

Feb. 21, 1962

Feb. 18, 1962

2250

LTR.

MEMO

REPORT

OTHER

TO:

Licensing & Regulation

ORIG.

Memorandum and Order

CC

OTHER

ACTION NECESSARY

CONCURRENCE

DATE ANSWERED

NO ACTION NECESSARY

COMMENT

BY:

CLASSIF.

POST OFFICE

Unclassified

REG. NO.

FILE CODE:

50-171

DESCRIPTION: (Must Be Unclassified)

The initial decision dtd. 2-2-62 regarding construction permit for a 215 megawatt (thermal) high temperature shall be immediately effective as to the dtd. of this order.

ENCLOSURES:

REFERRED TO

DATE

RECEIVED BY

DATE

TAPSON

2-23-62

8 extras

REMARKS:

Mail Room Distribution:
1-Suppl. File Cy.
1-Formal File Cy.

U. S. ATOMIC ENERGY COMMISSION

MAIL CONTROL FORM FORM AEC-326S (8-60)

A-290

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of)
PHILADELPHIA ELECTRIC COMPANY)

DOCKET NO. 50-171-CP

L&R file copy (Suppl.)

MEMORANDUM AND ORDER

An initial decision directing the issuance of a provisional construction permit for a 115 megawatt (thermal) high temperature gas cooled nuclear reactor was issued by the Hearing Examiner on February 2, 1962. No petition for review having been filed by any party, the initial decision would become final on March 5, 1962, in the absence of review by the Commission on its own motion. 10 CFR Section 2.751.

The applicant has moved that the Commission waive the waiting period following the initial decision and direct that the initial decision immediately constitute the final action of the Commission. The regulatory staff has suggested that, following the precedent of General Electric Co. (Vallecitos Supplemental Superheat Reactor), Docket No. 50-183, order of August 8, 1961, the Commission order that

a construction permit issue immediately but, reserve its right to direct that the record be certified to it for final decision. We grant the motion to the extent recommended by the staff, but we add a comment concerning certain observations in the initial decision.

On our review of the initial decision we note that the Hearing Examiner has adopted the proposed findings of fact and conclusions of law submitted jointly by the applicant and the regulatory staff. He has found that "the evidence in gross and in detail supports" certain opinions of the staff and the conclusion that a reactor of the general type proposed can be constructed and operated at the site without creating undue risk to the public health and safety. But he has said, in a footnote, that the ultimate conclusion does not rest on a technically based judgment that the facts and opinions stated by the expert witnesses are scientifically true and correct, and that instead the "legal judgment" is that the record "contains substantial evidence, including facts and opinions declared by skilled experts, to warrant the stated affirmative findings upon the issues". We are confident on reading the entire initial decision that the Hearing Examiner did not intend to apply the "substantial evidence" rule and thus

to substitute for the required adjudication the very limited assessment of the evidence appropriate to the judicial review of a final decision of an administrative agency.

WHEREFORE, upon consideration of the applicant's motion, and in view of the waiver of the right to file petitions for review by the applicant and the regulatory staff, it is hereby ORDERED that:

- (1) The initial decision dated February 2, 1962, shall be immediately effective as to the date of this order.
- (2) The Director, Division of Licensing and Regulation is directed, and is so authorized as of the date of this order, to issue to the applicant a construction permit in the form attached to the initial decision.
- (3) Pursuant to Section 2.751 of the Commission's Rules of Practice, the Commission may, on its own motion, direct that the record be certified to it for final decision prior to March 5, 1962.
- (4) In the absence of any further Commission order pursuant to the foregoing, the initial decision dated February 2, 1962, shall become the final decision of the Commission

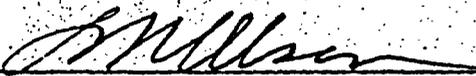
on March 5, 1962.

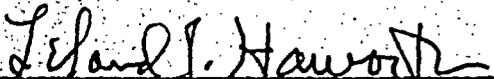
UNITED STATES ATOMIC ENERGY COMMISSION

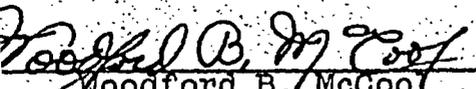

Glenn T. Seaborg, Chairman

John S. Graham, Commissioner


Robert E. Wilson, Commissioner


L. K. Olson, Commissioner


Leland J. Haworth, Commissioner


Woodford B. McCool
Secretary

ated: February 21, 1962

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of
PHILADELPHIA ELECTRIC COMPANY

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) DOCKET NO. 50-171-CP
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L&R File Copy. (formal)

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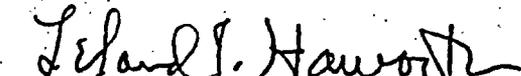
UNITED STATES ATOMIC ENERGY COMMISSION

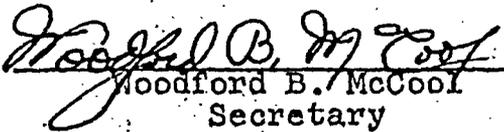

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