

Appendix E

Exelon Generation Company's Compliance Status and Consultation Correspondence

Appendix E

Exelon Generation Company's Compliance Status and Consultation Correspondence

The list of licenses, permits, consultations, and other approvals obtained from Federal, State, regional, and local authorities for Peach Bottom Units 2 and 3 is shown Table E-1. Following Table E-1 are reproductions of consultation correspondence prepared and sent during the evaluation process of the application for renewal of the operating licenses for Peach Bottom Units 2 and 3.

Table E-1. Federal, State, Local, and Regional Licenses, Permits, Consultations, and Other Approvals for Current Peach Bottom Units 2 and 3 Operation

| Agency | Authority | Description | Number | Issue Date | Expiration Date | Remarks |
|--------|---|--|-----------------|---|-------------------------|--|
| NRC | 10 CFR Part 50 | Operating license, Peach Bottom Unit 2 | DPR-44 (Unit 2) | | August 8, 2013 (Unit 2) | Authorizes operation of Unit 2 |
| NRC | 10 CFR Part 50 | Operating license, Peach Bottom Unit 3 | DRP-56 (Unit 3) | | July 2, 2014 (Unit 3) | Authorizes operation of Unit 3 |
| FWS | Section 7 of the Endangered Species Act (16 USC 1536) | Consultation | NA | November 19, 2001 | | Requires a Federal agency to consult with FWS regarding whether a proposed action will affect endangered or threatened species |
| NMFS | Section 7 of the Endangered Species Act (16 USC 1536) | Consultation | NA | November 19, 2001 | | Operation during the renewal term |
| SRBC | Susquehanna Basin Compact (18 CFR 803) | Approval | Docket 19830506 | May 12, 1985, no expiration date | | Consumptive Use of Conowingo Pond water |
| PDEP | Storage Tank and Spill Prevention Act 32 | Registration | 187882 | Issued annually | | Storage tanks (gasoline, used oil, hazardous substances, unlisted materials) |
| PHMC | Section 106 of the National Historic Preservation Act (16 USC 470f) | Consultation | | Letter from PHMC to PECO, December 14, 2000 | | The National Historic Preservation Act requires Federal agencies to take into account the effect of any undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places. |
| MDE | Section 307 of the Coastal Zone Management Act [16 USC 1456(c)(3)(A)] | Consistency determination | NA | Letter from MDE dated April 23, 2002 | | Consistency of license renewal with the Maryland Coastal Management. |

Table E-1. (contd)

| Agency | Authority | Description | Number | Issue Date | Expiration Date | Remarks |
|--------|--|--|----------|--|-------------------|--|
| PDEP | Pennsylvania Clean Stream Law, as amended, 35 P.S. Section 691.1 et seq. | National Pollution Discharge Elimination System Permit and Section 401 certification | | | December 1, 2005 | Permit for discharge of waste waters from cooling water, waste water settling basin, auxiliary boiler blowdown, sewage treatment plant, dredging rehandling basin, raw intake screen backwash water; and storm water outfall |
| PDEP | Pennsylvania Dam Safety and Encroachment Act (32 P.S. Section 693.1 et seq.), Clean Stream Law (35 P.S. Section 691.1 et seq.), Flood plain Management Act (32 P.S. Section 679.101 et seq.) | Permit | E36-693 | | December 31, 2010 | Maintenance dredging of intake area |
| PDEP | Pennsylvania Safe Drinking Water Act | Permit | 6791502 | March 21, 1994, no expiration date | | Public Water Supply permit |
| PDEP | Air Pollution Control Act P25 Pa. Code Chapter 127) | Air emissions permit | 67-05020 | | February 29, 2004 | Emissions from diesel emergency generators, miscellaneous diesel engines, and other miscellaneous units |
| DSHPO | Section 106 of the National Historic Preservation Act (16 USC 470f) | Consultation | NA | Letter from DSHPO to NRC dated October 29, 2001 | | Impact on sites listed or eligible for listing in the National Register of Historic Places |
| DSHPO | Section 106 of the National Historic Preservation Act (16 USC 470f) | Consultation | NA | Letter to NRC from DSHPO dated September 9, 2002 | | Identifies need for consultation |
| MHT | Section 106 of the National Historic Preservation Act (16 USC 470f) | Consultation | NA | Letter MHT to Exelon, September 22, 2000 | | Impact on sites listed or eligible for listing in the National Register of Historic Places |

Table E-1. (contd)

| Agency | Authority | Description | Number | Issue Date | Expiration Date | Remarks |
|--------------|---|--|-------------------------------------|------------------|------------------|--|
| PDER | Clean Water Act (33 USC Section 1251 et seq.), Pennsylvania Clean Streams Law (35 P.S. Section 691.1 et seq.) | Individual Discharge Permit | PA 0009733 | November 3, 2000 | December 1, 2005 | Contains effluent limits for Peach Bottom Units 2 and 3 discharges to the Susquehanna River. |
| EPA and PDEP | Clean Water Act Section 401 (33 USC 1341) | Certification of compliance with state water quality standards | NPDES permit constitutes compliance | | | Discharges during license renewal term |

DSHPO - Delaware State Historic Preservation Officer

EPA - U.S. Environmental Protection Agency

FWPCA - Federal Water Pollution Control Act (also known as the Clean Water Act)

FWS - U.S. Fish and Wildlife Service

MDE - Maryland Department of the Environment

MHT - Maryland Historical Trust

NMFS - National Marine Fisheries Service

NPDES - National Pollutant Discharge Elimination System

NA - Not applicable

PDEP - Pennsylvania Department of Environmental Protection

PDER - Pennsylvania Department of Environmental Resources

PECO - PECO Energy

PHMC - Pennsylvania Historical and Museum Commission

SRBC - Susquehanna River Basin Commission



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

January 17, 2002

Ms. Bonnie Crosby
U.S. Fish and Wildlife Service
Pennsylvania Field Office
315 South Allen St., Suite 322
State College, PA 16801-4850

