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United States Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555-0001

Peach Bottom Atomic Power Station, Units 2 and 3
Facility Operating License Nos. DPR-44 and DPR-56
NRC Docket Nos. 50-277 and 50-278

Subject: Information On Correspondence Received By the U.S. Nuclear Regulatory Commission (NRC) From the Delaware State Historic Preservation Officer

Reference: Letter from L.L. Wheeler (NRC) to M.P. Gallagher (Exelon Generation Company, LLC) dated November 26, 2001

Dear Sir/Madam:

This letter is in response to the reference letter, where you forwarded a letter you received from the Delaware State Historic Preservation Officer (SHPO) concerning the remnants of a 19th century feeder canal in the Delaware portion of the transmission corridor for the Peach Bottom Atomic Power Station, Units 2 and 3 (PBAPS). Your letter requested any information that we may have concerning: (1) legal title to the property in question, (2) the chronology of the development of the transmission corridor, (3) copies of permit applications for construction, operations and maintenance of the transmission corridor, (4) a brief discussion of current and future responsibilities for operation and maintenance of the transmission line, and (5) any alternatives we consider feasible to address the SHPO's concerns.

Background

On November 9, 2001, the NRC conducted a site audit with respect to the environmental portion of the application by Exelon Generation Company, LLC (Exelon) to renew the operating licenses for PBAPS. This audit included a site visit to the remnants of the feeder canal that the SHPO states is within the area of potential effect of the transmission line. Present during that site visit were members of Exelon's Environmental License Renewal team, Exelon's Transmission and Distribution department, Exelon's Real Estate department, Conectiv's Vegetation Management department, NRC Project Management, and National Lab employees contracted by the NRC to aid them in writing the Environmental Impact Statement for the renewal of the PBAPS operating licenses. During that visit, the area that the SHPO states is an historic property within the transmission corridor was examined as well as the area adjacent to the corridor. The examination entailed a visual check of the area through a walk down.

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The transmission corridor in question contains four different transmission lines, only one of which serves PBAPS (the Keeney Line). The remains of the feeder canal consist of an earthen ditch without any observable stonework. The remnants of the feeder canal within the transmission corridor have less definition than the portions located in adjacent areas. In addition, several varieties of wetland vegetation were observed within the remains of the feeder canal in the transmission corridor, and trees were observed growing in portions of the feeder canal outside the transmission corridor. The feeder canal is not listed on the National Register of Historic Places.

(1) Legal Title to the Transmission Lines and Transmission Corridor

In 1977, an agreement was entered into by several utilities to own and operate fully interconnected electric supply systems, and to ensure that the planning and operations of the bulk supply facilities of such systems are coordinated pursuant to various agreements. Those utilities included Philadelphia Electric Company and Delmarva Power and Light Company. Delmarva Power and Light Company has subsequently merged with Atlantic City Electric Company to become Conectiv and Philadelphia Electric Company changed its name to PECO Energy Company and subsequently merged to become Exelon. This agreement, titled Lower Delaware Valley Transmission System Agreement (Agreement) with supplements and addendums, is on file with the Federal Energy Regulatory Commission (FERC) as Rate Schedule Number 45, dated November 1, 1977. Schedule 3 of the Agreement delineates the responsibilities of Delmarva Power and Light Company (now Conectiv). With respect to the Peach Bottom – Keeney Line (Delaware Section), it was the responsibility of Delmarva Power and Light Company to construct and make available to the Lower Delaware Valley Transmission System Agreement signatories a single circuit 500 kV, 3 phase twin bundled conductor, 2493 kcmil ACAR each, steel and aluminum tower transmission line right-of-way, extending from the Delaware/Maryland Boundary to Keeney Substation, a distance of approximately 4 miles within Delaware. Schedule 5 of the Agreement delineates the responsibilities of Philadelphia Electric Company (now Exelon). With respect to the Peach Bottom – Keeney Line (Maryland Section), it was the responsibility of Philadelphia Electric Company to construct and make available to the Lower Delaware Valley facilities a single circuit 500 kV, 3 phase twin bundled conductor, 2493 kcmil ACAR each, steel and aluminum tower transmission line and right-of-way, extending from Peach Bottom in Pennsylvania to the Maryland/Delaware State Boundary, a distance of approximately 32 miles.

