

August 13, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOUSTON LIGHTING & POWER COMPANY

(Allens Creek Nuclear Generating  
Station, Unit 1)

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Docket No. 50-466

NRC STAFF'S RESPONSE TO TEXPIRG'S MOTION FOR DIRECTIVE  
THAT A SUPPLEMENT TO THE ALLENS CREEK EIS  
BE PREPARED; RE: CLASS 9 ACCIDENTS

The NRC Staff opposes the July 24, 1980 motion filed by TEXPIRG in the captioned proceeding. In that motion, TEXPIRG requested, on the basis of the new Statement of Interim Policy regarding accident considerations,<sup>1/</sup> that the Board direct the Staff to prepare and circulate a supplement to its Final Environmental Statement to address Class 9 accidents. TEXPIRG argues that both the terms of the policy statement and NEPA require the consideration of Class 9 events.

I.

INTRODUCTION

From 1971 until the issuance of the above-mentioned Statement of Interim Policy, the Commission's policy with regard to accident considerations, and

<sup>1/</sup>45 Fed. Reg. 40101 (June 13, 1980).

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Class 9 accidents in particular, was contained in the Proposed Annex A to Appendix D to 10 C.F.R. Part 50 (Annex). Detailed discussion of Class 9 accidents was never required as a matter of course pursuant to the Annex because, at least for land-based plants, the Commission determined that the environmental risk of such accidents was extremely low. The Annex reflected the Commission's view that although the consequences of a Class 9 event could be severe, the probability of such an occurrence was made extremely small by (1) the defense-in-depth concept, (2) the Commission's quality control system, (3) its inspection program, and (4) its general requirement of design conservatism. See Offshore Power Systems (Floating Nuclear Power Plants) CLI-79-9, 10 NRC 257, 258-259 (1979). In its OPS decision, the Commission announced its intention to complete the rulemaking begun by the Annex, but requested that in the interim, the Staff bring to its attention any cases involving land-based reactors in which the Staff believed more detailed consideration of Class 9 accidents was necessary. The Commission later gave further guidance with regard to the cases which might necessitate detailed Class 9 analysis in the Black Fox proceeding, in which it directed that it be informed of "exceptional cases 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." Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-8, 11 NRC 433, 434-435 (1980) (emphasis in original).

Pursuant to the guidance of the Commission in the OPS and Black Fox decisions, the Staff considered whether Allens Creek presented such "exceptional" circumstances that it should be brought to the attention of the Commission as deserving of more detailed Class 9 consideration. No such exceptional circumstances have been identified by the Staff.<sup>2/</sup>

The June 13 Statement of Interim Policy withdrew the Annex as guidance regarding accident considerations; at the same time, the Commission directed that a discussion of Class 9 accidents be prepared "for any proceeding at a licensing stage where a Final Environmental Impact Statement has not yet been issued."<sup>3/</sup> The Commission also emphasized that its policy change was

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<sup>2/</sup> See letter from Harold R. Denton to J. Bishop dated August 6, 1980; "NRC Staff's Response to New Contentions 48 and 49 and an Amendment to Admitted Contention 17 Submitted by Intervenor John F. Doherty," dated April 28, 1980.

<sup>3/</sup> 45 Fed. Reg. 40103. In this connection, the Staff notes TEXPARG's argument, in its motion, that since the FES is not really finalized until the initial decision is rendered, the Commission must have intended that all proceedings which had not reached the initial decision stage must be expanded to consider Class 9 accidents. We will not respond in detail to that argument; suffice it to say that such a construction would violate the Commission's explicit caution against expanding an ongoing proceeding. Further, had the Commission intended a Class 9 analysis to be prepared for all ongoing proceedings, it would have said so. The only reasonable reading of the policy statement is that Class 9 analyses need be prepared only when the Staff has not published its conclusions in the FES.