**SUBJECT: PEACH BOTTOM ATOMIC POWER STATION, UNITS 2 AND 3, LICENSE
RENEWAL - "NO EFFECT" AND "NOT LIKELY TO ADVERSELY AFFECT"
DETERMINATIONS FOR THREATENED AND ENDANGERED SPECIES**

Dear Ms. Crosby:

This is a request for your concurrence with conclusions which have been developed during the preparation of an environmental impact statement. The conclusions pertain to threatened and endangered species in the project area for the proposed license renewal of the Peach Bottom Atomic Power Station (PBAPS).

The U.S. Nuclear Regulatory Commission (NRC) is preparing a Supplemental Environmental Impact Statement (SEIS) for the proposed license renewal of the operating licenses for (PBAPS) Units 2 and 3, located in Peach Bottom Township, southeastern York County, PA. The current PBAPS licenses will expire in 2013 and 2014 for Units 2 and 3, respectively. The proposed license renewal would extend these operating licenses to 2033 and 2034. One factor considered within this SEIS is the potential for adverse impacts to federally listed endangered or threatened species that may result from continued operation of the facility for up to 20 additional years.

The PBAPS facility includes two boiling water reactors, a control building, a turbine building, and several other structures and facilities, including cooling water intake and discharge structures. The facilities are located on the west bank of the Susquehanna River, approximately 2 miles north of the Maryland/Pennsylvania border. The site is located approximately 8 miles upstream from Conowingo Dam and 6 miles downstream from Holtwood Dam. One transmission corridor is included in the analysis for the PBAPS SEIS. This 54 km (34 mile), 500kV transmission line crosses the Susquehanna River at the PBAPS site, enters Maryland near the village of Rock Springs, then traverses Cecil County, MD, and ends at the Keeney substation in northern Delaware, approximately 5 miles south of Newark, DE.

The licensee for PBAPS, Exelon Generation Company (Exelon), formerly PECO Energy Company (PECO), contacted the USFWS Pennsylvania Field Office concerning threatened and endangered species through a letter dated October 11, 2000, (PECO 2000). The Pennsylvania Field Office provided a response to PECO on October 18, 2000, (USFWS 2000a). The NRC staff contacted the USFWS Chesapeake Bay Field Office on October 11, 2001 (NRC 2001), and received a response dated November 19, 2001 (USFWS 2001). We have reviewed these letters, additional information provided by PECO, and information obtained through discussions with State wildlife biologists in Pennsylvania, Maryland and Delaware.

Appendix E

B. Crosby

2

Federally listed species potentially affected by the PBAPS license renewal include the American bald eagle (*Haliaeetus leucocephalus*) and the bog turtle (*Clemmys muhlenbergii*). An additional species, the swamp pink (*Helonias bullata*) has also been reported from the vicinity of the project area. It is our understanding that one additional species, the Delmarva peninsula fox squirrel (*Sciurus niger cinereus*) may occur as experimental populations in Cecil County, MD and New Castle County, DE, but no natural populations are known from those counties (USFWS 1993) and it will therefore not be considered further.

The bald eagle is known to occur in York and Lancaster Counties, PA, Cecil County, MD, and New Castle County, DE. The Lower Susquehanna River is one of the most important areas for bald eagles in Pennsylvania. There are approximately 10 known nests on Conowingo Pond, 6 on the Maryland side of the border and 4 on the Pennsylvania side. The nests within Pennsylvania are all upstream of the PBAPS site, with the nearest located on Lower Bear Island, approximately 5 km (3 miles) upstream from the PBAPS site (Daniel Brauning, PA Department of Wildlife, personal communication, November 2001). The locations of the nests within Maryland were not precisely indicated, but the nearest nest would be at least 2 miles downstream from the PBAPS site (David Brinker, Maryland Department of Natural Resources, personal communication, November 2001).

The lower Susquehanna River is also a very important wintering area for bald eagles. In Maryland, there are usually between 25 and 30 eagles that winter in the vicinity of Conowingo Dam (David Brinker, personal communication), while in Pennsylvania there are usually between 10 and 20 wintering eagles on Conowingo pond (Brauning and Peebles 2001). In especially cold periods, as many as 15 to 20 eagles have been reported to congregate near the PBAPS discharge canal because it may be the only non-frozen portion of the river (Daniel Brauning, personal communication, corroborated by PECO Energy personnel).

The presence of the PBAPS does not appear to adversely affect the local bald eagle population, and there are indications that the nesting eagle population on the lower Susquehanna may be approaching saturation (PGC 2001). The PBAPS facility has been operating at this location since the early to mid 1970's. Since that time the eagle population has increased dramatically in the vicinity of Conowingo Pond, as it has throughout Pennsylvania. The NRC staff therefore concludes that continued operation of the PBAPS facility for an additional 20 years beyond the current license terms is not likely to adversely affect bald eagles. During especially cold periods, the operation of the plants may have a beneficial effect, because the warm discharge water may be the only available foraging area.

