

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF NUCLEAR REACTOR REGULATION
Harold R. Denton, DirectorOFFICE OF SECRETARY
DOCKETING & SERVICE
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In the Matter of

PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station,
Unit 2)

Docket No. 50-353

(10 CFR 2.206)

DIRECTOR'S DECISION UNDER 10 CFR 2.206INTRODUCTION

On July 28, 1985, Mr. Marvin I. Lewis, on behalf of himself and Citizen Action in the Northeast (Petitioners), filed with the Director of the Office of Nuclear Reactor Regulation a Petition seeking that the Director immediately suspend the construction permit for Unit 2 of the Limerick Generating Station and institute proceedings to determine whether to revoke the construction permit. Construction Permit No. CPPR-107 (construction permit or CP) was issued to the Philadelphia Electric Company (licensee or PECO) on June 19, 1974 authorizing construction of the Limerick Generating Station, Unit 2. Petitioners base their Petition upon a recent recommendation by Administrative Law Judge Allison K. Turner to the Pennsylvania Public Utility Commission which the Petitioners allege shows that Unit 2 is not economically viable. The Petition argues that this new information demonstrates that the cost/benefit ratio required to be evaluated by the NRC under the National Environmental Policy Act (NEPA) is now unfavorable and that therefore the construction permit was illegally and improperly issued.

On August 30, 1985 I acknowledged receipt of the Petition and informed the Petitioners that the Petition would be treated under 10 CFR 2.206 of the Commission's regulations and that a formal decision with respect to it would be issued within a reasonable time. Notice of receipt of the petition was published in the Federal Register (50 FR 36934, September 10, 1985).

The licensee submitted comments on the Petition of Mr. Lewis on September 18, 1985 and I have considered them in reaching my decision. My decision in this matter follows.

DISCUSSION

Current Status of Limerick Generating Station

A full power operating license for Unit 1 of the Limerick Generating Station was issued on August 8, 1985 and Unit 1 subsequently began a startup testing program of about six months duration prior to placing the unit in a commercial operation status. Construction Permit No. CPPR-107 for Limerick Unit 2 was issued on June 19, 1974. Construction on Unit 2 has, until recently, been suspended by the Philadelphia Electric Company in response to an order by the Pennsylvania Public Utility Commission. At present Unit 2 is approximately 30 percent complete. Hearings were held before Administrative Law Judge (ALJ) Allison K. Turner of the Pennsylvania Public Utility Commission (PUC) in early 1985 and on July 12, 1985 a Recommended Decision of the ALJ was issued to the PUC. On December 5, 1985, the PUC issued an Order wherein it set forth the terms and conditions of a cost containment and operating incentive plan under which the PUC would approve continuation of Limerick Unit 2. On December 23, 1985 PECO announced that it had decided to complete construction of Limerick Unit 2 under those terms and conditions and had so notified the PUC.

Since the Recommended Decision also discusses PECO's arguments to the PUC regarding the status of NRC licensing activities for Unit 2, I shall comment briefly on that subject here. A large portion of the NRC licensing activities necessary to facilitate the issuance of an operating license for Unit 2 have been completed. For example, the Final Safety Analysis Report review and the Environmental Report review for Unit 2 are virtually complete except for certain issues specific to Unit 2 which cannot be addressed until later, such as the qualifications of the Unit 2 operating staff. Furthermore, new regulatory requirements will be imposed only in accordance with the Commission's backfitting policy in 10 CFR 50.109. The four partial initial decisions resulting from the NRC's Atomic Safety and Licensing Board hearings encompass issues which in almost all cases are applicable to Unit 2 as well as Unit 1. Inspection activities associated with Unit 2 completion, some additional Advisory Committee on Reactor Safeguards review and additional consideration by the Commission at the time of authorization of full power operation would constitute the majority of the remaining expected NRC licensing activities to be completed for Unit 2. This assessment is of course conditioned on a general absence of proposed changes to the Unit 2 design by PECO.

