

ATOMIC ENERGY COMMISSION

POLICY ASPECTS OF THE PEACH BOTTOM CASE

Report to the General Manager by the Director, Division of
Licensing and Regulation

THE PROBLEM

1. To consider the policy questions raised by the Peach Bottom case.

SUMMARY

2. There are attached as Appendices "A" and "B" reports dated December 5, 1960 and December 7, 1960, respectively, prepared by the staff of the Division of Licensing and Regulation for the use of the Advisory Committee on Reactor Safeguards in its consideration of the Peach Bottom Atomic Power Station. *for proposal*

3. The Advisory Committee on Reactor Safeguards discussed the Peach Bottom case with the applicant and with the staff of the Division of Licensing and Regulation at its meeting on December 8. A letter is expected from the ACRS on this case and it will be circulated to the Commissioners when received.

4. The status of this case on the question of safety, as analyzed by the technical staff of the Division of Licensing and Regulation, raises important policy questions on which the staff needs ^{Commissioner} guidance, particularly in the light of the Court of Appeals decision in the PRDC case.

5. At Regulatory Meeting 59 on January 29, 1960 the Commission approved AEC-R 2/13 with respect to a proposed amendment to 10 CFR

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Section 50.35 which would establish new criteria for the issuance of provisional construction permits. Two additional proposed amendments were approved for publication at that meeting. One of these was the provisional ^{OPERATING} license amendment and the other stated the rule prohibiting start of construction without a permit.

6. Subsequently, after public comments had been received, AEC-R 2/15 was approved by the Commission in Regulatory Meeting 77 on August 17, 1960. R 2/15 recommended action on the two other amendments mentioned but recommended no action at that time on the provisional construction permit amendment.

7. While, as described in R 2/13, Section 50.53 of the current regulation recognizes that there may be information omitted from an application and it is recognized that developmental reactors heretofore proposed have some special design features requiring research and development effort before omitted information can be provided, and the safety issues with respect to those features can be resolved, the current regulation requires a finding as a condition precedent to the issuance of a construction permit that there is "reasonable assurance that a facility of the general type proposed can be constructed and operated at the proposed location without undue risk to the health and safety of the public and that the omitted information will be supplied."

8. When this provision of the current regulation regarding later submittal of omitted information was originally issued in 1955, the staff felt that it afforded the Commission some flexibility in issuing provisional construction permits, but the degree of flexibility was

not spelled out.

9. The decision of the Circuit Court of Appeals in the PRDC case raises a question as to whether the Commission has any flexibility in this regard. If there is no flexibility, then the Commission is put in the position of having to prejudge the results of research and development programs in order to issue construction permits for developmental reactors.

10. On the other hand, if the Commission has any flexibility in this regard and wishes to exercise it as a matter of policy, the policy should be published for the guidance of the staff and other parties involved.

project

11. The case ~~of the~~ Peach Bottom reactor is a case in point where the staff needs policy guidance.

12. The application submitted by the Philadelphia Electric Company, with the assistance of its contractor, General Atomics, describes an extensive research and development program addressed to the various features which the staff believes need to be dealt with. The AEC is supporting this program to the extent of about \$15 million.

13. In its review of the application, the staff has raised several additional questions relating to particular features or lack thereof in the proposed facility, specifically the need for a back-up shut-down system, for a back-up cooling system, and for means of safeguarding against air or water inleakage to the hot core. Although these questions yet remain to be dealt with, their resolution will not alter the problem described above with respect to the extent and nature of the omitted information dependent upon the extensive research and development program that the applicant has described.

14. ~~The Staff's Analysis of~~ the Peach Bottom case contained in Appendix "A" and "B" contains technical facts and opinions and does not attempt to reach regulatory findings. Appendix "B" states a technical judgment ^{*of the staff*} that there is reasonable probability that satisfactory solutions can be found to the basic safety problem involved but that ~~it~~ ^{*the staff*} cannot now conclude that satisfactory ~~answers will be found.~~

15. The staff believes that clarification of the policy intended by Section 50.35 of the regulation is needed as a basis for considering any application

for a construction permit for a reactor requiring substantial research and development programs such as the Peach Bottom project. At least ^{three} ~~3~~ policy alternatives appear to be available.

16. (1) A policy requiring a finding of safety of operation prior to issuance of a construction permit. This is one possible interpretation of the Court of Appeals decision in the PRDC case. It is highly doubtful that the Peach Bottom project or any other developmental project could meet this test.

(2) A policy along the lines of the provisional construction permit amendment mentioned above. Under such a policy it would only be necessary to find that the location is suitable, that the applicant has identified the safety problems and that the R&D program is reasonably designed to resolve the safety problem?

(3) A variation of alternative no. 2 to require an additional finding of reasonable probability of success of the R&D program.