Bog turtles are known to occur in York and Lancaster Counties, PA, Cecil County, MD, and in New Castle County, DE (USFWS 1997). There is no suitable habitat at the PBAPS site itself. However, the Peach Bottom-to-Keeney transmission corridor traverses several streams and wetlands. PECO commissioned a "Phase 1" bog turtle habitat survey (Tetra Tech 2000) along the entire length of the transmission corridor following procedures described in USFWS 2000b. Four of the five stream crossings identified during the survey were incised channels through upland habitats, with no adjacent wetlands present. These channels are rocky, with no muck substrate. Therefore, these areas lack the criteria (hydrology, substrate, and vegetation) identified by USFWS 2000b for suitable bog turtle habitat. The fifth site supports a small wetland (< 0.04 ha [0.1 acre]) with at least one low area of mucky soil and a few wetland plants such as jewelweed (*Impatiens* sp.), skunk cabbage (*Symplocarpus foetidus*), and rushes

B. Crosby

3

(*Juncus* sp.). However, most of the area is covered by a dense stand of mile-a-minute weed (*Polygonum perfoliatum*). Additionally, the hydrology of the site does not meet bog turtle habitat criteria. The marsh does not appear to be spring fed, but is instead a depressional area with no evidence of shallow rivulets or other features described in USFWS 2000b. Therefore, it is concluded that there is no suitable bog turtle habitat within the Keeney transmission corridor. Based on the results of this survey, the NRC staff concludes that continued operation of PBAPS for an additional 20 years will have no effect on bog turtles.

The swamp pink is a perennial, rhizomatous member of the lily family (Liliaceae). New Jersey supports the greatest number of populations, but populations also are found in Delaware, Maryland, and further south in Virginia, North and South Carolina, and Georgia (USFWS 1991). In Maryland, all known populations appear to occur within freshwater seepage areas along streams (USFWS 1991). All the known populations within Cecil County occur along the fall line between the coastal plain and piedmont ecological regions (David Brinker, personal communication) which lie several miles south of the Peach Bottom-to-Keeney transmission line. All the transmission line corridors within Cecil County have been surveyed on several occasions by the Maryland Department of Natural Resources. These surveys identified two locations along the Keeney line with rare or unusual plant species (the Richardsmere and Rock Springs Natural Areas), but did not identify any occurrences of the swamp pink within the Keeney transmission corridor (MDNR 1998). In Delaware, the swamp pink is known from southwestern New Castle County, but not from the project area in the northwestern part of the county (Bill McAvoy, Delaware Natural Heritage Program, personal communication). Therefore, the NRC staff concludes that the continued operation of PBAPS for an additional 20 year license term will have no effect on the swamp pink.

Based on these considerations, the NRC staff has concluded that renewal of the PBAPS operating licenses for an additional 20 years beyond the current license terms will have either no effect (swamp pink and bog turtle) or is not likely to adversely affect (bald eagle) listed species in the vicinity of the PBAPS site or the associated transmission corridor. The NRC staff requests your written concurrence with these conclusions, if appropriate, for inclusion in the SEIS currently under preparation.

Thank you for your consideration of this request. If there are any questions, please contact me by telephone at (301) 415-1444 or by email at dxw@nrc.gov.

Sincerely,

Original Signed By: LLWheeler

Louis L. Wheeler, Sr. Environmental Project Mgr.

Environmental Section

License Renewal and Environmental Impacts Program

Division of Regulatory Improvement Programs

Office of Nuclear Reactor Regulation

Enclosure: List of References

Appendix E

References

Brauning, D.W. and B. Peebles 2001. Bald Eagle Research and Management, Bald Eagle Breeding and Wintering Surveys. Project Annual Job Report. Pennsylvania Game Commission, March, 2001.

Maryland Department of Natural Resources, 1998. Ecologically significant areas in Cecil County. Sites newly identified or updated in 1998. Report to the Coastal Zone Management Division, Maryland, Department of Natural Resources, December 1998.

PECO Energy Company, 2000. Peach Bottom Atomic Power Station, Units 2 and 3 License Renewal: Request for information on threatened and endangered species. Letter from Mr. James A. Hutton, PECO, to Mr. Michael McCarthy, USFWS, October 11, 2000.

Pennsylvania Game Commission. 2001. "Bald Eagles Continue Their Impressive Comeback." Pennsylvania Game Commission News Release #48-01, June 26, 2001.

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U.S. Fish and Wildlife Service, 1991. Swamp Pink (*Helonias bullata*) Recovery Plan. Newton Corner, MA, 56 pp.

U.S. Fish and Wildlife Service, 1993. Delmarva Fox Squirrel (*Sciurus niger cinereus*) Recovery Plan, Second Revision. Hadley, MA, 104 pp.

U.S. Fish and Wildlife Service, 1997. "Endangered and Threatened Wildlife and Plants; Final Rule" to list the northern population of the bog turtle as threatened and the southern population as threatened due to similarity of appearance. Federal Register Vol. 62, No. 213, November 4, 1997.

U.S. Fish and Wildlife Service. 2000a. Letter from Mr. David Densmore, USFWS to Mr. James Hutton, PECO Energy, October 18, 2000.

U.S. Fish and Wildlife Service, 2000b. Guidelines for Bog Turtle Surveys. Pennsylvania Field Office, State College, PA., August 30, 2000, Revision.

NRC, 2001. Letter to Mr. John Wolflin, U.S. Fish and Wildlife Service requesting information on endangered or threatened species in the Peach Bottom license renewal project area, October 11, 2001.

U.S. Fish and Wildlife Service, 2001. Letter to Ms. Cynthia A. Carpenter, NRC, responding to October 11, 2001, request for information on the presence of endangered or threatened species in the Peach Bottom license renewal project area, November 19, 2001.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Pennsylvania Field Office
315 South Allen Street, Suite 322
State College, Pennsylvania 16801-4850



April 17, 2002

Duke Wheeler
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Mr. Wheeler:

This responds to your letter of March 13, 2002, requesting our review of the Peach Bottom Atomic Power Station, Units 2 and 3, license renewal - "No Effect" and "Not Likely to Adversely Affect" determinations, located in York County, Pennsylvania. The Power Station is located within the range of two federally listed species, the threatened bald eagle (*Haliaeetus leucocephalus*) and bog turtle (*Clemmys muhlenbergii*). The following comments are provided pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to ensure the protection of endangered and threatened species.

