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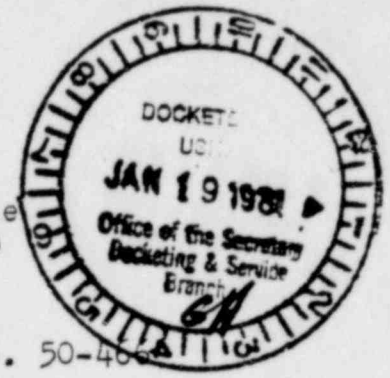
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE
ATOMIC SAFETY AND LICENSING BOARD and the
ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of X
Houston Lighting and Power Company X Docket No. 50-466
(Allens Creek, Unit 1) X

TEX PIRG'S MOTION AND REQUEST TO:
A. LICENSING BOARD FOR INTERLOCUTORY APPEAL PER 2.730(f) and CERTIFICATION OF QUESTION PER 2.718(i)
AND
B. APPEAL BOARD FOR DIRECTED CERTIFICATION PER SEABROOK DECISION, ALAB-271; 1 NRC 478,482-83

I. BACKGROUND

On March 20,1080, the Council on Environmental Quality informed the full NRC Commission that NEPA required that the full range of potential accidents including "class 9" meltdowns be considered in their impact statements and hearings. Shorthy after this the utilities met with the NRC staff where they urged that the plants that already were involved in licensing not have to prepare such impact statements. It was admitted that such class 9 considerations could be prepared in a couple of months. On June 13, 1980, the full Commission withdrew the proposed Annex to Appendix D of 10 CFR Part 50, and ordered that site-specific impacts of class 9 accidents be considered. 45 FR 40103. The NRC staff has prepared such statements for some plants such as the Virgil C. Summer plant in South Carolina. NUREG-0534 on Nov. 1980. The Staff refuses to give Allens Creek the same consideration. They claim that it is not an ongoing proceeding because a Environmental Statement has already been published. They fail to consider Supplements to correct errors in the FES as part of the FES.On December 1980 a supplement was published that could have included the Class 9 effects in its alternative site analysis (where it logically goes).

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On July 21,1980, Tex PIRG made a detailed motion that class 9 accidents be considered for Allens Creek. On August 7, the Applicant opposed, and on August 13, the Staff opposed. On September 15,1980, the Licensing Board denied the Tex PIRG Motion.These documents are part of the record in this case so I will not repeat their arguments.

II. QUESTIONS

1. Does NEPA require that Class 9 accidents be considered for all NRC Construction permits since NEPA became law?

2. Does the NRC Interim Policy announced on June 13,1980 require NRC Staff to consider Class 9 accidents for Allens Creek because its NEPA review is ongoing, ie no construction permit has been issued, no hearing has started on NEPA issues, no construction has been done, no decision on siting has been made on alternative siting, no final supplement to consider alternative siting has been completed, and when the motion was made no supplement on alternative sites had been made?

3. Do the circumstances of Allens Creek require the Staff to identify it as an additional case where early consideration of either additional features or other actions which would prevent or mitigate the consequences of serious accidents must be considered in order to conform to the Commission Interim Policy?

III. BRIEF DISCUSSION

Directed Certification and Interlocutory Appeal is allowed here because of the exceptional circumstances, public interest, and effects of delay if this issue is not considered at the Construction permit stage. A delay until the operating license stage will mean that either the time and cost of construction will have been wasted or that an impossible and unfair burden will have been placed on the Intervenor

to show that an alternative site would have mitigated the effects of a class 9 accident but the fact that 2 Billion dollars have been spent building it will not allow the correct site to be used. It is hard to imagine more exceptional circumstances where the public interest and burden on the intervenors could be so easily removed as exist in this case at this time. The staff could prepare a consideration of Class 9 for Allens Creek before the NEPA hearing is even over. In fact they could present it as part of their planned alternative site evaluation. The Staff Attorney indicated that a format and computer program were already developed, as is obvious by looking at the Class 9 analysis for the Summer plant. There is no excuse for not doing it now. The only reason for refusing to do it now is that clearly it will show that there is some possibility that over 100,000 people could become acute fatilities in the Houston Area if a accident occured now. Since Houston is one of the fastest growing areas in the country the results would be much worse if the accident took place near the end of the operating life of the plant, appx 2030.

Also this case is one where the utility applicant has a site already under construction where this plant could be placed with minimum environmental harm and reduce the population at risk within 50 miles of the plant by a factor of at least four times.

The Supreme Court has held that CEQ's interpretation of NEPA should be followed. Andrus v. Sierra Club, 9 ELR 20,390. CEQ has said that NRC should consider class 9 accidents. The NRC has said that they must be considered. The Applicant has said it will be considered after the plant has been built. Little cost and no delay would be involved in considering it now. In summary it is very unwise (stupid) to not consider class 9 now instead of in a few years when some Appeal Court requires it.

Respectfully submitted,

James M. Scott Jr.

James M. Scott, Jr.

CERTIFICATE OF SERVICE: all required parties on Jan 18, 1982.