

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

POOR ORIGINAL

In the Matter of :
Public Service Electric & Gas Co. :
Hope Creek Generating Station :
Units No. 1 and No. 2 :

Docket No. 50-354
No. 50-355

PETITION SEEKING ISSUANCE OF AN ORDER TO SHOW CAUSE
REQUEST SEEKING SUSPENSION AND/OR REVOCATION OF CONSTRUCTION PERMITS
DOCKET NO. 50-354 AND 50-355

Alfred C. Coleman, Jr. and Eleanor G. Coleman (husband and wife) hereby petition the Nuclear Regulatory Commission (NRC) seeking Issuance of an Order to Show Cause, Suspension and/or Revocation of Construction Permits for Hope Creek Nuclear Generating Station Unit No. 1 and 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 regulations 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 (ESA) 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 conservati.. of such Endangered Species and Threatened Species, and to take such as may be appropriate to achieve the purposes of the 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 Hope Creek Nuclear Generating Station Unit No. 1 and No. 2, Public Service Electric and Gas Co. (PSE&G), Docket No. 50-354 and No. 50-355, dated February, 1974;

"Hope Creek Station is located on about 300 acres of the applicant's (licensee's) 700-acre site at 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 site is essentially midway between Wilmington and Dover, Delaware, 20 miles north and south of the site, respectively. Philadelphia (Penna.) is about 40 miles and Salem, New Jersey is 7.5 miles northeast of the site."

"Artificial Island was created, beginning 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."

"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, February, 1974 (Pages 2-20, 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, February, 1974 (Pages 2-22, 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 PS&G (the Licensee) 80 Park Place, Newark, N. J."

Hope Creek Nuclear Generating Station Unit No. 1 and No. 2 are alike in that each will use a General Electric boiling-water reactor, rated at 3.293 megawatts thermal (MWt), to develop steam to drive turbine generators with net outputs of 1067 megawatts electrical (MWe).

"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 the 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 cannot be assured that it is entirely trouble-free. The number 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 habitat within each range.

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

Sturgeons, family Acipenseridae
Acipenser brevirostrum Lesueur, Shortnose sturgeon
E (Endangered), 1 (Present or Threatened Destruction of habitat), Atlantic Coast (USA).

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The intent of the Endangered Species Act of 1973, as amended (the Act) is that all Federal agencies, including the NRC 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 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 PSBBG 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*

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- brevirostrum Lesueur, Shortnose sturgeon. Even in the case of the A. C. 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.C. oxyrhynchus Mitchell, Atlantic sturgeon which is reported by Ichthyological Associates, Progress Reports for 1968, 1974 and 1975 for the licensee, neither the licensee/contractor nor the NRC has required protective measures 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 Construction Permits for Hope Creek Nuclear Generating Station Units No. 1 and No. 2 in light of the probability of needless taking (with emphasis) of the Acipenser brevirostrum Lesueur, Shortnose sturgeon.

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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 _____

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

Eleanor G. Coleman

35 "K" Drive
Pennsville, N. J. 08070

(609) 678-7125

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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, Hone Creek Nuclear Generating Station Unit No. 1 and No. 2, Draft Environmental Statement, issued November, 1973.
4. Public Service Electric and Gas Company, Hone Creek Nuclear Generating Station Unit No. 1 and No. 2, Final Environmental Statement, dated February, 1974.
5. Edward C. Kaney, 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. 834), including the amendments.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of :
Public Service Electric & Gas Co.:

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AFFIDAVIT

IN SUPPORT OF PETITION SEEKING ISSUANCE OF AN ORDER TO SHOW CAUSE
REQUEST SEEKING SUSPENSION AND/OR REVOCATION OF CONSTRUCTION PERMITS
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1. We are fully familiar with all the 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 submitted 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, New Jersey, 08070 in a one-story ranch style house which we own. Our home is located about ten (10) miles north of Artificial Island (site of Hope Creek No. 1 and No. 2). We have lived in this location for about six years and have no present intention of moving. Except for the first six years of my wife's life, we have both been life-long residents of Salem County.
3. I, Alfred Coleman, 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 a 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 Unit No. 1, PSERG (Docket No. 50-272)
5. We have filed Petition Seeking Issuance of an Order to Show Cause and Stay Licensing of Salem Nuclear Generating Station Unit No. 2 (advised pending notification Federal Register).

Date _____

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

Eleanor C. Coleman
35 "K" Drive
Pennsville, N. J. 08070
(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 _____ day of _____ in the year _____ to
persons listed on the attached Service List.

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

Date _____

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

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

SERVICE LIST

POOR ORIGINAL

Director of Nuclear Reactor Regulation
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Director of Nuclear Material Safety and Safeguards
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Director of Office of Inspection and Enforcement
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Office of the Secretary
Bookkeeping and Service Section
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Office of Endangered Species
U. S. Fish and Wildlife Service
Washington, D. C. 20240

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