"not to be construed as any lack of confidence"<sup>4/</sup> in conclusions regarding accident risks reached in prior environmental statements"<sup>5/</sup> nor, absent a showing of similar special circumstances, as a basis for opening, re-opening or expanding any previous or ongoing proceeding.<sup>6/</sup> In addition, the Staff was directed to "take steps to identify additional cases that might warrant early consideration of either additional features or other actions which would prevent or mitigate the consequences of serious accidents."<sup>7/</sup>

TEXPIRG argues in its motion that because the Staff is preparing a supplement to the Final Environmental Statement which addresses alternative sites and the environmental impacts associated with barging the reactor vessel up the San Bernard River, a Final Environmental Statement has not been issued in this proceeding and a Class 9 analysis is required pursuant to the Commission's policy statement. Although TEXPIRG also argues that, in general, Class 9 accidents are required to be discussed by NEPA, that question has been resolved, since the Commission has obviously implicitly determined that its policy statement comports with NEPA, and that the positions taken therein are consistent with that statute.

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<sup>4/</sup> Id.

<sup>5/</sup> Id.

<sup>6/</sup> Id.

<sup>7/</sup> Id.

II.

DISCUSSION

The Staff's Final Environmental Statement for the Allens Creek facility was issued in November, 1974; that document contained (Chapter 7) a discussion of the environmental impacts of a spectrum of accidents (excluding Class 9 events) and a tabulation of the consequences for the spectrum of accidents considered. After this proceeding was reactivated by the Applicant, the Staff issued, in August, 1978, a supplement to the FES, in which "[t]he probable environmental impacts and adverse effects of constructing a two-unit nuclear station at the Allens Creek site, as described in the FES, are reconsidered because of project changes resulting from the deferral and subsequent rescheduling of Unit 1 and the cancellation of Unit 2."<sup>8/</sup> Chapter S.7 of the supplement contains an updated tabulation of the consequences of a spectrum of accidents (again, excluding Class 9 events).

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<sup>8/</sup> FES Supplement (NUREG-0470), p. s.iii.

Thus, the Staff has no ongoing review of accidents in this proceeding, having reached its conclusions in the supplement to the FES issued two years ago. Of course, as explained supra, the Staff has considered, pursuant to the OPS and Black Fox decisions, whether there are exceptional circumstances related to the Allens Creek application which would render detailed consideration of Class 9 accidents necessary; it has not identified any such circumstances. Thus, the Staff's analysis of accidents for this application is complete in the absence of some future development which would cause it to reconsider conclusions already reached in the FES and its supplement.

The Staff has prepared a second supplement to the FES which contains additional discussion of alternative sites and environmental impacts of transporting the reactor vessel by barge to the site. The publication of that supplement is imminent. The supplement was not prepared for the purpose of reassessing conclusions regarding accident analyses contained in the FES or the first supplement. Nor was it intended to contain any discussion of accidents.

TEXPIRG argues that the intended publication of this supplement renders the FES incomplete. It therefore argues that because the Commission directed that Class 9 reviews must be done for all proceedings in which an FES has not issued, and since a complete FES has technically not been issued for Allens Creek, this application falls within the purview of that category of applications for which such an analysis must be prepared.

There are two reasons why TEXPIRG's position should not be upheld by this Board. First, the Staff has published an FES for this application and by the terms of the policy statement, no Class 9 analysis is required. The preparation of a supplement to that document does not signify its inadequacy or incompleteness for NEPA purposes. The purpose of this upcoming supplement is to amplify the discussion regarding alternative sites already contained in the FES and the first supplement thereto. That analysis will provide further support for the conclusions reached in the earlier Staff documents. The preparation and circulation of the upcoming supplement is not required as a legal matter. The courts have uniformly held that where additional material was prepared to merely clarify or amplify material already discussed in the original statement, no circulation of a supplement is required. See, e.g., Environmental Defense Fund, Inc. v. Froehlke, 368 F.Supp. 231, 237 (W.D. Mo. 1973), aff'd sub. nom., Environmental Defense Fund, Inc. v. Callaway, 497 F.2d 1340 (8th Cir. 1974). Similarly, where supplemental material is prepared to support previous conclusions reached in an EIS, no circulation of the supplementary material is required. See, e.g., Upper W. Fork Watershed v. Corp. of Engineers, 414 F.Supp. 908 (N.D.W. Va. 1976).

