Matter of
PUBLIC SERVICE CO. OF OKLAHOMA,
et al.
(Black Fox Station, Units 1 and 2)

Docket Nos. STN-50-556
STN-50-557

MEMORANDUM AND ORDER

In ALAB-573, 10 NRC _____ (December 7, 1979), the Appeal Board affirmed, with two exceptions, the issuance of a Limited Work Authorization for the Black Fox Station. This Memorandum and Order deals with one of the exceptions, the consideration of Class 9 accident issues in the Black Fox proceeding.^{1/} In ALAB-573, the Appeal Board interpreting the decision in Offshore Power Systems (Floating Nuclear Power Plants), CLI-79-9, 10 NRC 257 (1979)[hereinafter referred to as Offshore Power], directed the NRC staff to file its views on whether Class 9 accidents should be considered at Black Fox and permitted other parties to file their views within 30 days thereafter.

^{1/} The other exception was the radon issue over which the Appeal Board retained jurisdiction pending a resolution of separate proceedings. ALAB-573, 10 NRC _____, slip op. at 66-67 (Dec. 7, 1979). See Philadelphia Electric Co., et al. (Peach Bottom Station, Units 2 and 3, et al.), ALAB-480, 7 NRC 796 (1973), ALAB-562, 10 NRC 437 (1979). In addition, the Commission accepted a question certified to it by the Board concerning an interpretation of 10 CFR Part 50, Appendix I. Order dated February 20, 1980 (accepting certified question).

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The Commission believes that the Appeal Board has misinterpreted the decision in Offshore Power. Accordingly, the portion of ALAB-573 captioned "Consideration of 'Class 9 Accidents'" is vacated and remanded to the Appeal Board for further consideration.

In Offshore Power the Commission faced a question certified by the Appeal Board concerning "whether the probability and consequences of a so-called 'Class 9' accident at [a floating nuclear plant] are proper subjects for consideration in the Commission's environmental analysis of Offshore's application." 10 NRC, at 257-58. In that case the Commission decided that they were properly included in the Offshore environmental analysis, based on the Commission's interpretation of its responsibilities under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321. However, the Commission found it "neither necessary nor appropriate ... to employ such particular adjudicatory proceeding to resolve the generic issues of consideration of Class 9 accidents at land-based reactors." 10 NRC, at 262 [footnote omitted]. The Commission stated its intention to complete rulemaking and policy development in that area [id.]. Neither of these activities have been completed. The Appeal Board in ALAB-573 correctly noted that while the Commission did not set aside existing policy regarding treatment of Class 9 accidents generally,^{2/} it "reserved ... the right to decide whether such matters are to be considered in any given case until it adopts a new general policy." ALAB-573, slip op. at 31. In the interim, the staff was directed to "bring to [the

^{2/} The Commission's current policy on Class 9 accident considerations is set out in its Offshore Power opinion and in the Appeal Board opinion in that case, ALAB-489, 8 NRC 194 (1978) and need not be restated here.

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Commission's] attention, any individual cases in which it believes the environmental consequences of Class 9 accidents should be considered." Offshore Power, supra, 10 NRC, at 263.

Because the existing policy on Class 9 accidents was not displaced in Offshore Power, and would not be displaced pending generic consideration of Class 9 accident situations in policy development and rulemaking, the Commission envisioned that the staff would bring an individual case to the Commission for decision only when the staff believed that such consideration was necessary or appropriate prior to policy development. The Commission did not expect that such discretion was to be exercised without reference to existing staff guidance on the type of exceptional case that might warrant additional consideration: higher population density, proximity to man-made or natural hazard, unusual site configuration, unusual design features, etc., i.e., circumstances where the environmental risk from such an accident, if one occurred, would be substantially greater than that for an average plant.^{3/} The broad issue of consideration of Class 9 accidents at land-based reactors was not before the Commission in Offshore Power and we did not believe that the NRC's generic policy on consideration of Class 9 accidents would properly be developed ruling on a case-by-case basis. Such piecemeal consideration is

^{3/} We do not intend to influence the staff's choices of cases where it believes further consideration to be appropriate. Indeed, if the staff believed that such further action was necessary in a majority of cases, it was to seek our permission to consider such accidents in those cases. We express no opinion, in advance of receiving the staff's proposed new policy for accident consideration and other generic considerations, on whether or to what extent it will be necessary to supplement the environmental record in each case. Our decision here is only to vacate the Appeal Board's misinterpretation of Offshore Power.

not appropriate to such an important policy area, and we decline to adopt such an approach now.

Therefore, the portion of the Appeal Board's decision in ALAB-573 captioned "Consideration of 'Class 9 Accidents'" is vacated and remanded to the Board for further proceedings not inconsistent with this opinion. Because this matter has been resolved on this threshold issue, the various motions and requests contained in the pleadings filed with the Commission are moot. Finally, the staff is reminded that this generic issued is important for the Commission and that we expect to be kept informed of any individual cases in which the staff believes that further consideration of Class 9 accidents would be appropriate. We have just received the staff's proposed statement of interim policy on Class 9 accident considerations. We will consider the staff's recommendation and provide further guidance in the near future.