Bald Eagle

Bald eagles typically occur in the vicinity of aquatic ecosystems; they frequent lakes, reservoirs, large rivers (e.g., Delaware River, Juniata River, Susquehanna River), and wetland systems. Their nests are usually built in large trees within two miles of these features. Because eagles are vulnerable to human disturbance, particularly during the nesting season, nests are often located in relatively remote forested areas.

The Fish and Wildlife Service proposed to remove the bald eagle from the federal *List of Endangered and Threatened Wildlife* on July 6, 1999 (*Federal Register*, Vol. 64, No. 128), but final action on that proposal has not been taken. The bald eagle, therefore, continues to be listed under the Endangered Species Act. Any changes in the regulatory status of the bald eagle can be monitored by accessing the Service's web site (www.fws.gov).

The bald eagle population in Pennsylvania has increased substantially from the three nest sites found in the State from 1963 through 1980. In 2001, 53 eagle nests were documented. Because bald eagles are continuing to recover and expand their breeding range in Pennsylvania, new eagle nests may be found in previously undocumented locations.

The Pennsylvania Game Commission has determined that the project is in the vicinity of 10 eagle nests on the Lower Susquehanna. In Pennsylvania, the closest nest site is located three miles upstream. Downstream of the project (Maryland), the closest eagle nest is approximately two miles away. Because of the distance between the project and the known eagle nests, continued

Appendix E

operation of the power plant is not likely to adversely affect the bald eagle.

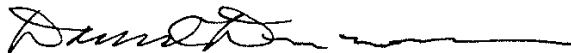
Bog Turtle

A Phase I Bog Turtle Habitat Survey was conducted by Tetra Tech in 2000. According to the report, no wetlands are located at the power plant site. However, the transmission corridor traverses several streams and wetlands. Four of the five streams were incised channels with rocky substrates. The fifth stream crossing had a small, adjacent wetland. However, hydrology adequate to support bog turtles is not present in this wetland. Therefore, based on our review of this information, we conclude that the proposed project will have no permanent or temporary impacts on palustrine wetland habitat that could be occupied by bog turtles.

If this project is implemented as proposed, we concur that renewal of the license of the Peach Bottom Power Station will not effect the bog turtle or its habitat, and is not likely to adversely affect the bald eagle. This response relates only to endangered or threatened species under our jurisdiction, based on an office review of the proposed project's location. No field inspection of the project has been conducted by this office. Consequently, this letter is not to be construed as addressing potential Service concerns under the Fish and Wildlife Coordination Act or other authorities.

If we can be of further assistance, please contact Bonnie Dershem of my staff at 814-234-4090.

Sincerely,

A handwritten signature in black ink, appearing to read "David Densmore", followed by a horizontal line.

David Densmore
Supervisor



STATE OF DELAWARE
DEPARTMENT OF STATE
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS
HISTORIC PRESERVATION OFFICE
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50-277/278

September 9, 2002

Mr. Louis L. Wheeler
Senior Project Manager
License Renewal and Environmental Impacts Program
Division of Regulatory Improvements Programs
Office of Nuclear Reactor Regulations
Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Wheeler:

We received your March 7 letter regarding the Nuclear Regulatory Commission's (NRC) opinion that for compliance with Section 106 of the National Historic Preservation Act, the presence of any historic property along the Keeney Transmission Line are beyond the area of potential effects. We believe this opinion to be inconsistent with the Advisory Council on Historic Preservation's (Council) regulations and with information provided to this Office during the initiation Section 106 consultation for the proposed relicensing of the Peach Bottom Atomic Power Station (PBAPS). In a July 5, 2000 letter sent to Ms. Joan Larrivee, of my staff, from James Hutton, Director of Licensing for PECO Nuclear, Mr. Hutton identified the original undertaking included authorizing the construction in 1974 of the Keeney Transmission Line as the "Only one new transmission corridor [which] was required to integrate PBAPS into PECO Energy's bulk power system when the facility was constructed. This line, from Peach Bottom to the Keeney Substation in Delaware, is the only transmission line/corridor under review during this [current] license renewal process." In this letter initiating consultation with this Office, Mr. Hudson effectively identified reauthorizing of the Keeney Transmission line as an element of the licensing renewal, the undertaking, and as part of the Area of Potential Effect, as per the Council's definition of an *undertaking* (36 CFR 800.16(y)) and the project *Area of Potential Effect* (36 CFR 800.16(d)). Especially important to the definition of undertaking is the notion that it includes "the geographical area or areas within which a undertaking *may directly or indirectly* (my emphasis) cause alterations in the character or use of historic properties, if such properties exist." It is important to note here, there is no discussion of ownership or control which limits the consideration of whether to include any location or property therein within the boundary of the APE. Such limitations would

Add: Duke Wheeler IE25

Appendix E

Letter to Wheeler
September 9, 2002
Page 2

hamper the ability to adequately identify and consider to the fullest extent, what types and degrees of impact or effect an undertaking would have on historic properties for any type of undertaking at any possible location. The Council does not set such restrictions on determining a project undertaking and its APE. The reauthorization of the Keeney Transmission Line, as part of this project, even though it is not owned or controlled by the licensee is not pertinent to the identification of historic properties and the evaluation of effects which the undertaking may have on those historic properties which are present within the APE. (See the attached information provided by Laura Dean of the Council as it pertains to determining an undertaking's area of potential effect: Points to remember Item #2; and, *Colorado River Indian tribes v. Marsh*, 605F. Supp.1425 (C.D. Cal. 1985).) Additionally, in the *Lower Delaware Valley Transmission System Agreement, Schedule 3, Revision No.1*, Page 1 of 2, which you included as an attachment to your March 7 letter, there was an agreement for DP & L (now Conectiv) to construct the Delaware section of the Keeney Transmission Line. Essentially, even while the licensee did not construct this line, it was clearly a contractual arrangement to provide the licensee with the facilities to convey power to its bulk power system, as referenced in Hutton's July 2000 letter. It is part of the undertaking and should be included in the project APE.