Further, since NEPA does not require hearings to consider the environmental consequences of a proposed action, Ford v. Train, 364 F.Supp. 227, 235 (W.D. Wis. 1973), and since this agency subjects the FES to testing in an adjudicatory

forum, NRC Boards have held that significant supplementation of an FES through testimony is both permissible and proper without the need to circulate a formal supplement thereto; the FES is considered no less complete by virtue of its supplementation. See, e.g., Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-264, 1 NRC 347, 372 (1975); Allied General Nuclear Services (Barnwell Nuclear Fuel Plant Separations Facility), ALAB-296, 2 NRC 671, 680 (1975).

The import of the above discussion is clear: there is no legal obligation pursuant to which the Staff is required to circulate the upcoming supplement to the FES. Frankly, the only reason the Staff chose to present the additional material in a supplement to the FES was because there was time to do so and still not impinge on the expeditious consideration of alternative sites at the evidentiary hearing. We could have presented the material to be contained in the supplement in testimony at the hearing in response to the various contentions related to this issue; we believed, however, that it would be more appropriate to provide the maximum time possible for the Board and parties to consider and comment upon the additional analysis.

Thus, the Staff believes that its FES, together with the supplement published in 1978 after reactivation of this proceeding, represents an entirely adequate and complete document for both NEPA purposes and for purposes of the Commission's statement of interim policy. Insofar as the NEPA review of accident consequences is concerned, there is no question that the document is and has been complete for at least two years.

Secondly, the Staff believes that TEXPIRG's interpretation of the policy statement is unreasonable when read in context with the balance of the statement. As we have already noted, the Commission expressed its intention that, absent special circumstances, ongoing proceedings were not to be expanded. Secondly, only Final Environmental Statements published subsequent to June 13, 1980, and Environmental Reports submitted after July 1, 1980, were required to contain a discussion of Class 9 accidents.<sup>9/</sup> Further, as noted, supra, the Commission expressed its intent that the Staff identify those cases for which an FES was published in which exceptional circumstances might warrant a detailed Class 9 analysis.<sup>10/</sup> Of course, if such a case were identified, the mechanism by which the Class 9 analysis would be made available would most probably be a supplement to the FES. However, there is no indication in the policy statement that supplements prepared for purposes other than to re-assess accident analysis conclusions must contain Class 9 discussions.

Thus, when read against the background of the language of the policy statement as a whole, the question whether there is technically a complete FES misses the point. The policy statement can only be reasonably interpreted

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<sup>9/</sup> 45 Fed. Reg. at 40103.

<sup>10/</sup> Id.

as a desire by the Commission to require Class 9 analyses in circumstances where no accident analysis has yet been published or finalized by the Staff in its FES, or where the Staff henceforth determines that additional treatment of accidents need be undertaken in a supplement to an already published FES.

Since (1) the Staff has no ongoing accident review for this application, (2) the FES supplement to be published shortly by the Staff will deal solely with alternative site and reactor vessel transport issues, (3) the supplement was not prepared for the purpose of re-assessing conclusions already reached regarding accidents, (4) the publication of the supplement was not legally required as a NEPA matter, and (5) the preparation of a detailed analysis of Class 9 accidents would constitute a substantial expansion of an ongoing proceeding, the Staff does not believe that the Statement of Interim Policy requires a detailed consideration of Class 9 accidents in this proceeding.

III.

CONCLUSION

For the reasons discussed above, the Staff urges the Board to deny TEXPIRG's July 24, 1980 motion.

Respectfully submitted,

*Richard J. Black* for

Stephen M. Sohinki  
Counsel for NRC Staff

Dated at Bethesda, Maryland,  
this 13th day of August, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO TEXPIRG'S MOTION FOR DIRECTIVE THAT A SUPPLEMENT TO THE ALLENS CREEK EIS BE PREPARED; RE: CLASS 9 ACCIDENTS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk by deposit in the Nuclear Regulatory Commission internal mail system, this 13th day of August, 1980:

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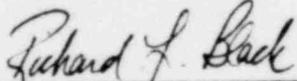
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