Therefore, it was the responsibility of Delmarva Power and Light Company to construct the line and right-of-way for the portion of the Keeney Line in Delaware that intersects with the remains of the canal discussed in the SHPO letter. Philadelphia Electric Company did not have any responsibility for construction of the Delaware Section of the Keeney Line and did not have responsibility for obtaining right-of-way.

(2) Chronology of the Development of the Transmission Corridor

As discussed above, the transmission corridor consists of four transmission lines. The Keeney Line was the last of the lines, and was installed in the corridor around 1971. The other three transmission lines were installed prior to the Keeney line. As the Philadelphia Electric Company (now Exelon) was not responsible for the construction of these other lines and does not have ready access to related construction permits or documentation, the exact dates of their construction is unknown.

At the completion of the examination of the transmission corridor on November 9, 2001, Exelon's Environmental License Renewal team, NRC Project Management, and a National Lab employee reviewed aerial photographs of the region at the New Castle Historical Society in Delaware. During the examination of photographs of the area, that included the property in question, it was observed that the feeder canal seemed to experience the most degradation in the time period between 1968 and 1979. Since the photographs are not taken every year, it was not possible to narrow the time period of degradation any further than those time periods.

(3) Copies of the Permit Applications for the Transmission Corridor

A copy of the Lower Delaware Valley Transmission System Agreement is enclosed.

As stated above, Exelon was not responsible for construction, operation, or maintenance of the right-of-way or the construction of the other three transmission lines in the right-of-way. As a result, Exelon does not have ready access to copies of permit applications for construction, operations, or maintenance of the transmission corridor. This documentation would be maintained by the parties responsible for their construction.

(4) Discussion of Current and Future Responsibilities for Operation and Maintenance of the Keeney Line

Under the Lower Delaware Valley Transmission System Agreement, Delmarva Power and Light Company was responsible for operating and maintaining the line and right-of-way. Conectiv is currently responsible for operating and maintaining the line and right-of-way. Exelon or its predecessors have not had (and currently do not have) any responsibility for operation and maintenance of the Delaware Section of the Keeney Line. Furthermore, Exelon has no plans to assume responsibility for operation and maintenance of the Delaware Section of the Keeney Line. Exelon is also not aware of any plans to modify the Lower Delaware Valley Transmission System Agreement that would assign Exelon any such responsibility.

(5) Feasible Alternatives to Address the SHPO's Concerns

Section 106 of the National Historic Preservation Act (NHPA) requires a federal agency to take into account, prior to issuance of a license, the effect of the license on a property that is included or eligible for inclusion in the National Register of Historic Places. We have researched the application of the NHPA to the feeder canal running under the Keeney Line. The application of NHPA to the canal was discussed in the SHPO's letter to the NRC. The results of our research are included as an attachment to this letter (Attachment A) titled, Eligibility of the Feeder Canal for Listing in the National Register. As discussed in the attachment, for a property to be eligible for inclusion on the National Register, it must fall within one of the eligibility categories, possess integrity, and have historic significance.

In our opinion, the feeder canal does not satisfy these criteria for listing in the National Register. As discussed in more detail in Attachment A, the feeder canal is a ruin and is not a site of any important historic or cultural event. It is decayed and does not retain much of its integrity. Furthermore, it was never finished and did not make an important or significant contribution to the canal industry in Delaware. Therefore, we do not believe that the feeder canal is eligible for inclusion in the National Register since it does not satisfy any eligibility criteria.

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Since the feeder canal is not eligible for inclusion in the National Register, NRC has no responsibility under the NHPA to consider alternatives for addressing the SHPO's concerns related to the feeder canal.

Furthermore, even if the feeder canal were eligible for inclusion on the National Register, there is no basis in the NHPA for the NRC to agree to SHPO's request for remediation of past degradation of the feeder canal. Section 106 of the NHPA requires federal agencies to take into account the effect of a federal undertaking (including issuance of a license) on a property on the National Register or eligible for inclusion on the National Register, prior to approval of the undertaking or license. Thus, NHPA applies prospectively to proposed issuance of a federal license, and does not require an agency to consider actions to remediate pre-existing impacts on historic properties. Therefore, contrary to SHPO's claims, there is no legal basis for the NRC to require restoration of the feeder canal.

