



TexPIRG

Texas Public Interest Research Group

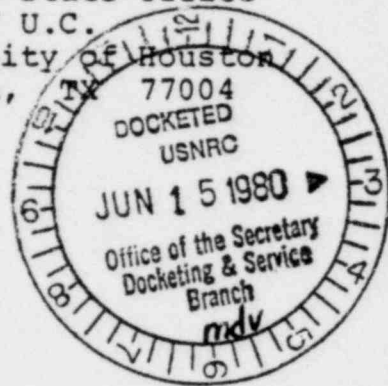
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April 30, 1980

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DOCKET NUMBER
PROPOSED RULE

PR-50,51 (2)
(45 FR 40101)



Chairman John Ahearne
Mr. Victor Gilinsky
Mr. Joseph Hendrie
Mr. Richard Kennedy
Mr. Peter Bradford
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Commission Action on SECY-80-131, "Accident Consideration Under NEPA"

Dear Sirs:

The Commission Staff has recommended that the annex to Appendix D of 10 CFR 50 be withdrawn. With that conclusion, TexPIRG concurs. The legal and policymaking basis for including analyses of Class-9 accidents in the environmental impact statement process is cogently stated by the Council on Environmental Quality in their transmittal to you (letter from Mr. Gus Speth to Mr. Ahearne, Mar. 20, 1980).

We, however, find the staff's further position that such analyses be applied only to future impact statements to be unacceptable and without merit. In most respects, TexPIRG would associate its position with that of the Attorney-General of Massachusetts as stated in the transmittal of Francis S. Wright on April 22, 1980.

At a minimum, TexPIRG believes the further analyses should be applied to those applications which must still undergo construction permit hearings. We believe it indefensible to simultaneously conclude that NEPA confers an obligation to review possible, but improbable Class 9 accidents, while also deciding that applications which have not been reviewed by the licensing board are excluded from such a review.

TexPIRG is a student-funded non-profit consumer and environmental advocacy organization. As an intervenor in docket 50-466 (HOUSTON LIGHTING & POWER COMPANY, Allens Creek Unit 1), TexPIRG has repeatedly raised contentions alleging NEPA defects due to the failure to consider the effects of various accidents classed by the staff as "incredible." Each time, of course, the licensing board denied the request.

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5/5...To EDO for Appropriate Action...Cpys to: RF,..Docket..80-0940

NEPA-mandated impact statements must contain adequate information to allow the public, Congress, and other agencies "to all know possible environmental consequences of proposed agency action." Environmental Defense Fund v. U.S. Army Corps of Engineers 325 F. Supp. 749, 759 (E.D. Ark. 1971)

Most of the applications pending in the construction permit stage are Boiling Water Reactor designs. Unlike Three Mile Island Unit 2, these plants are likely to incur atmospheric releases via a breach of the containment in the event of substantial core melting. As WASH-740 Update and other documents would indicate, such an event would entail massive environmental damage--over a scope of population and space which exceeds the LPZ or EPZ siting rules otherwise to be exercised in these construction permit hearings.

Rational and consistent decision-making would ensure that the site analyses to be considered at these hearings, as required by NEPA, should balance all of the possible impacts of all accidents prior to selecting an obviously superior site.

As the Appeal Board stated:

"Perhaps the most important environmentally-related task the staff has under NEPA is to determine whether an application should be turned down because there is some other site at which the plant ought to be located. No other environmental question is both so significant in terms of the ultimate outcome and so dependent upon facts particular to the application." Florida Power & Light Company (St. Lucie Unit 2) ALAB-435, 6 NRC 541, 543, 544 (1977).

With the most crucial issues of the construction permit stage tied to the severity of accidents, TexPIRG sees no sense in holding back on the implementation of this policy for proceedings where the construction permit issues such as site suitability are still active.

TexPIRG particularly objects to this staff recommendation as it relates to the proposed Allens Creek Unit 1. In the instance of Allens Creek, the staff is preparing a detailed alternative site study and supplement to the FES. Yet the staff's policy would apparently preclude the consideration of what most of the public considers to be the most important issues during that process, which already includes publication of supplementary documents. */

*/ There is some question in our minds as to where Allens Creek lies in the staff's recommendation. A Final EIS has been submitted, as has a Final Supplement to the FES, with another final supplement to follow, apparently. There is obviously a question of what is meant by "final."

In this instance, where the staff is already engaged in preparation of supplemental environmental analysis, there is absolutely no excuse for stopping short in reviewing Class 9 accidents. To proceed on the present course of the staff is to admit that the staff analysis is nothing more than a continuation of the "boilerplate" work referred to by the Council on Environmental Quality.

As the construction permit hearings begin without the review of these serious accidents, the citizens of Houston or Portland or Massachusetts might rightfully ask "why do we merit less serious safety consideration than the residents surrounding newer plants?"

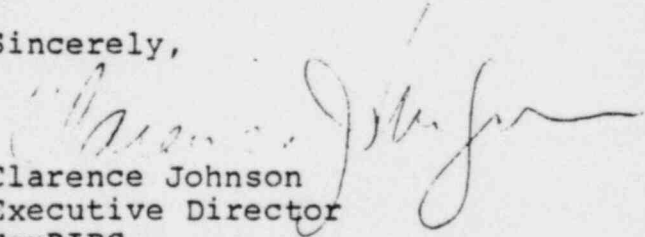
Finally, not only do we ask that the NRC require a review of Class 9 accidents in these pending applications, but we also urge you to require the submission of supplemental EIS documentation--rather than merely leaving it to the Licensing Board to correct the EIS. The Appeal Board noted in Allied-General Nuclear Services (Barnwell Facility) ALAB-296, 2 NRC 671 (1975) that truly substantial modifications to the FES requires recirculation of the document. Certainly, there can be no question that the inclusion of these severe accident possibilities is not a trivial or minor modification to the environmental review.

By submitting supplemental EIS documentation, the public and intervenors can more ably participate in the hearing process on this issue through clearer definition of the staff position and facts.

In summary, TexPIRG believes that a Nuclear Regulatory Commission which is truly committed to improving its scrutiny of applications--as stated on numerous occasions since TMI-2--will begin applying the new staff recommendations on Class 9 accidents, when it can, where it can, which means pending construction permit applications.

Thank you for your consideration.

Sincerely,



Clarence Johnson
Executive Director
TexPIRG