Sepember 3, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

HOUSTON LIGHTING AND POWER (Allens Creek Nuclear Generating Station, Unit 1) ----Docket No. 50-466 CP

INTERVENOR DOHERTY'S BRIEF TO THE LICENSING BOARD WITH REGARD TO ALAB-640

At Tr. 14,424, Judge Linenberger, of the ASLB for this proceeding requested parties to present positions with regard to the findings of the Appeal Board's decision, ALAB-640, (Philadelphia Electric Co., et al, Peach Bottom Atomic Power Station, Units 2 & 3, et al., May 13, 1981). Subsequent discussions in the record placed a written brief as the appropriate response form and a submittal date of Thursday, September 3, 1981. Below is Intervenor's position.

I. THAT THE RADON EMISSIONS DETERMINED BY ALAB-640, CONSTITUTE SIGNIFICANT ADDITIONAL ENVIRONMENTAL IMPACT FROM THE ALLENS CREEK NUCLEAR GENERATING STATION.

ALAB-640 has concluded that Radon 222 emissions attributable to the operation of a 1,000 MW(e) nuclear plant's fuel cycle at any time during or after the plant's useful life would be 7,000 Ci/year (CCH. Slip op., Table 4, P. 30,585.34). Thus, for the ACNGS the emissions are 8,050 Ci/yr.

However,ALAB-640 leaves untouched the issue of health effects of Radon 222 regardless of quantity. The decision appears to state that just as the Intervenors in the Peach Bottom decision appealed in ALAB-640 could not be bound by the de minimus decision of the Perkins Board, the Allens Creek Intervenors cannot either. (CCH. Slip op., at 30,585.35)

In other words, Table"S-3" as found in the Allens Creek Final Environmental Statement Supplement #1, (Pg.S. 5-33) may be filled in and arguments concerning that quantity laid to rest, but the health effects are at issue.

Under the National Environmental Policy Act (NEPA) of 1969, (83 Stat.852) agencies of the federal government are required to present detailed environmental statements on major federal actions significantly affecting the quality of the human environment. Major federal actions requiring such statements have included such modest activities as a loan by the Federal Housing Administration for construction of a golf course and park, (Texas Commission on Natural Resources vs. United States, (W.D. Texas) 2 ELR 20,574, vacated as moot, 430 F2d 1315, (5th Cir. 1970) and construction of an incinerator at the Walter Reed Medical Center Annex, (Montgomery County v. Richardson, 340 F2d 591, (D.C.D.C., 1972)

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ALAB-640 has indicated the impact from the uranium fuel cycle on the environment is 6,925 Ci/yr more than 75 Ci/yr as stated in the Allens Creek Final Environmental Statement (Pg. 5-20, Table 50-15) of November 1974. Therefore, because the increase in radioactive emissions from Radon 222 is greater than originally discerned, and the Allens Creek plant is a significant federal action on the environment, a draft environmental impact statement supplement devoted to the effects of Radon 222 on human health is the proper requirement of the Board in this proceeding at this time. This is not to say that any small change in a significant project requires such a statement, but rather that the change in Radon 222 emissions, were it the only environmental impact, would be sufficient alone for such a requirement, being greater than the impacts in Texas Commission on Natural Resources (supra) and Montgomery County (supra).

II. WHERE ENVIRONMENTAL IMPACTS ARE SIGNIFICANT AS HERE, THE COMMISSION'S RULES OF PRACTICE REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT SUPPLEMENT.

In 10 CFR 51.23, that rule specifically states (51.23(a),)"The draft environmental impact statement will include the matters specified in Sec. 51.20(a), (e), and (g) and Sec. 51.21 as appropriate." This is important because Sec. 51.20(e) sets the Table S-3 values to be used, and one of these is the Fuel Cycle Radon 222 emissions. And, Sec. 51.23(a) presupposes through Sec. 51.23(b) perusal by federal, state, and local agencies as well as interested persons of the draft environmental statement. The major intent of Sec. 51.23(b) is to bring agency expertise to bear on the contents of the statement, even as in this case where the statement is an aspect of a project instead of an entire project.

Finally, 10 CFR 51.23(a) also presupposes its own Sec. 51.23(c) which requires a cost-benefit analysis. Here, where an arguably strong impact has been added (namely 6,925 Ci/yr of Radon 222 as a gas to the environment, normalized by this Intervenor to 8,050 Ci/yr) the cost-benfit analysis of the project must be updated under Sec. 51.23(c) of 10 CFR.

On publicaton of the Draft Supplement, the Board in this proceeding could probably request Intervenors to file contententions on the Staff's conclusions on the Applicant's submittals with regard to the health effects of fuel cycle emission of Radon 222 to the environment, through a Federal Register notice. Also, it would appear the Board would be required to entertain contentions from the public responding to that Federal Register notice on the environmental impacts of the Fuel Cycle Radon 222 as they related to health effects.

III. CONCLUSION

Despite obvious inconvenience to Applicant and Staff, this Intervenor believes its obligation here has been to inform the Board as to what he believes ALAB-640 requires at this moment of those seeking construction permits for energy production facilities, and has so stated.

Respectfully

John F. Doherty

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CERTIFICATE OF SERVICE

Copies of "INTERVENOR DOHERTY'S BRIEF TO THE LICENSING BOARD WITH REGARD TO ALAB-640" were served on the parties below this 3rd of September, 1981, via First Class U. S. Postal Service, from Houston, Texas.

Sheldon J. Wolfe, Esq., Gustave A. Linenberger, Dr. E. Leonard Cheatum, Administrative Judges.
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Atomic Safety Licensing and Appeal Board
The Several Intervening Parties
Docketing & Service Branch, N. R. C.