Analysis of Petition

The Petition alleges that the Recommended Decision¹ by Administrative Law Judge Allison K. Turner to the Pennsylvania Public Utility Commission provides new information which shows that Unit 2 of the Limerick Generating Station is

1 Recommended Decision (RD) of Allison K. Turner, Administrative Law Judge, dated July 12, 1985, before the Pennsylvania Public Utility Commission, Limerick Unit No. 2 Nuclear Generating Station Investigation No. I-840381.

not economically viable. The Petition argues that, on this basis, the NRC staff's assessment of costs and benefits which supported issuance of the construction permit is invalid and, accordingly, the construction permit should be suspended and proceedings initiated to determine whether it should be revoked. The petition essentially argues that the facility is no longer needed or economical and thus the benefit from the facility, i.e., the power it will generate, no longer outweighs the environmental costs of the facility and the Commission should reconsider its decision to grant a construction permit for the facility.

The results of the staff's assessment of the Unit 2 costs and benefits which support issuance of the Unit 2 construction permit are reported in the Final Environmental Statement issued in November 1973. As indicated therein a variety of costs were evaluated including capital and operational costs, land usage, water usage, thermal, chemical and radiological impacts on the environment and biological impacts. A variety of benefits were evaluated including the electric energy and improved reliability from increased electric capacity to be supplied. The overall assessment of the costs and benefits resulted in various conclusions as stated in the FES, the last of which was that the net impact of the construction and operation of the station would be beneficial. Thus, the direct economic costs and benefits were not the only parameters considered by the NRC staff in its evaluation of the station for National Environmental Protection Act (NEPA) purposes.

The Petition is essentially a collection of comments and unsupported assertions regarding the Pennsylvania PUC Recommended Decision. The investigation by the Pennsylvania PUC as carried out by the ALJ was concerned with economic issues as they relate to monetary rates for electricity and the degree of service to be provided to the public. The specific issues concerned the adequacy of PECO power generation margins, cost effectiveness of

alternates such as cogeneration, conservation or purchased power, the financial health of PECO, the acceptance or rejection of securities filings by PECO, treatment of sunk Unit 2 costs, a plan to induce cost efficient and timely construction, construction costs and capacity factors, fossil fuel prices, load growth projections and Unit 2 operating and maintenance expenses and capital additions during its projected life.

The Recommended Decision is extensive (over 400 pages) and includes the opinions of the ALJ and assessments of the views of the eight parties to the proceeding followed by a summary and conclusion and proposed Findings of Fact, Conclusions of Law and a proposed Order. The differing viewpoints of the parties on the numerous issues are assessed in the Recommended Decision. The ALJ also discusses the inherent uncertainties in assessing many of the individual issues based, as they are, largely on forecasts of future happenings in a changing industry and economy. The ALJ concluded that power equivalent to that which would be provided by Limerick Unit 2 would be needed to meet future requirements. The ALJ concluded that, although Limerick Unit 2, per se, is not required to meet these future needs, power equivalent to what Unit 2 could provide would need to be provided in the time frame beyond 1991. This appears to also be the approximate time frame in which Unit 2 could be completed for use.

The Petition provides no citations to the Recommended Decision nor any other indications regarding which specific aspects of the Recommended Decision constitute the basis for its request beyond asserting that the new information in the Recommended Decision directly demonstrates the economic non-viability of Unit 2 of the Limerick Generating Station. However, as indicated above, the full Pennsylvania PUC has now evaluated the ALJ's recommendation and has established a plan of cost containment and operating incentives under which it will permit continuation of construction of Limerick Unit 2. Thus, the PUC

has concluded that, within the limitations it has established, the costs for the Limerick facility are acceptable. PECO has agreed to resume construction on that basis.

The Petition provides a discussion that is not directly related to or supported by citations to the Recommended Decision on the analyses of costs and benefits required by the NRC regulations in 10 CFR Part 51 in a manner which suggests that the Petitioner believes that an overall numerical value of costs to benefits, a cost/benefit ratio, must be developed and compared to a specific acceptance criterion (of "positive" or "negative" value). In the NRC staff assessment of the various environmental costs and benefits of construction of Unit 2 reported in the FES in November 1973, the costs and benefits are not reduced to single values or parameters due to their dissimilarity and the resulting lack of meaning any such value would have. Therefore there is no overall numerical value of cost to be compared to an overall numerical value of benefits.

