

March 10, 1980

Mrs. Mary Sinclair
Great Lakes Energy Alliance
5711 Summerset Drive
Midland, Michigan 48640

In the Matter of
Consumers Power Company
(Palisades Nuclear Plant)
Docket No. 50-255SP

Dear Mrs. Sinclair:

Attached is the Commission's Order in Surry which directs the Staff to prepare an environmental impact statement regarding the replacement of steam generators in the Surry facility.

Sincerely,

Charles A. Barth
Counsel for NRC Staff

Attachment: As Stated

cc: (w/attachment)
Charles Bechhoefer, Esq.
Dr. George C. Anderson
Dr. M. Stanley Livingston
Atomic Safety and Licensing
Board Panel
Atomic Safety and Licensing
Appeal Panel
Michael I. Miller, Esq.
Martha E. Gibbs, Esq.
Judd L. Bacon, Esq.
Docketing and Service Section

DISTRIBUTION

Barth
Woodhead
D. Silver
D. Ziemann
P. Cota
R. Ballard
Shapar/Engelhardt/Christenbury
FF (2)
Reis
Reg Gen: LPDR

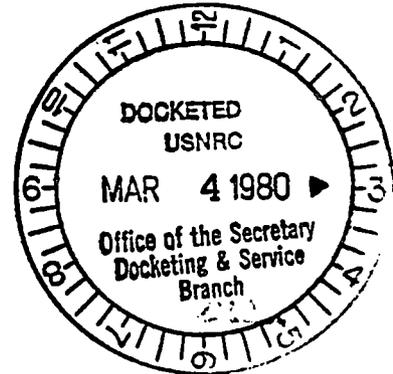
OFFICE	OFLD					
SURNAME	CAR Barth/dkw					
DATE	03/10/80					

8008190 519

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

John F. Ahearne, Chairman
 Victor Gilinsky
 Richard T. Kennedy
 Joseph M. Hendrie
 Peter A. Bradford



In the Matter of

VIRGINIA ELECTRIC POWER CO.

(Surry Nuclear Power Station,
 Units 1 and 2)

For Relief Under 10 CFR 2.206

Docket Nos. 50-280
 50-281

MEMORANDUM AND ORDER

The Commission has before it for sua sponte review three decisions by the Director of the Office of Nuclear Reactor Regulation on petitions^{1/} filed under 10 CFR § 2.206 involving the steam generator repair at the Surry Nuclear Power Station. On January 29, 1980, the Commission, pursuant to 10 CFR § 2.206(c)(1), took review of the three decisions on the issue of the need for an environmental impact statement regarding the proposed repair.

^{1/} The three petitions are from the North Anna Environmental Coalition (filed December 29, 1978; denied February 1, 1979); the Environmental Policy Institute (filed February 20, 1979, denied April 4, 1979); and the Potomac Alliance, Citizens Energy Forum, Inc., Truth in Power, Inc., and the Virginia Sunshine Alliance (filed April 18, 1979, denied October 24, 1979).

Dupe
 8003070023

The primary issue presented by the repair,^{2/} and the sole issue considered on the merits in this Commission review, is whether the NRC's action in approving the repair is one "significantly affecting the quality of the human environment" for purposes of the National Environmental Policy Act (NEPA),^{3/} and therefore one that requires an environmental impact statement. This admittedly vague test, and the lack of definitive criteria that can be used in applying it, leaves the Commission and its Staff with a difficult decision in many cases. The circumstances of this case presented the Director with just such a difficult decision.

Our review has focused on the occupational radiation exposure that the repair program will entail because we believe that this adverse environmental impact is the only one associated with the repair program that might be considered significant. We have carefully examined the Director's Decisions and the bases therefor, and are unable to determine from the data and arguments presented by the Director whether the occupational radiation exposure involved here is significant. The Director's Decisions rest essentially on a comparison of the impact of the radiation exposure resulting from the repair with the net savings in total occupational exposure resulting from operation using repaired steam generators

^{2/} When this issue first arose, both units at Surry were the subject of the petitions. At this point however, repairs at Unit 2 are essentially completed and the repairs at Unit 1 are scheduled to begin in June of 1980. Hence, the need for an environmental impact statement for the Unit 2 repairs is moot. However, the issue of the need for a statement for the Unit 1 repair is very much alive and is the focus of this Commission review.