The identification of the Chesapeake and Delaware Feeder Canal (Feeder Canal), as an historic property within the project APE, was made by my staff during the consultation process. Comments were provided in an attachment to your March 7 letter, prepared by the licensee, as to their opinion on the non-eligibility of this property. It is important to remember that if there are disagreements between the federal agency and the SHPO as to the eligibility of a particular property, it is the federal agency's responsibility, using 36 CFR Part 61 qualified professionals, to seek a formal determination of eligibility from the Secretary of the Interior, pursuant to 36 CFR 800.4(c)(2) of the Council's regulations. To our knowledge this has not been done.

Finally, it is our contention the Feeder Canal, which we believe may be eligible for listing in the National Register of Historic Places, has been and is continuing to be subjected to destruction due to the lack of adequate maintenance of the transmission line. A bridge which was clearly present in the 1950-1960s which crossed the Feeder Canal was either removed or left to deteriorate. Sometime in the 1970's, the canal was filled in crusher run rock to provide access along this transmission line and to specifically cross this body of water. This in filling has resulted in the loss of the physical features of the Feeder Canal where it is crossed by the transmission line and the subsequent blocking of the flow of water within the Canal. It is our opinion, the lack of maintenance and/or retention of a bridge which spanned the canal and the lack of security to prevent unauthorized use of the access road or any other area along the banks of the Feeder Canal within the transmission right-of-way has caused significant deterioration and alteration of the

Letter to Wheeler
September 9, 2002
Page 3

character of this property and therefore constitutes adverse effects due to destruction and neglect under 36 CFR 800.5(b)(2)(i) and (vi) of the Council's regulations. Towards trying to reverse or correct these adverse effects and to prevent further deterioration, the recommendations made in my October 29 , 2001 letter were presented.

By copy of this letter, we are requesting the Advisory Council to participate in the consultation process and provide guidance on expediting the review for this undertaking, pursuant to Appendix C, Criteria 2 of their regulations. We believe there has been an inconsistent application of their regulations during the Section 106 consultation for the relicensing of the PBAPS and the Keeney Transmission Line.

If you have any questions or desire to discuss this matter further, please contact Faye Stocum at the address above. Thank you.

Sincerely,



Daniel R. Griffith
State Historic Preservation Officer

Enclosures

cc: Don Klima, ACHP
Faye Stocum

Jun-14-02 10:46A

P.01

OPTIONAL FORM 96 (7-90)

FAX TRANSMITTAL

To: **Faye Storum** From: **Laura Dean** Page 6 of 6

City/Agency: **302-739-5685** Phone: **202-600-8527**

Fax: **302-739-5660** Fax: **202-600-5072**

NON 7500-01 317-7388 5099-101 GENERAL SERVICES ADMINISTRATION

Eligibility and inclusion

If a property meets the criteria for inclusion in the National Register, this doesn't automatically result in its being listed. To be listed, a property must be formally nominated using NPS forms and following NPS procedures. Agencies are not required to nominate properties in order to comply with Section 106, although Section 110(a)(2) of NHPA does require agencies to have programs in place for nominating federally owned or controlled historic properties.

If an owner of private property objects to including his or her eligible property in the National Register, they may block it from being listed. Effects on such a property are not exempt from Section 106 review, however, since the property remains eligible for the Register. Private owners may do as they wish with their historic property, provided that they are not receiving Federal assistance or approvals. If they are, the Federal agency involved must comply with Section 106 before the project can be implemented.

Identifying historic properties

Agencies are required to make a "reasonable and good faith effort to carry out appropriate identification efforts. . . " [36 CFR § 800.4(b)(1)] This responsibility rests squarely with the Federal agency and cannot be delegated (with the exception of certain HUD programs). The agency can solicit the help of applicants, grantees, or others to carry out this work, but it is up to the agency to see that the work is carried out properly and to make appropriate use of the results.

In consultation with the SHPO/THPO, the agency determines the scope of needed identification efforts and takes action to identify potential historic properties. The agency then evaluates the significance of those properties and decides whether any could be affected by the undertaking.

Determining an undertaking's area of potential effects

The agency's first step in establishing the scope of needed identification efforts is to determine the undertaking's area of potential effects. This is done in consultation with the

Jun-14-02 10:46A

P.02

SHPO/THPO. [36 CFR §800.4(a)(1)] The area of potential effects (APE) is defined as:

... the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. [36 CFR § 800.16(d)]

If there is disagreement concerning the extent of the APE, the consulting parties may seek guidance and assistance from the Council. Also, the Council can elect to issue an advisory comment to the agency on its APE determination. [36 CFR § 800.9(a)] If this occurs, the agency has to consider the views of the Council in reaching a final decision regarding the boundaries of the APE.

