

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of :
Public Service Electric & Gas Co. :
Salem Nuclear Generating Station, :
Unit No. 1 and No. 2

Docket No. 50-272
No. 50-311

PETITION SEEKING ISSUANCE OF AN ORDER TO SHOW CAUSE
REQUEST SEEKING SUSPENSION AND/OR REVOCATION OF OPERATING LICENSE
SALEM NUCLEAR GENERATING STATION UNIT NO. 1 (DOCKET NO. 50-272)

REQUEST SEEKING SUSPENSION AND/OR REVOCATION
OF CONSTRUCTION PERMITS AND STAY LICENSING
SALEM NUCLEAR GENERATING STATION UNIT NO. 2 (DOCKET NO. 50-311)

Alfred C. Coleman, Jr. and Eleanor G. Coleman (husband and wife) hereby petition the Nuclear Regulatory Commission seeking Issuance of an Order to Show Cause, Suspension and/or Revocation of Operating License for Salem Nuclear Generating Station Unit No. 1, Suspension and/or Revocation of Construction Permits and Stay of Licensing of Salem Nuclear Generating Station Unit No. 2, without counsel (pro-se).

The authority for this request is granted by the Atomic Energy Act of 1954, as amended (The Act) and the regulation in Title 10 Code of Federal Regulations, Part 2.202 Order to Show Cause and Part 2.206 Request for Action. Also set forth in the Endangered Species Act of 1973 as amended (The Act) Section 7 (a) "...All other Federal agencies shall, in consultation with and with the assistance of the Secretary (Secretary of the Interior), utilize their authorities in furtherance of this Act by carrying out programs for the conservation of endangered species..." The Endangered Species Act of 1973, as amended, is an act "To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes."

The purposes of this Act (Section 2.(b)) are to provide a means whereby the ecosystems upon which Endangered Species and Threatened Species depend may be conserved, to provide a program for the conservation of such Endangered Species and Threatened Species, and to take such as may be appropriate to achieve the purposes of treaties and conventions set forth in subsection (a) of this section."

"It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve Endangered Species and Threatened Species and shall utilize their authorities in furtherance of the purposes of this Act (Sec. 2.(c))."

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Definitions

"The terms 'conserve,' 'conserving,' and 'conservation' mean to use and the use of all methods and procedures which are necessary to bring any Endangered Species or Threatened Species to the point at which the measures provided pursuant to this Act are no longer necessary (the Act Sec. 3.(3))."

"The term 'Endangered Species' means any species which is in danger of extinction throughout all or a significant portion of its range...: (The Act Sec. 3.(6)). The term "take" defined in the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in any such conduct.

Introduction

Set forth in the Final Environmental Impact Statement (FEIS) related to operation of Salem Nuclear Generating Station Unit No. 1 and No. 2, Public Service Electric and Gas Co. (PSE&G), Docket No. 50-272 and 50-311, dated April, 1973:

"Salem Station is located on about 220 acres of the applicant's 700-acre site at the southern end of Artificial Island in Lower Alloways Creek Township, Salem County, New Jersey. The Island (in actuality, an artificial peninsula) projects from the eastern shore about one-third of the way across the Delaware River estuary which has a width of about 2.5 miles at this location. The station is essentially midway between Wilmington and Dover, Delaware, 20 miles north and south of the site, respectively.. Philadelphia (Penna.) is about 30 miles and Salem, New Jersey is 7.5 miles northeast of the site."

"Artificial Island was created, beginning early in the twentieth century, by disposing of hydraulic dredging spoils within a progressively enlarged diked area established around a natural bar that projected into the river. The low and flat 1500-acre island, average elevation about 9 ft. above mean sea level (msl) and a maximum elevation of about 18 ft. msl can best be characterized as tidal marsh and grassland. The remainder of the island, as well as a 1-mile wide inland strip of land abutting the island, is owned by the U.S. Government."

Construction permits for Salem Nuclear Generating Station Units No. 1 and No. 2 were issued by the Atomic Energy Commission on September 25, 1968.

Ecological studies of the Delaware River in the vicinity of Artificial Island have been in progress since June of 1968 by Ichthyological Associates under contract to the applicant (licensee) FEIS April, 1973 (Page 2-27, 2.7.2 Aquatic)."

"The sampling is believed to have been sufficiently comprehensive that there is little likelihood that any species of importance has been missed in this survey (with emphasis) - FEIS April, 1973 (Page 2-28, 2.7.2.2 Fish)."

History

"The ecology of the Delaware River in the vicinity of Artificial Island is being studied by Ichthyological Associates, an unincorporated group of biologists. The study is financed by a contract with PSE&G (the Licensee), 80 Park Place, Newark, N. J.

Artificial Island is the site of twin-unit pressurized water reactors, each plant will have a gross electrical output of 1100 megawatts.