^{3/} The National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 as amended by Pub. L. 94-83, 89 Stat. 424, 42 U.S.C. §§ 4321 et seq.

instead of defective ones, and a comparison with the incidence of cancer for the worker population due to causes other than the repair at Surry. The first comparison is relevant to the question whether the expected benefits of the action outweigh the environmental costs, which is distinct from the question whether the expected environmental impact of a federal action is sufficiently great to require an impact statement. Even if on balance the result of the Federal action is beneficial, the proper criterion on which to base the decision whether to prepare an EIS is the significance of the action.^{4/} Hence, the fact that the occupational exposure at Surry (2070 man rems for the repair at each unit) is expected to be less than the occupational exposure resulting from continued operation with defective steam generators over a period of four years is a valid consideration in assessing the merits of the repair once the requirements of NEPA have been satisfied, but has no bearing in determining the threshold question of the "significance" of the exposure and the attendant decision whether to prepare an environmental impact statement.

The Director's second basis, comparing the occupational exposures to the number of worker deaths due to cancer from risks unrelated to the repair, necessarily entails a judgment regarding the significance of these other risks. More specifically, it implies the proposition that these other risks are either not significant or that a small percentage of them is not significant. However, nothing in the Director's Decisions establishes this proposition. Thus the comparison, without more, does not enable us to determine whether the exposures here are significant.

^{4/} See Regulations For Implementing The Procedural Provisions of NEPA, 40 CFR 1508.27(b)(1).

Given this, and given the controversy in the scientific community as to the effects of such exposures, we are unable to determine whether the environmental impacts here are significant. Therefore, we believe that the preferable course of action in the circumstances of this case is to prepare an environmental impact statement on the repair.

Accordingly, we hereby direct the Staff to expeditiously prepare and issue an environmental impact statement on the proposed repair at Unit 1.

Chairman Ahearne and Commissioner Hendrie dissent from this decision.^{5/}

It is so ORDERED.

For the Commission



SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.,
this 4th day of March, 1980.

^{5/} Section 201 of the Energy Reorganization Act, 42 U.S.C. § 5841 provides that action of the Commission shall be determined by a "majority vote of the members present." Had Commissioner Gilinsky been present at the meeting he would have voted with the majority. To enable the Commission to proceed with this case without delay, Chairman Ahearne, who was a member of the minority on the question up for decision, did not participate in the formal vote. Accordingly, the formal vote of the Commission was two to one in favor of the decision.

3/6/80

RELATED CORRESPONDENCE

DOCKET NUMBER
PROD. & UTIL. FAC. 50-255

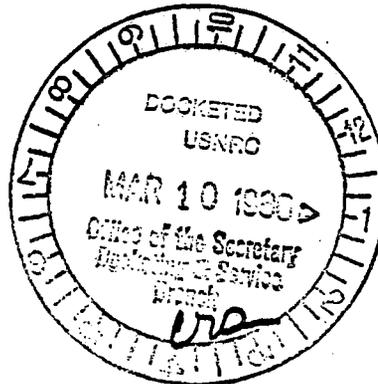
In the Matter of

CONSUMERS POWER COMPANY
(Palisades Nuclear Power Facility)

CIVIL PENALTY

Add'l Dist.:

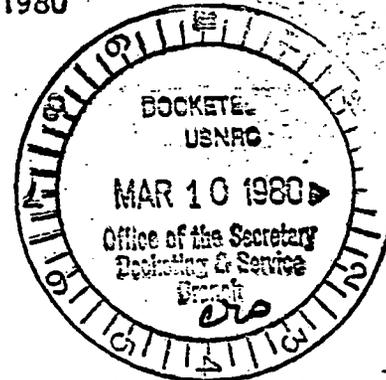
Dick Silver, NRR
Sam Bryan, I&E
D. Thompson, X00S
Victor Stello, Jr., I&E
James Keppler, Reg. III
D. Boyd, Reg. III
Docketing & Service Section
ASLBP
ASLAP



