

September 3, 1981

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))

Docket No. 50-486

APPLICANT'S BRIEF OPPOSING
FURTHER CONSIDERATION OF RADON RELEASES

I. Introduction:

The Licensing Board has requested the parties to file briefs addressing whether, in light of Philadelphia Electric Company et al., (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-640, _____ NRC _____ (May 13, 1981) (hereinafter, "ALAB-640"), the Board should take additional evidence on the quantity and potential health effects of Radon releases associated with the uranium fuel cycle.

In Applicant's view, no further evidence is necessary since the NRC Staff's analysis of Radon releases in the Final Supplement to the Final Environmental Statement (FSFES) satisfies the NRC's obligations under NEPA and complies with the Commission's April 14, 1978 Order amending Table S-3 and establishing procedures for the consideration of Radon releases in individual proceedings. (43 Fed. Reg. 15613, et seq.). In addition, the Appeal Board's decision in ALAB-640 does not provide any grounds for reopening the NEPA record on this issue.



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II. Background:

Table S-3 of the Commission's regulations (10 C.F.R. §51.20, Table S-3) establishes numerical values to be applied in the analysis of nuclear fuel cycle effects in all environmental impact statements for individual licensing projects. On April 14, 1978, in response to a request to amend Table S-3, the Commission found that the Table S-3 value for the release of Radon-222 was incorrect and therefore deleted this value from the Table. (43 Fed. Reg. at 15615). Recognizing, however, that NEPA requires releases from the entire fuel cycle to be considered in licensing decisions, the Commission ruled that Radon releases could henceforth be considered on a case-by-case basis and outlined procedures for cases in different stages of the licensing process.

For cases, like Allens Creek, in which the NEPA record was still open (i.e., no LWA, CP or OL had been issued), the Commission directed the individual licensing boards to fashion procedures for developing a record sufficient to meet NEPA standards. (43 Fed. Reg. at 15615).

In cases where LWAs, CPs, or OLs had been issued but proceedings were still pending before licensing or appeal boards, the Commission ruled that the environmental record should be reopened to permit the receipt of new evidence on Radon releases. (43 Fed. Reg. at 15616).^{*/}

^{*/} In cases where licenses had already been issued, the Commission determined that no further proceedings were required. (Id.)

In August 1978, the Staff issued the FSPES in this proceeding. Section S.5.5.E of that document contains an updated and detailed analysis of Radon-222 releases associated with the Allens Creek plant, and the estimated health effects from such releases. No contentions were submitted challenging the adequacy of the Staff's analysis of Radon releases.

III. The Analysis of Radon Effects in the FSPES
Satisfies the Commission's Obligations Under
NEPA:

As the Commission recognized, one effect of the deletion of Radon values from Table S-3 was to obligate the licensing boards in individual ongoing proceedings to make an adequate NEPA record on this issue. That has been done in this proceeding. The Commission did not require that Radon effects be the subject of litigation in each proceeding. (43 Fed. Reg. 15615).

Subsequent to the amendment of Table S-3, the Staff in this proceeding issued the FSPES in which it included a detailed analysis of the impacts associated with Radon releases. The Staff analyzed the total releases from mining and milling of uranium, used the figures derived to calculate 100-year population dose commitments, and concluded that the total population dose from radon releases allocable to Allens Creek will constitute a minute percentage of natural background doses. In addition, the Staff analyzed the short and long-term health effects associated with Radon releases, and concluded that such effects would be minimal. (FSPES at S.5-34 - S.5-35).

Clearly, the Staff's consideration of Radon impacts in the FSFES meets NEPA requirements with respect to depth and breadth of analysis, E.D.F. v. Corps of Engineers of U.S. Army, 492 F.2d 1123, 1136 (5th Cir. 1974), and clarity of presentation. See, Sierra Club v. Froehlke, 359 F.Supp. 1289, 1342-43 (S.D. Tex. 1973). Thus, the present record is sufficient for the Board to find that the health impacts due to Radon releases are insignificant. Moreover, no contention was filed challenging the Staff's consideration of Radon impacts either at the time the FSFES was issued or at any time subsequent. Since the Commission's April 14, 1978 Order did not require the Staff's analysis of Radon effects to be treated differently from other uncontested portions of the FSFES that analysis need not be the subject of further litigation.