Points to remember. When defining an area of potential effects (APE), agencies need to remember that:

1. The APE is defined before identification begins, when it may not yet be known whether any historic properties actually are within the APE. To determine an APE, it is not necessary to know whether any historic properties exist in the area.
2. An APE is not determined on the basis of land ownership.
3. The APE should include:
 - all alternative locations for all elements of the undertaking;
 - all locations where the undertaking may result in disturbance of the ground;
 - all locations from which elements of the undertaking (e.g., structures or land disturbance) may be visible or audible;
 - all locations where the activity may result in changes in traffic patterns, land use, public access, etc.; and

Jun-14-02 10:46A

P.03

Court Decisions

project. The Corps prepared the plan and obtained the Council's concurrence in the plan in 1983.

The court rejected plaintiffs' claim that the Corps had not complied with the provision of the MOA that required a treatment plan. First, the court determined that Section 800.6(c)(3) of the Council's regulations, which states that a ratified MOA shall evidence satisfaction of the Federal agency's responsibility under Section 106 of NHPA, creates a "presumption of compliance." 567 F. Supp. at 989-90. Even without this presumption, the court held that the Government's documents demonstrated compliance with the terms of the MOA. *Id.* at 990.

The court dismissed plaintiffs' NHPA claims and held that further action withholding possession of the condemned lands on these grounds would not be warranted. *Id.* The Fifth Circuit affirmed. 733 F.2d at 380.

The district court also found that the Corps' programmatic environmental impact statement (EIS) prepared under the National Environmental Policy Act on the entire waterway project sufficiently addressed the impacts of the project on cultural resources. No site-specific EIS for Cedar Oaks and Barton township was needed. 567 F. Supp. at 991. The appellate court affirmed. 733 F.2d at 381.

87

Colorado River Indian Tribes v. Marsh, 605 F. Supp. 1425 (C.D. Cal. 1985).

Plaintiffs, Indian tribes and an environmental organization, sought to enjoin the U.S. Army Corps of Engineers from issuing a permit to a developer for the placement of riprap along the western shore of the Colorado River in California. The purpose of the riprap was to stabilize the riverbank and establish a permanent boundary line for private property that the developer proposed to subdivide and develop into a residential and commercial community. The site of the development,

known as the River City project, was directly across the river from the Colorado River Indian Reservation and directly south of additional portions of the reservation lying on the west side of the river. The land abutting the development site on the west was owned by the United States and administered by the Bureau of Land Management (BLM) of the Department of the Interior. The BLM land, an archeological district, included several significant cultural and archeological sites.

The developer applied to the Corps for the riprap permit in April 1978. The following fall, the Corps prepared an environmental assessment under the National Environmental Policy Act (NEPA) and concluded that, because significant impact upon the environment would result from the developer's proposed project, an environmental impact statement (EIS) should be prepared. The draft EIS was prepared and published in September 1979. In January 1981, the Corps informed the developer that a thorough cultural resources survey of resources on and near the proposed development site was needed before the Corps could complete the final EIS.

In June 1981, however, before the survey was begun, the Corps retracted the draft EIS as a result of changes in Corps policy regarding its jurisdictional authority and announced that no EIS and no further cultural resource evaluation were required. The Corps' decision to retract the draft EIS was apparently made in conformity with its proposed cultural resource regulations published in 1980, regulations that had never been adopted in final form or incorporated into the Code of Federal Regulations.

Under the proposed regulations, the Corps was required to assess both direct and indirect effects of its permits on properties listed or officially determined eligible for listing in the National Register of Historic Places. This review requirement extended beyond the area in which the permit would have direct physical effects to the "affected area," that area within which direct and indirect effects could be reasonably expected to occur.

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Federal Historic Preservation Case Law

For properties that were not listed or officially determined eligible for listing in the Register, but that might be eligible for the Register, the proposed regulations limited the Corps' review to the area within the Corps' jurisdiction—the "permit area," defined as that area which would be physically affected by the proposed work.

The Corps issued the riprap permit to the developer on May 21, 1982. Plaintiffs then filed this action, alleging that the Corps failed to comply with NEPA and the National Historic Preservation Act (NHPA).

After discussing the factors that must be present for a preliminary injunction to be granted, the court addressed the likelihood of plaintiffs' success on the merits of their case. Defendants first contended that no EIS was necessary under NEPA because Federal involvement in the River City project was minimal and "major Federal action" was therefore lacking. The court disagreed, finding that NEPA requires assessment of both direct and indirect effects of a proposed Federal action on both "on site" and "off site" locations. 605 F. Supp. At 1433. That there was minimal Federal involvement in the project did not excuse defendants from compliance with NEPA, for "it is not the degree of Federal involvement that influences the standard of living of our society, but is instead the potential and degree of impact from development that bears upon the overall welfare and enjoyment of our society." *Id.* at 1432. "Major Federal action" does not have a meaning under NEPA independent of "significantly affecting the quality of the human environment." *Id.* at 1431.

The Corps' limitation of the scope of its environmental assessment of the bank stabilization activities and its resulting conclusion that there would be no impact on cultural resources were improper and contrary to the mandate of NEPA. *Id.* at 1433.

The court next addressed plaintiff's claim that the Corps had violated NHPA by distinguishing between properties actually listed in or determined

eligible for the National Register and properties that might be eligible for the Register and by affixing different historic review responsibilities to each. The court held that this distinction between properties and different scopes of responsibility was at odds with NHPA and the regulations of the Advisory Council on Historic Preservation implementing Section 106 of NHPA. *Id.* at 1438. Using the Council's definition of "eligible property" in Section 800.2 of its regulations as encompassing all properties that meet the criteria for inclusion in the Register, the court concluded that, in enacting NHPA, Congress intended to protect all properties that are of inherent historic and cultural significance and not just those that have been "officially recognized" by the Secretary of the Interior. *Id.* The court cited Executive Order No. 11593 and Section 110(a) of NHPA as support, finding that Federal agencies must exercise caution to ensure the physical integrity of those properties that appear to qualify for inclusion in the National Register. *Id.* at 1435.

