

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

Sheldon J. Wolfe, Esquire, Chairman
Dr. E. Leonard Chaatum, Member
Gustave A. Linenberger, Jr., Member



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SEP 16 1980

In the Matter of)

HOUSTON LIGHTING AND POWER COMPANY)

(Allens Creek Nuclear Generating
Station, Unit 1))

Docket No. 50-466 CP

Memorandum and Order
September 15, 1980

On July 24, 1980, Intervenor TexPirg served a Motion For Directive That A Supplement To The Allens Creek EIS Be Prepared Re: Class 9 Accidents. On August 7, Applicant filed an opposing response, which it amended on September 10, 1980. On August 13, 1980, the NRC Staff filed an opposing response.

Memorandum

TexPirg requests that the Board direct the NRC Staff to prepare immediately a supplement to the Final Environmental Statement (FES) for Allens Creek Nuclear Generating Station (ACNGS) which adequately and thoroughly addresses the impact of worst-case accidents, and other accidents referred to in the FES for ACNGS as "Class 9". In support of its Motion, TexPirg relies in part upon the Commission's Statement of Interim Policy regarding Nuclear Power Plant Accident Considerations Under The National Environmental Policy Act of 1969, which had been published on June 13, 1980 (45 Fed. Reg. 40101, 40103).^{1/}

1/ Pertinent paragraphs cited by the movant read as follows:

It is the intent of the Commission in issuing this Statement of Interim Policy that the staff will initiate treatments of accident considerations, in accordance with the foregoing guidance, in its ongoing NEPA reviews, i.e.,

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In substance, TexPirg argues first that the Staff's NEPA review is ongoing because it is preparing an alternative site analysis which will be the subject of another supplement to the FES, and that, since such an analysis would be closely related to the impacts of site-related radiological accidents, pursuant to the Statement of Interim Policy, the Staff should be directed to discuss accident sequences that can lead to a spectrum of releases and to include therein sequences that can result in inadequate cooling of reactor fuel and melting of the reactor core. The Staff affirms that indeed it is preparing a supplement to the FES which will address alternative sites as well as the environmental impacts associated with barging the reactor vessel up the San Bernard River. However, Staff asserts that it has no ongoing review of accidents

Footnote 1 (Continued):

for any proceeding at a licensing stage where a Final Environmental Impact Statement has not yet been issued. These new treatments, which will take into account significant site-and plant-specific features, will result in more detail discussions of accident risks than in previous environmental statements, particularly for those related to conventional light water plants at land-based sites. It is expected that these revised treatments will lead to conclusions regarding the environmental risks of accidents similar to those that would be reached by a continuation of current practices, particularly for cases involving special circumstances where Class 9 risks have been considered by the staff, as described above. Thus, this change in policy is not to be construed as any lack of confidence in conclusions regarding the environmental risks of accidents expressed in any previously issued Statements, nor, absent a showing of similar special circumstances, as a basis for opening, re-opening, or expanding any previous or ongoing proceeding. (Footnote deleted)

However, it is also the intent of the Commission that the staff 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. Cases for such consideration are those for which a Final Environmental Statement has already been issued at the Construction Permit stage but for which the Operating License review stage has not yet been reached. In carrying out this directive, the staff should consider relevant site features, including population density, associated with accident risk in comparison to such features at presently operating plants. Staff should also consider the likelihood that substantive changes in plant design features which may compensate further for adverse site features may be more easily incorporated in plants when construction has not yet progressed very far.

in this case. The Staff states that in fact its analysis is complete inasmuch as, pursuant to the Commission's directives in the OPS and the Black Fox decisions,^{2/} it considered whether the Allens Creek plant or site presented such "exceptional" circumstances that they should be brought to the attention of the Commission as warranting a more extensive and detailed consideration of Class 9 events;^{3/} but that it did not identify any such "exceptional circumstances".^{4/} We must accept the Staff's representation to us that it has no ongoing review of accidents in this proceeding, and the mere fact that the Staff is currently analyzing alternative candidate sites other than the Allens Creek site does not discredit the representation that its accident analysis of the Allens Creek site is complete. The OPS and Black Fox decisions, as well as the Statement of Interim Policy, reflect the Commission's trust in the expertise and competency of its Staff, and we specifically note the Staff's recognition of its continuing obligation to reconsider its conclusion in the event of some future development (Staff's Response, p. 6).

2/ Offshore Power Systems (Floating Nuclear Power Plants) CLI-79-9, 10 NRC 257 (1979); Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), CLI-80-8, 11 NRC 433 (1980).

3/ Because of the proposed Annex to Appendix D to 10 C.F.R. Part 50, 36 Fed. Reg. 22851 (1971), the Staff had not accorded an extensive and detailed consideration to Class 9 events in Chapter 7 of the FES issued in November 1974. Therein, the Staff concluded (a) that while the consequences of Class 9 accidents could be severe, the probability of their occurrence was judged so small that their environmental risk was extremely low, and (b) that defense in depth (multiple physical barriers), quality assurance for design, manufacture and operation, continued surveillance and testing and conservative design are all applied to provide and maintain a high degree of assurance that potential accidents in this class are, and will remain, sufficiently small in probability that the environmental risk is extremely low. The supplement to the FES, issued in August 1978, did not alter those conclusions.

4/ See "NRC Staff Response To New Contentions 48 and 49 And An Amendment To Admitted Contention 17 Submitted By Intervenor John Doherty" served on April 28, 1980; see also letter dated August 6, 1980, from Harold R. Denton to Mr. J. M. Bishop.

Next, citing Citizens for Safe Power v. NRC, 524 F2d 1291 (1975), and 10 C.F.R. 51.52(b)(3), TexPirg argues that, even assuming the Final Environmental Statement has been issued, this Board may hear evidence and include in its initial decision findings and conclusions upon Class 9 accidents which differ from those in the FES. It also urges that, at this early stage of the construction permit review, it would be both timely and practical to consider the impacts of Class 9 accidents. However, the Commission made it abundantly clear in the Black Fox decision and in its Statement of Interim Policy that the Staff alone is to bring to the Commission's attention those cases that might warrant consideration of the environmental impact of the more severe kinds of very low probability accidents that are physically possible, and that the decision to proceed with this consideration rests with the Commission and not with its adjudicatory tribunals.

Finally, TexPirg asserts that the FES is defective, violates NEPA and the regulations of and the positions taken by the Council on Environmental Quality, and controvenes numerous Court decisions. The short answer is that we are bound by the Commission's orders. We are familiar with no legal system - judicial or administrative - which allows a lower tribunal to disregard the directives of a superior one. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), ALAB-303, 2 NRC 858, 870 (1975).

Order

TexPirg's instant Motion is denied.

Dr. Cheatum concurs but was unavailable to sign this issuance.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

G. A. Linenberger
Gustave A. Linenberger, Jr.,
Member

Sheldon J. Wolfe
Sheldon J. Wolfe, Esquire
Chairman

Dated at Bethesda, Maryland
this 15th day of September, 1980.