IV. The Appeal Board's Decision in ALAB-640
Has No Precedential Effect in This Proceeding:

After the Commission's Order, the Appeal Board Panel evaluated procedures under which it would consider Radon releases in the seventeen proceedings pending before it, since, as discussed above, the Commission had directed the individual Appeal Boards to independently reopen the NEPA record in those proceedings. In ALAB-480,^{*/} the Appeal Board Panel rejected the Staff's recommendation for a generic proceeding governing all cases then pending before that Panel. Instead, it ruled

^{*/} Philadelphia Electric Company et al (Peach Bottom Atomic Station, Units 2 and 3), ALAB-480, 7 NRC 796 (1978).

that those seventeen cases would be governed initially by the record created in the Perkins proceeding.^{*/} Later, the Appeal Board held further hearings in three of those seventeen cases in which intervenors challenged the Perkins findings.^{**/} ALAB-640 represents the partial findings of the Appeal Board in the three cases in which intervenors challenged the Perkins record.

Implicit in the Commission's decision to temporarily forego generic treatment of Radon effects, was a recognition that the record on this issue might vary in different proceedings, especially if contentions were filed and the issue was the subject of litigation. The Commission did not direct the Appeal Board (or any particular licensing board) to make findings for application to other proceedings pending before different adjudicatory panels. Therefore, absent specific direction from the Commission, the evidentiary record created in the Appeal Board proceeding has no legal precedential effect in this or any other proceeding.^{***/} In fact, the Appeal Board specifically stated

^{*/} ALAB-480, 7 NRC at 804-05.

^{**/} See, ALAB-540, 9 NRC 428 (1979).

^{***/} It is well established that licensing and appeal boards have no more jurisdiction than that conferred upon them by the Commission, and may conduct only "such hearings as the Commission may direct." Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170 (1976); Carolina Power & Light Co. (Shearon Harris Nuclear Plant, Units 1-4), ALAB-577, 11 NRC 18, 25 (1980).

in ALAB-640 that its decision applied only to the three contested Radon cases before it. (ALAB-640, slip op. at 96). To give precedential effect to findings based on the record created in that proceeding, would violate fundamental principles of res judicata and collateral estoppel to which the Appeal Board has subscribed. Consolidated Edison Co. of New York, (Indian Point Units 1-3), ALAB-304, 3 NRC 1 (1976).

In addition, the record in the consolidated Appeal Board proceeding is still open; the Appeal Board has asked for further testimony from the parties, and its decision, when final, will be subject to Commission review. The Appeal Board has also not yet decided how it will treat the fourteen other cases before it that were not contested on this issue after the Perkins decision. (ALAB-640, slip op. at 7). For these additional reasons, it would be especially inappropriate to afford the findings in ALAB-640 any special weight in this proceeding.

V. The Licensing Board Should Not Undertake
Sua Sponte Consideration of Radon Releases:

Based upon the testimony presented to it, the Appeal Board in ALAB-640 modified the radon release values adopted by the licensing board in the Perkins decision. As stated above, the values adopted by the Appeal Board represent the conclusions of fact of an independent adjudicatory panel based on the unique record before it. Moreover, those values are not significantly different from those utilized by the Staff in this case. When viewed in light of the Staff's conclusion

in the FSFES that total doses resulting from Radon releases constitute a minute fraction (less than 0.00002%) of the total background dose to the population, the differences are de minimis by any reasonable measure. Since no party has contested the Staff's conclusions in the FSFES, these small differences do not justify taking further evidence, on either Radon releases or the health effects of such releases, to supplement an already legally sufficient NEPA record in this case. For the same reasons it would be entirely inappropriate to suspend consideration of the Radon issue in this proceeding.

Conclusion:

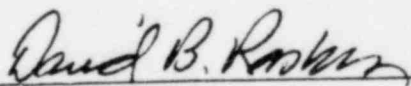
For all of the foregoing reasons, the Board should not take further evidence on the effects of Radon releases in this proceeding.

Respectfully submitted,

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In the Matter of)
)
HOUSTON LIGHTING & POWER COMPANY) Docket No. 50-466
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(Allens Creek Nuclear Generating)
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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Brief Opposing Further Consideration of Radon Releases has been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid, or by hand delivery as indicated by an asterisk, on this 3rd day of September, 1981.

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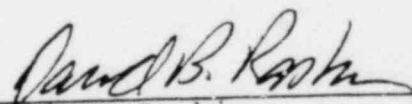
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