The Corps' action in assessing the effects on properties that might qualify for inclusion in the National Register solely within the "permit area" and its failure to survey and consider the effects on like properties in the broader "affected area" was a breach of its responsibilities under NHPA. *Id.* at 1438.

Finally, the Court granted a preliminary injunction, finding that irreparable harm to cultural and archeological resources as a result of the development was possible. *Id.* at 1434-39.

88

Sierra Club v. Watt, No. CV-83-5878 AWT (C.D. Cal. Nov. 18, 1983), *aff'd sub nom. Sierra Club v. Clark*, 774 F.2d 1406 (9th Cir. 1985).

Plaintiffs challenged both the Bureau of Land Management's (BLM) California Desert Conservation Management Plan, which designated a



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 9, 2003

Mr. Daniel R. Griffith
State Historic Preservation Officer
Division of Historical and Cultural Affairs
15 The Green
Dover, Delaware 19901-3611

Dear Mr. Griffith:

This letter responds to your correspondence of September 9, 2002, in which you disagreed with the NRC staff position that the Delaware portion of the Peach Bottom-to-Keeney transmission line corridor is outside the Area of Potential Effects (APE) for the proposed renewal of the operating licenses for the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3.

The NRC staff has considered your views and has determined that the Delaware portion of the Peach Bottom-to-Keeney transmission corridor is outside of the APE. Notwithstanding any representations made by NRC applicants, the Agency official (the Director, Office of Nuclear Reactor Regulation) has determined that the APE for a license renewal action is the area at the power plant site and its immediate environs which may be impacted by post-license renewal land disturbing operation or projected refurbishment activities associated with the proposed action. The APE may extend beyond the immediate environs in those instances where post-license renewal land disturbing operations or projected refurbishment activities specifically related to license renewal of the nuclear power plant potentially have an effect on known or proposed historic sites. This determination is made irrespective of ownership or control of the lands of interest.

For the proposed PBAPS license renewal, the licensee has stated, and our review has shown, that there will be no major structural modifications, that maintenance activities will be confined to previously disturbed areas, and that there will be no additional land disturbance. Further, the NRC staff has determined that the decision to approve or deny the requested license renewals would not affect maintenance practices or land disturbances beyond the substations at the PBAPS site where the generating units are connected to the distribution system. Therefore, the APE for the proposed PBAPS license renewal is the plant site, which is wholly within the Commonwealth of Pennsylvania. The PBAPS APE does not extend into Maryland or Delaware. In its letter of December 14, 2000, the Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation (the State Historic Preservation Office), determined that National Register-listed, eligible, historic, and archeological resources are present in the general vicinity of the PBAPS site, and stated an opinion that the proposed license renewal will not affect any of those resources. The NRC staff agreed with this determination and opinion. Therefore, consultation was not required.

In response to your interest in the degraded portion of the feeder canal, where it crosses the transmission line corridor in Delaware, the NRC staff included this site in its review of environmental resources of interest as the staff prepared its environmental impact statement (EIS) to comply with the National Environmental Policy Act (NEPA). The NRC staff review included a visit to the canal during the staff's PBAPS site audit in November 2001. The staff

D. Griffith

- 2 -

disclosed its NEPA findings in its Draft Supplemental Environmental Impact Statement (SEIS) issued for public comment on July 5, 2002.

The NRC staff has determined that, even if the APE were to be extended through Maryland to the Delaware portion of the Keeney transmission line corridor, the proposed renewal of the PBAPS operating licenses would have no effect on the feeder canal where it crosses the Peach Bottom-to-Keeney transmission line corridor. In light of your expressed interest in this matter, we are providing, by separate correspondence, a copy of your September 9, 2002, letter, along with a copy of this reply, to the owner/operator of the Delaware portion of the Keeney transmission line corridor (who is not an NRC licensee) to ensure it is aware of your concerns (Conectiv Power Delivery, Newark, DE).

Additional information regarding the NRC staff review of your interest is enclosed. The staff will include a discussion of this matter in the Final SEIS scheduled for publication in February 2003. No further action is considered necessary. If there are any questions regarding this correspondence, please contact me at (301) 415-1444.

Sincerely,



Louis L. Wheeler, Senior Project Manager
Environmental Section
License Renewal and Environmental Impacts Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Enclosure: Additional Responses to DE SHPO Correspondence

cc w/encl: See next page

Enclosure

Responses to comments in correspondence received from the Delaware State Historical Preservation Office (DE SHPO) regarding the feeder canal:

Comment: The Atomic Energy Commission might not have met National Historic Preservation Act Section 106 responsibilities when it made its early 1970s decisions to grant operating licenses for Units 2 and 3 at Peach Bottom.

Response: The NRC staff carefully reviewed the records and found that the Atomic Energy Commission (AEC) met the compliance standard for historic preservation consideration when the AEC made its decisions to issue the initial operating licenses for Peach Bottom Atomic Power Station, Units 2 and 3 (PBAPS).

The original regulations, implementing Section 106 of the Act (36 CFR 800), were promulgated in 1979, five years after the NRC granted the original licenses for operation of Units 2 and 3 at Peach Bottom Atomic Power Station. The Advisory Council on Historic Preservation had no prescribed regulatory process for Federal agencies to demonstrate compliance with National Historic Preservation Act Section 106 responsibilities until 1979.

As required by Section 106, in 1972 the AEC provided information on the proposed action for PBAPS, including information on historic and archeological resources and determinations, to the Advisory Council on Historic Preservation with a request for comment. There is no record to indicate that the Advisory Council on Historic Preservation objected to the AEC's determinations.