Furthermore, there are three other transmission lines unrelated to PBAPS in the same corridor as the Keeney Line, and those transmission lines would continue to operate even if PBAPS were shut down permanently. Therefore, it would appear that future operation and maintenance of the Keeney Line itself would not cause any incremental impacts to the feeder canal, beyond that being caused by the transmission lines unrelated to PBAPS. As a result, in the absence of any incremental impacts attributable to future operation and maintenance of the Keeney Line, there is no need under the NHPA to consider mitigation alternatives.

Even if it was assumed that the Keeney Line would adversely affect the feeder canal, the portion of the Keeney Line that is within Delaware is owned and controlled by Conectiv, who is not a licensee of PBAPS. There is no basis in existing law for the NRC to order Conectiv (which is not a licensee of PBAPS) to take the mitigative actions recommended by SHPO. Furthermore, Exelon has no contractual or legal authority on its own to enter into the transmission corridor of the Delaware Section of the Keeney Line and to take mitigative actions on its own. Any voluntary initiatives that the NRC may wish to pursue with Conectiv or other parties would be outside the bounds of the PBAPS license renewal process.

In summary, we believe that the NRC has no obligation under the NHPA to consider alternatives to address the SHPO's concerns.

We hope that this information will aid the NRC in its review of SHPO letter. If you should have any questions regarding this letter, please contact Mr. William Maher at (610) 765-5939.

Very truly yours,



Michael P. Gallagher
Director – Licensing and Regulatory Affairs
Mid-Atlantic Regional Operating Group

Enclosure: Attachment A: Eligibility of the Feeder Canal for Listing in the National Register

cc: H. J. Miller, Administrator, Region I, USNRC
A. C. McMurtry, USNRC Senior Resident Inspector, PBAPS

ATTACHMENT A

ELIGIBILITY OF THE FEEDER CANAL FOR LISTING IN THE NATIONAL REGISTER

1.0 Purpose

The purpose of this paper is to discuss whether the Chesapeake and Delaware Feeder Canal is eligible for inclusion in the National Register of Historic Places. As this paper demonstrates, the Feeder Canal is not eligible for inclusion in the National Register.

2.0 Criteria for Inclusion of a Property in the National Register

A property is eligible for inclusion in the National Register of Historic Places if it satisfies the regulations of the National Park Service in 10 CFR § 60.4. Section 60.4 states that a property must satisfy the following criteria to be eligible for inclusion in the National Register:

- 1) Eligible Category - the property must fall within one of the following categories: “districts, sites, buildings, structures, and objects;” and
- 2) Integrity - the property must “possess integrity of location, design, setting, materials, workmanship, feeling, and association;” and
- 3) Historic Significance - the property must satisfy at least one of the following four criteria on historic significance:
 - (a) it is “associated with events that have made a significant contribution to the broad patterns of our history;” or
 - (b) it is “associated with the lives of persons significant in our past;” or
 - (c) it “embod[ies] the distinctive characteristics of a type, period, or method of construction, or that represent[s] the work of a master, or that possess[es] high artistic values, or that represent[s] a significant and distinguishable entity whose components may lack individual distinction;” or
 - (d) it has “yielded, or may be likely to yield, information important in prehistory or history.”

The eligibility of the Feeder Canal under each of these criteria is evaluated below.

3.0 Category of the Feeder Canal

The letter dated October 29, 2001 from the Delaware State Historic Preservation Office (SHPO) did not discuss whether the Feeder Canal falls within one of the eligible categories of properties for inclusion in the National Register.

Guidance on the categories of properties eligible for inclusion in the National Register is provided in Section IV of National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation*. This guidance states that canals are an example of a “structure.” However, this guidance also states that “[i]f a structure has lost its historic configuration or pattern of organization through deterioration or demolition, it is usually considered a ‘ruin’ and is categorized as a site.”

The Feeder Canal appears to have lost its historic configuration through deterioration or demolition. In particular, in the transmission corridor, the sides of the canal are no longer intact, much of the canal has been filled with earth, and there is no evidence of the canal except for a slight depression in the ground. In the area near the transmission corridor, the remains of the canal consist of an earthen ditch without any stonework or structural elements, the sides of the canal are eroded, and trees and other vegetation are growing throughout the canal and its banks. Therefore, the Feeder Canal appears to be a “ruin” and not a structure. A ruin qualifies for listing in the National Register only if it can be categorized as a “site.”

