

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Richard S. Salzman, Chairman
Dr. John H. Buck
Michael C. Farrar



SERVED OCT 2 1978

In the Matter of)

OFFSHORE POWER SYSTEMS)

(Floating Nuclear Power Plants))

) Docket No. STN 50-437

Messrs. Barton Z. Cowan, Thomas M. Daugherty, and John R. Kenrick, Pittsburgh, Pennsylvania, for the applicant, Offshore Power Systems.

Mr. Anthony Z. Roisman, Washington, D. C, for intervenor National Resources Defense Council.

New Jersey Attorney General John J. Degnan, and Deputy Attorney General Richard M. Hluchan, Trenton, New Jersey, for intervenor the State of New Jersey.

Messrs. Martin G. Malsch and Mark Staenberg for the Nuclear Regulatory Commission staff.

MEMORANDUM AND ORDER

(On Motion for Reconsideration or Certification to the Commission)

September 29, 1978

(ALAB-500)

1. Offshore Power Systems (OPS) moves for reconsideration of part of our decision in ALAB-489. We are requested to reexamine our holding that the staff may

7810140148

consider "Class 9 accidents" in its final environmental statement on OPS's application to manufacture floating nuclear power plants. ALAB-489, 8 NRC__ (August 21, 1978). The motion is opposed by the Natural Resources Defense Council (NRDC), the State of New Jersey, and the staff. After a careful review of all the arguments presented, both the majority of the Board and the dissenting member remain convinced of their respective positions as set forth in ALAB-489. Accordingly, the motion to reconsider is denied.^{1/}

2. In the event we were to deny its motion to reconsider, OPS asked us to certify our Class 9 ruling to the Commission for its determination. See 10 C.F.R. §2.785(d). The staff interposes no objection but the NRDC and New Jersey are opposed. NRDC particularly stresses that Commission review should await the development of a full factual record "so the Commission can address [the Class 9 accident] issue in

^{1/} The applicant also asks that we preclude imposition of those license conditions proposed by the staff which rest on the consideration of Class 9 accidents. Such relief is premature and, in any event, unnecessary at this juncture. As we took care to stress in ALAB-489: "Our ruling -- that the consequences of a class 9 accident may be considered in this environmental statement -- carries with it no connotation that the staff's judgments expressed there are necessarily sound, much less that its recommended license conditions are warranted. These are matters yet to be explored in the pending proceedings before the Licensing Board. 10 C.F.R. §51.52." ALAB-489, 8 NRC at __ (slip opinion at 57).

the context of specific facts and a specific case." New Jersey contends that the issue is both narrow and unique to this one proceeding and does not merit Commission review.

We exercise our authority to certify questions to a burdened Commission sparingly.^{2/} A number of factors, however, impel that action in this case. First, consideration of Class 9 accidents in an environmental statement is a novel action on the staff's part. Second, New Jersey's contrary assertions notwithstanding, we think the staff's decision to look at Class 9 accident does involve a "major * * * question of policy" that may have ramifications beyond this case. To be sure, as NRDC suggests, a fuller record might assist in deciding what policy the Commission should adopt. However, the question is not what the policy ought to be but, rather, what policy governs CPS' pending application. That question is manifestly ripe now. Third, as ALAB-489 reflects, the members of this Board give divergent readings to current policy in this area, a division attributable in no small measure to the ambiguous character, history and status of the "annex" in which it is set forth.

^{2/} See, Vermont Yankee Nuclear Power Corp. (Vermont Yankee Station), ALAB-421, 6 NRC 25, 27 (1977); Consolidated Edison Co. of New York (Indian Point Generating Unit No. 3), ALAB-186, 7 AEC 245 (1974).

- 4 -

Only the Commission itself can clarify this. Finally, because we brought the matter before us by certification, the parties themselves are precluded under the present Rules of Practice from petitioning the Commission for review of ALAB-489. Pacific Gas and Electric Co. (Diablo Canyon Plant, Units 1 and 2), CLI-77-23, 6 NRC 455 (1977); 10 C.F.R. §2.786(b).

Accordingly, OPS's motion to certify to the Commission the question we decided in ALAB-489 -- that Class 9 accidents are a proper subject for consideration in the staff's environmental statement on the floating nuclear power plant application -- is granted.^{3/}

It is so ORDERED.

FOR THE APPEAL BOARD

Margaret E. Du Flo
Margaret E. Du Flo
Secretary to the
Appeal Board

^{3/} The members of the Board acknowledge the helpful briefs and arguments presented by all the parties both in the main case and on motion for reconsideration. That our decision on the merits is divided reflects the difficulty of the question presented and is not the fault of the thorough and comprehensive presentations of the litigants.