The feeder canal, now identified as a historic property by the DE SHPO, was documented in September 1974, after the AEC issued the operating licenses. The Nuclear Regulatory Commission (NRC) was not aware of the feeder canal until informed by the DE SHPO's office in 2001.

Comment: The proposed license renewal is a Federal undertaking with the potential to affect historic properties.

Response: The NRC staff agrees.

Comment: The feeder canal is a historic resource that meets standards for listing on the National Register of Historic Places.

Response: Without taking a position in agreement or disagreement with the DE SHPO, the NRC staff considered the canal as though it were a historic resource potentially eligible for listing on the National Register for the limited purpose of addressing the DE SHPO's interests.

Comment: Operation of the PBAPS under the current license has caused adverse effects on the feeder canal at the transmission line crossing.

Response: Operation and maintenance of the Peach Bottom-to-Keeney transmission line was not the cause of past adverse effects on the feeder canal at the transmission line crossing. The utility corridor at the intersection with the feeder canal is approximately 400-feet wide; it is the same width as it was in 1968, well before the Peach Bottom line was added to the corridor.

- 2 -

Three other overhead transmission line easements, and at least one underground utility easement share the corridor at the crossing. An NRC decision to either approve or deny the license renewal applications for PBAPS would not alter maintenance practices along the Delaware portion of the Peach Bottom-to-Keeney transmission line; maintenance would continue the same with or without the use of an easement on the corridor for the Peach Bottom-to-Keeney transmission line. The licensee does not own the land at the corridor crossing of the feeder canal nor does it have maintenance responsibility for the corridor at the crossing. The corridor is clear of trees, but is grass and brush covered, and has been in a similar condition since before the Peach Bottom-to-Keeney transmission line was constructed. A gravel-surfaced utility road meanders through the corridor and crosses the remnant trench for the feeder canal underneath the Peach Bottom line, but is not exclusively for maintenance of the Peach Bottom-to-Keeney transmission line. The access road that crosses the feeder canal replaced previous fords in the area of the corridor dating back to as early as 1937.

The old feeder canal alignment remains a visible and well-defined feature along much of its original route through present-day woodlands. It displays less definition and more in-filling as it passes under the transmission corridor. The changes under the transmission corridor are cumulative effects from a range of human and natural activities that extend back in time to a period well before the addition of the Peach Bottom-to-Keeney transmission line to the utility corridor.

NRC team review of aerial photographs indicates the feeder canal remained relatively intact until after 1968. At that time, and before 1977, small noticeable changes began to occur and continue today. First, a utility road crossed the feeder canal at a new place in the transmission corridor and below the present-day Peach Bottom-to-Keeney transmission line. Second, a series of cumulative changes began then, and continue to the present. These include gradual loss of vegetation along the alignment of the canal and a progressive loss of sharpness in the features of the canal as viewed from the air.

Comment: The NRC staff should consider three specific actions to take into account the effects of the undertaking to grant the license renewals for PBAPS.

Response: The DE SHPO requests fall into two categories: (1) an action suggested with the intent to correct the perceived negative result of past operations, and (2) specific actions to prevent future deterioration of the feeder canal. The NRC staff forwarded the recommendations to the applicant in correspondence dated November 26, 2001, even though the recommended actions have no direct bearing on the undertaking.

For the license renewal period, the applicant indicated that it plans (1) no major structural modifications, (2) to limit maintenance activities to previously disturbed areas, and (3) no additional land disturbance. Consistent with the NRC's "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (NUREG-1437), under such conditions, the NRC staff believes continued operation of PBAPS would have no effect on any known or on potential unknown or undiscovered historic or archaeological resources located in areas of potential effect.

As part of its consideration of the DE SHPO correspondence, the NRC staff completed a supplementary analysis based on a scenario which postulated the inclusion of the Delaware

- 3 -

portion of the Peach Bottom-to-Keeney transmission line corridor in the National Historic Preservation Act Area of Potential Effect. In that supplemental analysis, the NRC staff applied the criteria of adverse effect pursuant to 36 CFR § 800.5(a)(1) and found that the proposed undertaking to extend the PBAPS licenses would not alter the characteristics of the potentially historic property known as the Chesapeake and Delaware feeder canal. This conclusion followed consideration of DE SHPO views concerning such effects and incorporated analyses of past, present, and potential future conditions.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 9, 2003

Mr. Robert Jubic
Connectiv Power Delivery
I-95 and Route 273
P.O. Box 9230
Newark, Delaware 19714-9239

Dear Mr. Jubic:

This purpose of this letter is to inform you of an interest of the Delaware State Historic Preservation Officer (DE SHPO) in a historic property that came to our attention during our review of the license renewal application submitted by Exelon Generation, LLC, for Peach Bottom Atomic Power Station, Units 2 and 3. The interest concerns a potential historic site located in the Delaware portion of the Peach Bottom-to-Keeney transmission line corridor.

Enclosed is a letter dated September 9, 2002, from the DE SHPO to the NRC staff which provides information related to DE SHPO's interest. Also enclosed is an NRC staff reply to the September 9, 2002, letter.

If there are any questions regarding this correspondence, please contact me at (301) 415-1444.

Sincerely,

A handwritten signature in cursive script, reading "Louis L. Wheeler".

Louis L. Wheeler, Senior Project Manager
Environmental Section
License Renewal and Environmental Impacts Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Enclosures: As stated

cc w/encls: See next page

Appendix E

Enclosures to NRC staff Letter to Conectiv Power Delivery

There are two enclosures:

The September 9, 2002, letter from the Delaware State Historic Preservation Officer to the NRC staff is located in this Appendix at pages E-11 through E-17.

The January 9, 2003, NRC staff letter to the Delaware State Historic Preservation Officer is located in this Appendix at pages E-18 through E-22.