RELATED CORRESPONDENCE
DOCKET NUMBER
PROD. & UTIL. FAC. **50-255**

March 6, 1980

Michael I. Miller Esq.
Isham, Lincoln & Beale
One First National Plaza
Suite 4200
Chicago, Illinois 60603



Dear Mr. Miller:

This letter is in response to your letter of February 21, 1980, which enclosed "Consumers Power Company's First Round of Interrogatories and Request for the Production of Documents by the Nuclear Regulatory Commission". We intend to answer this and future informal discovery requests insofar as these requests encompass matters which are appropriately discoverable in this case. To the extent information you seek is relevant and necessary to a proper decision in this matter, we believe we can accommodate your request informally and it will, therefore, be unnecessary to insist on your strict compliance with the formal discovery mechanisms contemplated in 10 CFR 2.720 and 2.744 as a prerequisite to your obtaining such information.

We wish to inform you, however, that we do not intend to provide any answers to several requests made in your February 21st filing: specifically, items 2(b), (c) and (d); 3; 4; 5 in part; 6(b)(ii) in part; 7(b)(ii) in part; 8(b)(ii) in part; 9; 11 in part; 12(f) and (g); 12(i) in part; 13(f) and (g); 13(i) in part; 14(a)(iv), (v), (viii), and (ix); and 17 in part. The thrust of these questions is to delve into the thoughts of each person on the NRC staff who may have participated in the internal deliberative process that led to the decision by the Director of Inspection and Enforcement to impose civil penalties against Consumers Power Company. In our view, such an inquiry is neither relevant nor necessary to a proper decision by the Administrative Law Judge in this case. Moreover, we do not believe that the information you seek in these questions is properly discoverable.

The issues in this case do not concern the individual opinions of members of the staff in proposing the imposition or non-imposition of a civil penalty against Consumers Power Company. Those persons who may have advised or participated in the process leading to the Director's December 20th Order - indeed, including the Director himself - are not the decisionmakers in this case. It is Judge Smith who must now determine (1) whether Consumers Power Company committed the alleged violations and (2) whether civil penalties are warranted. Of course, the NRC staff has the burden of going forward on the issues in this

MARCH 8, 1980

case.

In this regard, let me refer you to the decision of the Atomic Safety and Licensing Appeal Board in Radiation Technology, (ALAB-567, Oct. 16, 1979), petition for review denied, January 4, 1980. In that case, the licensee argued that its due process rights had been violated, because the licensee did not have the opportunity to cross-examine the Director regarding statements made to him by other NRC personnel that led to the Director's determination to impose civil penalties. The Appeal Board rejected this argument:

"The answer to this contention is that it rests on a misconception. The Director is not the ultimate fact finder in civil penalty matters. Commission regulations afford one from whom a civil penalty is sought the right to a hearing on the charges against it. 10 CFR §2.205(d) and (e). At that hearing, the Director must prove his allegations by a preponderance of the reliable, probative and substantial evidence. It is the presiding officer at that hearing, not the Director, who finally determines on the basis of the hearing record whether the charges are sustained and civil penalties warranted." Id., Slip Op. at 6-7.

The Appeal Board went on to say:

"A licensee who thinks the Director has been ill-advised or mistaken has a remedy. It is not to cross-examine the Director's thought processes but to make him prove his case at an impartial hearing." Id., Slip Op. at 8.

Although you may be styling your argument a bit differently, the Company's position is not unlike that taken by Radiation Technology. We think, therefore, that the Appeal Board's decision is equally applicable here.

While we intend at this point to answer your remaining requests, we do not intend to waive by this letter any other objections to those requests that may become apparent upon further analysis. We also note that your requests in items 12, 13, and 14 encompass for the most part documents and records which are publicly available in the Commission's public document room. To the extent that the staff may be able to easily identify the requested materials, however, we will make every effort to accommodate your requests.

Sincerely,

J
James P. Murray
Director and Chief Counsel
Rulemaking and Enforcement Division
Office of Executive Legal Director

cc: Hon. Ivan W. Smith, Paul Murphy, Esq., Alex Bielewski, Esq., + Judd Bocan, E.