Commissioners Gilinsky and Bradford dissent ^{4/} from this decision, and would affirm the Appeal Board's decision on this issue in ALAB-573, 10 NRC _____ (December 7, 1979).

It is so ORDERED.

For the Commission


 SAMUEL J. CHILK
 Secretary of the Commission

Dated at Washington, DC,
 this 21st day of March, 1980.

^{4/} Section 201 of the Energy Reorganization Act, 42 U.S.C. §5841 provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Kennedy was not present at the Commission Meeting when this Order was affirmed. Had he been present he would have voted with the majority. In order that the decision of the Commission majority could be executed, Commissioner Bradford who was a member of the minority, did not participate in the vote at the meeting. Accordingly, the formal vote of the Commission was 2-1 in favor of this Order.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman
Dr. W. Reed Johnson

In the Matter of)

PUBLIC SERVICE COMPANY OF OKLAHOMA)
et al.)

(Black Fox Station, Units 1 and 2))
_____)

Docket Nos. STN 50-556
STN 50-557

MEMORANDUM AND ORDER

March 28, 1980

(ALAB-587)

Last December 7th we held in ALAB-573 that existing NRC policy precluded consideration of "Class 9 accidents" in licensing proceedings involving individual land-based nuclear power reactors. ^{1/} We further ruled that this policy had not been set aside by the Commission's recent Offshore Power decision. ^{2/} Rather, we noted in ALAB-573 that "the Commission has reserved to itself the right to decide whether

1/ Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC __, __ (December 7, 1979) (slip opinion at 29-32).

2/ Offshore Power Systems (Floating Nuclear Power Plants), CLI-79-9, 10 NRC 257 (1979).

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such matters [i.e., Class 9 accidents] are to be considered in any given case until it adopts a new general policy," which it would do following completion of a formal rulemaking proceeding on the subject to be commenced presently.^{3/} We also noted that the Commission had instructed the staff to advise it whether Class 9 events should be considered in pending cases until the new policy had been formulated following completion of the rulemaking.

In ALAB-573, we read the Commission's Offshore opinion to have called upon the staff to advise it on a case-by-case basis whether Class 9 matters were to be taken up. Consistent with that understanding, we told the staff to render its views on that subject to the Commission in this case, and gave the other parties opportunity to respond to the staff's advice (we took no position on the question ourselves).

In due course the staff followed our instructions. It and certain other parties furnished the Commission with their views on the appropriateness of taking up Class 9 accidents in this construction permit proceeding. In acting on those papers, however, the Commission has made clear that we have misconstrued the policy it expressed in Offshore Power. In

^{3/} ALAB-573, 10 NRC at ____ (slip opinion at 31).

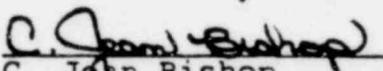
a decision rendered on March 21, 1980, the Commission vacated that portion of ALAB-573 dealing with Class 9 accidents. CLI-80-8, 11 NRC ___ (slip opinion at 4). In doing so, the Commission confirmed (as we had held in ALAB-573) that NRC policy remains not to consider those events in individual licensing proceedings involving land-based plants and reiterated that it wished to reconsider that general policy only after a rulemaking proceeding and not on a piecemeal, case-by-case basis. Id. at 3.

The Commission did allow for the possible consideration of Class 9 accidents in the interim, but only where special circumstances in particular cases warranted doing so. But the Commission stressed that it alone would make that determination and explained that its Offshore Power decision "envisioned that the staff would bring an individual case to the Commission for decision only when the staff believed that such consideration was necessary or appropriate prior to policy development." CLI-80-8, 11 NRC at ___ (slip opinion at 3) (emphasis added). We read the Commission's decision in CLI-80-8 as telling us that we were mistaken in ALAB-573 in not leaving entirely in the staff's discretion when to alert the Commission to the need to take up Class 9 events in individual cases.

Accordingly, the Licensing Board should continue hearing the radiological health and safety proceedings in this cause in a manner consistent with this opinion and the Commission's Memorandum and Order in CLI-80-8.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman
Dr. W. Reed Johnson
Thomas S. Moore

In the Matter of)
)
)
PUBLIC SERVICE ELECTRIC AND GAS) Docket No. 50-272
COMPANY)
)
(Salem Nuclear Generating Station,)
Unit 1))
)

Mr. Mark J. Wetterhahn, Washington, D.C.,
for the licensee, Public Service Electric
and Gas Company, petitioner.

Mr. William D. Paton and Mrs. Janice E. Moore ✓
for the Nuclear Regulatory Commission staff.

MEMORANDUM AND ORDER

April 1, 1980

(ALAB-588)

Before us is a motion for directed certification of a question which recently arose in this license amendment proceeding. At issue is a proposal to expand the storage capacity of the spent fuel pool for the Salem Nuclear Generating Station, Unit 1. On February 22, 1980, the

DUPLICATE DOCUMENT

Entire document previously entered
into system under:

ANO

8004100253

No. of pages: 9

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