For a property to be categorized as a “site,” Section IV of National Register Bulletin 15 states that the property must be a location that “itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.” The location of the Feeder Canal does not possess historic, cultural or archeological value -- it was never used and was not the location of an important historical or cultural event. Therefore, the Feeder Canal does not satisfy the first criterion for inclusion in the National Register.

4.0 Integrity of the Canal

The letter dated October 29, 2001 from the SHPO also did not discuss this criterion.

Guidance on the Integrity of properties eligible for inclusion in the National Register is provided in Section VIII of National Register Bulletin 15. This guidance states:

To retain historic integrity, a property will always possess several, and usually most, of the aspects [of location, design, setting, materials, workmanship, feeling, and association]. The retention of specific aspects of integrity is paramount for a property to convey its significance. Determining which of these aspects are most important to a particular property requires knowing why, where, and when the property is significant.

A comparison of the Feeder Canal with the seven aspects of Integrity indicates the following:

- The Feeder Canal has integrity of Location.
- The Feeder Canal retains some elements of Design (especially its routing and some indication of its overall dimensions). However, the canal is deteriorated (especially in

the transmission corridor), and therefore has an appearance that is different from its original condition.

- The Feeder Canal does not appear to retain the aspect of Setting. It is currently adjacent to modern elements (such as the transmission corridor, modern houses, and highways) and there is no evidence of elements that were present when the canal was constructed.
- The aspect of Materials would not appear to be applicable to the Feeder Canal, since the canal was simply a hole dug in the ground without any stonework or other materials.
- For the same reason, the aspect of Workmanship would not appear to be applicable to the Feeder Canal, since the canal was simply a hole dug in the ground and does not display physical evidence of a craft or skill.
- The Feeder Canal does not appear to retain the aspect of Feeling. For example, the canal is merely a ditch and conveys little of “the aesthetic or historic sense of a particular period of time.”
- The Feeder Canal does not have the aspect of Association, since it was never used and was not the site of an important historic event or activity.

In summary, although the Feeder Canal does retain some aspects of Integrity, a number of the aspects of Integrity are not present or are not applicable. Furthermore, with the exception of Location, none of the aspects is present in the transmission corridor. Therefore, the Feeder Canal would not appear to be eligible for inclusion in the National Register based upon the criterion of Integrity.

5.0 Criteria on Historic Significance

The letter dated October 29, 2001 from the SHPO states that the Feeder Canal has historic significance under Criterion A (associated with events that have made a significant contribution to the broad patterns of our history) and Criterion C (distinctive characteristics of a type, period, or method of construction).

5.1 Criterion A

With respect to Criterion A, the SHPO states that the Feeder Canal “represents early canal building industry in the state.” However, for a property to be eligible under Criterion A, Section VI of National Register Bulletin 15 states that “the property must have an important association with the event or historic trends.” This guidance goes on to state that:

Mere association with historic events or trends is not enough, in and of itself, to qualify under Criterion A: the property’s specific association must be considered important as well. For example, a building historically in commercial use must be shown to have been significant in commercial history.

The Feeder Canal would not appear to meet this criterion. The canal was never used, and there is no indication that it was important to the canal industry in the state. Therefore, although the canal is old, it does not have any significance to the history of the canal industry in Delaware.

5.2 Criterion C

With respect to Criterion C, the SHPO states that the Feeder Canal is “a good example of early 19th century construction technology.” However, for a property to be eligible under Criterion A, Section VI of National Register Bulletin 15 states that the property “must clearly contain enough of those [distinctive] characteristics to be considered a true representative of a particular type, period, or method of construction.” This guidance goes on to state that “[a] structure is eligible as a specimen of its type or period of construction if it is an important example (within its context) of building practices of a particular time in history.”

The Feeder Canal has no structural elements and does not display any particular construction methods. Instead, the canal is merely a ditch, which is deteriorated. Furthermore, the canal was never finished or used, and therefore does not represent an important example of canal building. Therefore, the Feeder Canal does not qualify for inclusion in the National Register under Criterion C.

6.0 Conclusions

For a property to be eligible for inclusion in the National Register, it must fall within one of the eligible categories, possess integrity, and have historic significance. The Feeder Canal does not satisfy any of these criteria. In particular, it is a ruin that is not the site of any important historic or cultural event, it is decayed and does not retain its integrity, and it was never finished and did not make an important or significant contribution to the canal industry in Delaware. Therefore, the Feeder Canal is not eligible for inclusion in the National Register.