The objective (ecology studies) is to make an ecological study of the Delaware River and adjacent waters in the vicinity of Artificial Island. The study area includes the Delaware River for a distance up to approximately ten miles above and below Artificial Island. The most intensive effort involves a relatively small area which will be directly affected by heat effluent or cooling water from the nuclear generating station (area around and near the intake and outfall pipes - our comment). The study will continue for several years after completion of the second unit (Ecological Study of the Delaware River in the vicinity of Artificial Island - Progress Report for June-December, 1968, Ichthyological Associates, Middletown, Delaware 19709)."

Facts

Fish that pass by the intake structure may follow the inflowing water up to the traveling screens. In spite of what appears to be a favorable design for this intake structure, it can not be assured that it is entirely trouble-free. The numbers and kinds of fish that die on the screens are monitored and reported since commercial operation began June 30, 1977 on a monthly basis in the "Impingement Monitoring Program."

The Secretary of the Interior publishes a list of all species determined by him, refers to the species by scientific and common name (if any) and species with respect to each such species over what portion of its range it is endangered or threatened and specifies any critical habit within each range.

Such is the case and reason for this petition, the Secretary of the Interior lists the Sturgeons as follows:

Sturgeons, family Acipenseride
Acipenser brevirostrum Lesueur, Shortnose Sturgeon,
E (Endangered), 1 (Present or threatened destruction
of habitat), Atlantic Coast (USA).

The intent of the Endangered Species Act of 1973, as amended (the Act) is that all Federal agencies, including the Nuclear Regulatory Commission shall protect, guarantee and insure that no adverse action (overutilization for commercial, sporting, scientific, or educational purposes, disease or predation, inadequacy of existing regulatory mechanisms) not limited to but including other natural or manmade factors affecting its continued existence (not limited to but to include intake pipes at nuclear facilities).

To the best of our knowledge there does not exist any known environmental impact analysis and/or statement prepared which discusses the impact upon Endangered, Threatened or of Special Concern species or their critical habitat as it relates to Artificial Island.

Except as provided in Sections 6 (g)(2) and 10 of the Act, with respect to any Endangered Species of fish or wildlife listed pursuant to Section 4 of the Act, it is unlawful for any person subject to the jurisdiction of the United States to take any such species within the United States.

The injunctive relief provided by the Act, Sec. 11 shall not restrict any right which any person (or class of persons) may have under any statute or law (not limited to but includes the Atomic Energy Act of 1954, as amended the Act - and the regulations in Title 10 Code of Federal Regulations) to seek enforcement of any standard or limitation or to seek any other relief.

The basis for determination of an Endangered Species at Artificial Island site are photographs and slides of samplings taken by PSE&G or Ichthyological Associates (as contracted) tagged from the Salem Nuclear Generating Station or in the vicinity (within testing area).

Primary cause for this belated request is the fact that substantive information and, in our opinion, conclusive evidence has just come to our attention prior to this filing.

It is the responsibility and right of every citizen to protect the environment in which they and their families live and use whatever legal means to preserve and protect those rights and the environment.

Contentions

1. The Licensee has not submitted sufficient information or documentation to determine there is adequate protection and assurance there is no taking (with emphasis) of Endangered Species at Artificial Island, in this case namely *Acipenser brevirostrum* Lesueur, Shortnose sturgeon. Even in the case of the A.O. *oxyrhynchus* Mitchell, Atlantic sturgeon (East Coast) a species Of Special Concern (present or threatened destruction of habitat) which the Atomic Energy Commission (now NRC) reported in 1973 required no special protection or statement of agreement from the Licensee.
2. The Licensee data fails to disclose that there is absolutely no taking (with emphasis) of an Endangered Species at Artificial Island, in this case *Acipenser brevirostrum* Lesueur, Shortnose sturgeon. Even in the case of the A.O. *oxyrhynchus* Mitchell, Atlantic sturgeon which is reported by Ichthyological Associates, Progress reports for 1974, 1975 and 1968 for the licensee, neither the licensee/contractor nor the NRC has required protective measures to be implemented.
3. The Licensee is knowingly taking (with emphasis) an Endangered Species, namely the *Acipenser brevirostrum* Lesueur, Shortnose sturgeon. We cannot find any mention of this species in the Impingement Monitoring Program Report for July, 1978, prior reports, or current reports for the Salem Nuclear Generating Station which is part of the ongoing ecological study of the Delaware River in the vicinity of Artificial Island. It is our contention that the Shortnose sturgeon is being impinged or is highly susceptible to impingement on the Circulating Water System (CWS) traveling screens and the Service Water System (SWS) traveling screens at the Artificial Island site.
4. The NRC has erred in finding that evidence and/or sampling of fish supports the conclusion that entrainment "...sampling is believed to have been sufficiently comprehensive that there is little likelihood that any species of importance has been missed in this survey." Further, the NRC staff has erred in finding that sampling in the vicinity of Artificial Island conclusively supports this statement as it relates to identifying, quantitatively and qualitatively Endangered Species, and measures that shall be taken to protect, guarantee and insure that no adverse action shall jeopardize the continued existence of any Endangered, Threatened or Of Special Concern Species.

