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March 27, 1980

Elizabeth S. Bowers, Esquire
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Mr. Frederick J. Shon
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Washington, D.C. 20555

In the Matter of
Sacramento Municipal Utility District
(Rancho Seco Nuclear Generating Station)
Docket No. 50-312

Dear Mrs. Bowers and Members of the Board:

Please find enclosed, for your information, a copy of a recent Memorandum and Order by the Commission in Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), CLI-80-8 (March 21, 1980) on the consideration of "Class-9" accidents (i.e., accidents beyond the design basis) in individual cases.

Respectfully submitted,

Thomas A. Baxter

Thomas A. Baxter
Counsel for Licensee

TAB:jah
Enclosure
cc: Service List

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SACRAMENTO MUNICIPAL UTILITY DISTRICT	)	Docket No. 50-312
	)	
(Rancho Seco Nuclear Generating Station)	)	
	)	

SERVICE LIST

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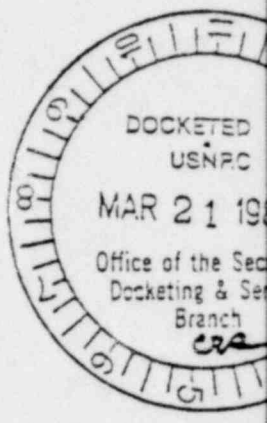
Washington, D.C. 20555

CLI-80-8

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 (1978), 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 this 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

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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.

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

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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.