As described above, the benefit side of the analysis is the power that will be generated by the facility. The Commission's regulations governing the consideration of need for power for a plant which already has a construction permit are set forth in 10 CFR §51.21 & §51.23. The Commission has made a generic determination that in all cases to date and in all foreseeable cases, there will be some benefit from operation of a nuclear plant in terms of either meeting increased energy needs or replacing older less economical generating capacity. Thus, once need for power and alternative energy source issues are resolved in the construction permit proceeding, absent special circumstances shown in accordance with 10 CFR 2.758 or as otherwise required by the Commission, need for power and alternative energy source issues will not be considered in operating licensing proceedings for nuclear power plants.

In previous decisions on petitions filed pursuant to 10 CFR 2.206, we have noted that NEPA does not require the Commission to reconsider environmental decisions whenever new information developed subsequent to the action becomes available. Rather, it is unnecessary for an agency to reopen the NEPA record unless the new information would clearly mandate a change in result. See, e.g., Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), DD-79-17, 10 NRC 613, 621 (1979); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 & 2), DD-79-4, 9 NRC 582, 584-85 (1979).

The petitioner here has identified no information or special circumstances which would cause us to ignore the Commission's generic findings on this issue in this case.

As explained by the Appeal Board in a decision in the Midland case on this issue:

Unless the proposed nuclear plant has environmental disadvantages in comparison to possible alternatives, differences in financial cost are of little concern to us. Because a line of our earlier decisions leads us directly to this proposition, we need record our underlying reasoning only briefly here.

In the Atomic Energy Act, Congress did not make this agency responsible for assessing whether a proposed nuclear plant would be the most financially advantageous way for a utility to satisfy its customers' need for power. Such matters remained the province of the utility and its supervising State regulatory commission.

Antitrust issues to one side, our involvement in financial matters was limited to determining whether, if we license the plant, the company will be able to build and then to operate it without compromising safety because of pressing financial needs. The passage of the National Environmental Policy Act increased our concern with the economics of nuclear power plants, but only in a limited way. The Act requires us to consider whether there are environmentally preferable alternatives to the proposal before us. If there are, we must take the steps we can to see that they are implemented if that can be accomplished at a reasonable cost; i.e., one not out of proportion to the environmental advantages to be gained. But if there are no preferable environmental alternatives, such cost-benefit balancing does not take place. Manifestly, nothing in NEPA calls upon us to sift through environmentally inferior alternatives

to find a cheaper (but dirtier) way of handling the matter at hand. In the scheme of things, we leave such matters to the business judgment of the utility companies and to the wisdom of the State regulatory agencies responsible for scrutinizing the purely economic aspects of proposals to build new generating facilities. In short, as far as NEPA is concerned, cost is important only to the extent it results in an environmentally superior alternative. If the "cure" is worse than the disease, that it is cheap is hardly impressive. (Footnotes omitted.)

Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-163 (1978).

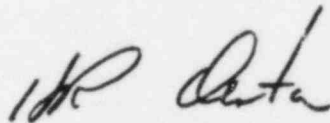
As I have previously stated² in a Director's Decision in response to an earlier 2.206 Petition regarding the Limerick plant:

Suspension, modification or revocation of construction permits may be appropriate based upon substantially changed circumstances. The appropriateness of suspending, modifying or revoking construction permits for nuclear facilities based upon alleged changed circumstances has previously been addressed. NEPA does not require a decision based upon environmental impact statements be reconsidered whenever information developed subsequent to the action becomes available. It is unnecessary for an agency to reopen a NEPA record unless the new information will clearly mandate a change in result. (Footnotes omitted.)

No such new information has been presented here.

CONCLUSION

For the reasons discussed above the information identified by the Petition does not warrant the initiation of the requested proceedings. Accordingly, the Petitioners' request for action pursuant to 10 CFR 2.206 is denied. As provided in 10 CFR 2.206 (c), a copy of this Decision will be filed with the Secretary for the Commission's review.



Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Dated at Bethesda, Maryland this
21st day of March, 1986

² Philadelphia Electric Company (Limerick Generating Station, Units 1 & 2), DD-84-13, 19 NRC 1137, 1144 (1984).