Conclusion

For all these reasons, we urge suspension and/or revocation of the Operating License for Salem Nuclear Generating Station Unit No. 1, suspension or revocation of Construction Permits and Stay Licensing of Salem Nuclear Generating Station Unit No. 2 in light of the needless taking (with emphasis) of the Acipenser brevirostrum Lesueur, Shortnose sturgeon.

We respectfully request the Commission admit us as intervenors, direct that evidence be taken on the above contentions and hold a public hearing in the County of Salem, New Jersey, City of Salem.

Date October 18, 1979

Alfred C. Coleman Jr.
Alfred C. Coleman, Jr.

Eleanor G. Coleman
Eleanor G. Coleman

35 "K" Drive
Pennsville, New Jersey 08070
(609) 678-7125

RESOURCE REFERENCE

1. Public Service Electric and Gas Company (PSE&G), Salem Nuclear Generating Station Unit No. 1 and No. 2, Draft Environmental Statement, Issued October, 1972.
2. Public Service Electric and Gas Company, Salem Nuclear Generating Station Unit No. 1 and No. 2, Final Environmental Statement, dated April, 1973
3. Public Service Electric and Gas Company, Hope Creek Nuclear Generating Station Unit No. 1 and No. 2, Draft Environmental Statement, issued November, 1973.
4. Public Service Electric and Gas Company, Hope Creek Nuclear Generating Station Unit No. 1 and No. 2, Final Environmental Statement, dated February, 1974.
5. Edward C. Raney, Victor J. Schuler, and Robert F. Denoncourt, Progress Report for June-December, 1968 of Ichthyological Associates Progress Report 1 June 1969, Ecological Study of the Delaware River in the Vicinity of Artificial Island.
6. Victor J. Schuler, Progress Report for January through December 1974, Volume I, Studies on Fishes and Ichthyoplankton by Ichthyological Associates June 1976, An Ecological Study of the Delaware River in the Vicinity of Artificial Island.
7. Victor J. Schuler, Progress Report for January through December 1975 of Ichthyological Associates, Inc., July 15, 1977, An Ecological Study of the Delaware River in the Vicinity of Artificial Island.
8. Public Service Electric and Gas Company, response dated November 12, 1973, submitted an Amendment 25 To The Applications under Docket No. 50-272 and No. 50-311.
9. A Bulletin of the American Fisheries Society, Vol. 4, No. 2, March-April 1979 entitled Fisheries, article Fishes of North America Endangered, Threatened, or of Special Concern: 1979 pages 30-42
10. U. S. Department of the Interior, December 1978, The Endangered Species Act of 1973, P.L. 93-205 (87 Stat. 884), including the amendments.

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In the Matter of :
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AFFIDAVIT

IN SUPPORT OF PETITION SEEKING ISSUANCE OF AN ORDER TO SHOW CAUSE
REQUEST SEEKING SUSPENSION AND/OR REVOCATION OF OPERATING LICENSE
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1. We are fully familiar with all statements contained in the attached Petition seeking the above. To the best of our knowledge, information and belief, the statements contained therein are true and accurate, submitted in good faith and not for the purpose of delaying adjudication of this within proceeding.
2. My wife and I, together with our three children (ages 11, 14 and 18), live at 35 "K" Drive, Pennsville, N. J. 08070 in a one-story ranch style house which we own. Our home is located about 10 miles north of Artificial Island (site of Salem No. 1 and No. 2). We have lived in this location for about six years, and have no present intention of moving. We have lived in Salem County all of our lives (except for short period of time in case of wife before 6 years old).
3. I am employed by the du Pont Company of Wilmington, Delaware as a Distribution and Customer Service Supervisor with responsibilities for the sale and distribution of du Pont paint products for international sales. I am a graduate of Rutgers University, where I majored in economics. I am also a licensed real estate salesman/broker and licensed insurance solicitor/broker in the State of New Jersey. I engage in real estate and insurance on a part-time basis, mostly in the Salem County area.
4. We are current Intervenor in the application to increase storage of spent fuel assemblies at the Salem Nuclear Generating Station Unit No. 1, PSE&G (Docket No. 50-272).

Date

October 18, 1979

Alfred C. Coleman, Jr.
Alfred C. Coleman, Jr.

Eleanor G. Coleman

Eleanor G. Coleman
35 "K" Drive
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(609) 678-7125

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CERTIFICATE OF SERVICE

IN SUPPORT OF PETITION SEEKING ISSUANCE OF AN ORDER TO SHOW CAUSE
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We hereby certify that copies of the following documents were
mailed this 18 day of October in the year 1979 to persons
listed on the attached Service List.

1. Petition Seeking the above
2. Affidavit in Support of Petition Seeking the above

Date October 18, 1979

Alfred C. Coleman Jr.
Alfred C. Coleman, Jr.
Eleanor G. Coleman
Eleanor G. Coleman
35 "K" Drive
Pennsville, N. J. 08070

SERVICE LIST

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Washington, D. C. 20555

Director of Nuclear Material Safety and Safeguards
U. S. Nuclear Regulatory Commission
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Office of the Secretary
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