



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. MC CORMACK STATE OFFICE BUILDING  
ONE ASHBURTON PLACE, BOSTON 02108

FRANCIS X. BELLOTTI  
ATTORNEY GENERAL



DOCKET NUMBER  
PROPOSED RULE PR-50,51 ①  
(45 FR 40101)

April 22, 1980

Chairman John Ahearne  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Richard T. Kennedy  
U. S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Commissioner Victor Gilinsky  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Peter A. Bradford  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Commissioner Joseph M. Hendrie  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

Gentlemen:

In SECY-80-131, "Accident Considerations Under NEPA", the NRC Staff has recommended that the proposed Annex to Appendix D of 10 CFR Part 50 be withdrawn. In the future, the Staff has concluded, NEPA environmental reviews should include analysis of the consequences of all possible radiological accidents, including the so-called Class 9 events that were heretofore deemed to be so improbable as to not warrant consideration.

The Commonwealth of Massachusetts, an intervenor in the ongoing Pilgrim 2 construction permit proceedings, took the position two years ago that the Pilgrim 2 FES was defective in its failure to address the issue of Class 9 accident

L-4-1, Pt. 50

consequences; we are therefore gratified to learn that after nine years the "proposed" Annex has been laid to rest, and that the impact of Class 9 accidents has finally been recognized as a necessary object of concern under NEPA, no matter what the likelihood of their occurrence. We are astonished and greatly troubled, however, by the Staff's further position that this extremely significant shift in regulatory policy need apply only to those NEPA reviews for which final environmental impact statements have not yet been issued. According to the Staff, all other reactors - those in operation, those under construction and those for which the Staff's NEPA review has been completed but which are still in construction permit hearings before licensing boards - should continue to be treated under the assumptions contained in the now discredited proposed Annex.

Whatever decision this Commission makes with respect to those plants currently in operation or even those now under construction, we urge at the very least that the suggested new policy set forth in SECY-80-131 be extended to include those six proposed plants - Pilgrim 2, Black Fox, Skagit, Perkins, Allen's Creek and Pebble Springs - for which impact statements have been prepared by the Staff but for which construction permits have not yet been issued. In these cases, at least, no investment in construction has been made that might arguably tip the balance toward declining to reopen the record. Indeed,

the record in each case is still open, and the licensing board in each has yet to strike the final cost-benefit balance required by NEPA.

It is unnecessary to recount once again the troubled history of the proposed Annex; suffice to say that its cursory dismissal of Class 9 accidents came under intense criticism from the very start, and indeed was ignored by the Staff wherever it felt that the consequences of a Class 9 accident at a particular facility, however improbable, were potentially too catastrophic to be ignored. What is significant is that in the wake of TMI the Staff is unmistakably turning from what the Council on Environmental Quality has recently characterized as "boilerplate" consideration of accident consequences to a hard look at all possibilities, including core melts and containment failures. NEPA, of course, requires no less; as this Commission observed in the very case that triggered the Staff's reconsideration of its treatment of Class 9 accidents,

NEPA is based on the philosophy that federal government should consider all available information about the reasonably likely environmental consequences of its proposed actions and should take appropriate measures to mitigate or eliminate the adverse impacts of those actions when practical. Offshore Power Systems, Slip Opinion at 7.

What is surprising is that on the heels of its conclusion that the consequences of Class 9 accidents must be considered as part of the NEPA review process, the Staff also concluded that such studies need not be undertaken for those six plants —for which impact statements have been prepared but for which

construction permits have not yet been issued. Legal considerations aside, it is hard to believe that with public debate over nuclear energy at its current level of intensity the Staff is nevertheless asking this Commission to announce that on the one hand its now repudiated methodology with respect to the most catastrophic of accidents must be dramatically upgraded but that on the other that very same methodology will continue to be relied on, even in those cases where the NEPA process has not been concluded. The public at large will surely find such logic bizarre, and for those people living in close proximity to the six sites in question it can only heighten distrust in the licensing process and guarantee increased resistance to the proposed plants.

Turning to the legality of the Staff's proposal, it is indisputable that the NEPA review process does not come to a halt with issuance of the Staff's FES. However significant that document may be in organizing the technical data and setting forth the Staff's conclusions, under the Commission's own regulations and decisions it is the licensing board itself that must strike the ultimate cost-benefit balance. See 10 CFR 51.52(b)(3), (c)(1-3). In each of the six cases referred to above, this final balancing has not yet been undertaken, and cannot be allowed to happen in the absence of data the Staff has now concluded is necessary in NEPA reviews. As the court noted in Calvert Cliffs Coordinating Committee v. A.E.C., 449 F2d 1109, 1118 (1971):



. . . NEPA requires that agencies consider the environmental impact of their actions "to the fullest extent possible." The Act is addressed to agencies as a whole, not only to their professional staffs. Compliance to the "fullest" possible extent would seem to demand that environmental issues be considered at every important stage in the decision making process concerning a particular action -- at every stage where an overall balancing of environmental and nonenvironmental factors is appropriate and where alterations might be made in the proposed action to minimize environmental costs.

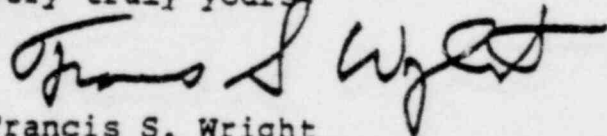
The question before this Commission, it must be emphasized, is not whether the records in the six proceedings should be reopened (although it might be noted that if such were the issue, the intervenors would undoubtedly have little trouble satisfying the standard set forth in Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-167, 6 AFC 1151 (1973), that the matter sought raised through reopening of the record be of "major significance to public safety.") To the contrary, the record in each of the six cases is already open, and this Commission need only decide whether those studies the Staff now concludes are necessary under NEPA can be neglected for these cases, especially in light of NEPA's mandate that environmental impacts be considered "to the fullest extent possible" and the NRC's own regulations, which place the ultimate responsibility for striking the cost-benefit balance on the licensing boards. In reaching this decision, the Commission might ask itself whether there is any appreciable difference between the attitude shown by the Staff in declining to consider Class 9 accident consequences at the

six plants in question and the attitude underlying the proposed Annex of nine years ago. In both instances the position taken by the Staff is arbitrary, technically unsupported and laden with potential for unending controversy.

Finally, it should be noted that a decision by the Commission to require consideration of Class 9 accident consequences for the six reactors in question will not cause undue delay in the licensing process. The Staff has concluded that only an additional "10 to 15 pages of discussion" would be required to support a project team conclusion as to "whether or not it considers that adequate steps have been taken to minimize the impact (risk) to the environment." SECY-80-131, Enclosure 3, p. 2. Indeed, the Staff estimates that only one to two man-months of Staff effort would be necessary for each reactor after the first such evaluation. Id. Under such circumstances, the Staff's proposal to ignore Class 9 accidents at what will in all likelihood become the first six reactors to begin construction after Three Mile Island becomes all the more indefensible.

Thank you for your consideration.

Very truly yours



Francis S. Wright  
Assistant Attorney General  
Environmental Protection Division

FSW:ec