PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held May 22, 1981

Commissioners Present:

Susan M. Shanaman, Chairman
Michael Johnson
James H. Cawley
Linda C. Taliaferro

Pennsylvania Public Utility Commission v. Metropolitan Edison Company and Pennsylvania Electric Company, Respondents	I-79080320
Operating Agreement among Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company and GPU Nuclear Corporation.	G-80060098
Affiliated Interest Agreement between Metropolitan Edison Company and Pennsylvania Electric Company relating to the proposed combined management of the two Companies.	G-80070101
Petition of JARI, Inc., et al. for an injunction to enjoin Pennsylvania Electric Company and Metropolitan Edison Company and for hearings.	P-80100242

OPINION AND ORDER

BY THE COMMISSION:

Procedural Background

By order adopted August 16, 1981, the Commission initiated an investigation upon its own motion into the past and present management practices of Metropolitan Edison Company, Pennsylvania Electric Company, and General Public Utilities Corporation, and authorized a management audit of the named companies which was docketed at I-79080320.

On June 5, 1980, an affiliated interest agreement between Jersey Central Power & Light Company and Metropolitan Edison Company and Pennsylvania Electric Company and GPU Nuclear Corporation, was filed with the Commission, pursuant to the provisions of Section 2102 of the Public Utility Code (66 Pa. C.S. §2102) on behalf of Metropolitan Edison Company

and Pennsylvania Electric Company, together with other relevant documents. This agreement, concerned with the operation, maintenance and rehabilitation of the Three Mile Island Nuclear Generating Station was docketed at G-80060098.

On July 22, 1980, an affiliated interest agreement between Metropolitan Edison Company and Pennsylvania Electric Company, was filed with the Commission, pursuant to the provisions of Section 2102 of the Public Utility Code (66 Pa. C.S. §2102). This agreement, concerning the proposed combined management of those two companies, was docketed at G-80070101.

On July 1, 1980, the Johnstown Regional Industries, Incorporated filed a petition seeking an injunction prohibiting Metropolitan Edison Company and Pennsylvania Electric Company from taking and further steps to carry out a de facto merger until completion of the management audit report and hearings thereon. This Petition filed at Docket No. I-79080320 subsequently was docketed at P-80100242.

By order adopted October 24, 1981, and entered October 29, 1981, the Commission:

1. Instituted an investigation into the affiliated interest agreement docketed at G-80060098;

2. Instituted an investigation into the affiliated interest agreement docketed at G-80070101; and,

3. Consolidated for investigation and disposition the above referenced affiliated interest agreement investigations and the Petition docketed at P-80100242 with the investigation previously initiated at Docket No. I-79080320.

The Recommended Decision of the Administrative Law Judge was issued on February 11, 1981.

On February 27, 1981, exceptions were filed by the Trial Staff, the Commission Administrative Staff[1/], and Metropolitan Edison Company and Pennsylvania Electric Company, jointly. On March 5, 1981, a reply to exceptions were filed by the Johnstown Area Regional Industries, Incorporated.

Discussion

This Opinion and Order is limited to a consideration of the affiliated interest agreement, filed by the Respondents on June 5, 1980, concerning the operation, maintenance and rehabilitation of the Three Mile Island Nuclear Generating Station by the GPU Nuclear Corporation, docketed at G-80060098.

1/ By order entered November 26, 1981, the Commission established an entity denominated the Commission Administrative Staff for the purpose of sponsoring the "Management and Operations Study" prepared by the Commission's contract consultant, Theodore Barry & Associates.

The recommendation of the Administrative Law Judge regarding this Operating Agreement is as follows:

> 2. It is recommended that the affiliated interest agreement docketed at G-80060098 and known as the "GPU Nuclear Corporation Operating Agreement" be rejected and disapproved in its present form by the Commission ----- subject, however, to certain conditions which, if complied with, would qualify the Agreement for reconsideration by the Commission:
>
> On or before September 1, 1981, Penelec and Met Ed (or GPU) should file the following documents with the Commission for its inspection and approval -----
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> a) Proof that FERC has approved the GPUNC "interlocking" Officers and Directors pursuant to Section 305(b) of the Federal Power Act.
>
> b) Proof that the NRC has granted permission to GPUNC to operate the GPU nuclear facilities on behalf of the owners and the present licensee.
>
> c) A detailed, comprehensive plan which demonstrates how GPUNC will efficiently control and operate the two nuclear generating stations at Three Mile Island in a manner that is considered safe, technically superior and better organized than the present licensee's capability to operate the said nuclear stations.

The exceptions of the Trial Staff very tersely state that: (1) it supports approval of the agreement; (2) the Recommended Decision fails to address the merits of the agreement; (3) no substantial testimony was presented in opposition to the agreement; and, (4) refers the Commission to its Main Brief for a discussion of the merits of the agreement.

The exceptions of the Commission Administrative Staff are equally succinct: first, that no party presented testimony in opposition to approval of the agreement; second, that the analysis of Theodore Barry & Associates supports the agreement; third, that the requirement that it be demonstrated that GPU Nuclear Corporation would function better as the operator than Metropolitan Edison Company is not the proper statutory test to be applied; finally, it is stated that prior approval of various matters by the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission, is an inappropriate approach to, or position in, the matter.

The exceptions of the Respondents are as follows:

1. Exception Is Taken To The ALJ's Conclusion As To Burden Of Proof Applicable To Code Section 2102 Filings.

2. Exception Is Taken To The Finding That The GPU Nuclear Agreement Is "Premature".

3. Exception Is Taken To The Finding That GPUSC Rather Than GPUNC Should Operate TMI.

4. Exception Is Taken To The Conclusion That The PUC Has Jurisdiction Over The Operation Of Nuclear Facilities.

5. Exception Is Taken To The Finding And Conclusion That The GPU Nuclear Agreement Is Not Reasonable And Consistent With The Public Interest.

6. Exception Is Taken To The Failure To Find And Conclude That The GPU Nuclear Agreement Is Reasonable And Consistent With The Public Interest.

7. Exception Is Taken To The Recommendation (at G-80060098) That The GPU Nuclear Agreement Be Rejected And Disapproved In Its Present Form.

The reply exceptions of the Johnstown Area Regional Industries, Incorporated did not address the GPU Nuclear Corporation affiliated interest agreement.

The statutory criteria to be utilized by the Commission in acting to approve or disapprove an affiliated interest contract appear in Section 2102(b) of the Public Utility Code, 66 Pa. C.S. §2102(b). That section, in pertinent part, provides as follows:

> The commission shall approve such contract or arrangement made or entered into after the effective date of this section only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. If at the end of 30 days after the filing of a contract or arrangement, no order of rejection has been entered, such contract or arrangement, whether written or unwritten, shall be deemed, in fact and law, to have been approved. The commission may, by written order, giving reasons therefor, extend the 30-day consideration period. No such contract or arrangement shall receive the commission's approval unless satisfactory proof is submitted to the commission of

> the cost to the affiliated interest of rendering the service or of furnishing the property or service described herein to the public utility. No proof shall be satisfactory within the meaning of the foregoing sentence unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom as the commission may deem adequate, properly identified and duly authenticated. The commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

The provision regarding the costs of rendering the services obviously contemplates the usual factual situation in which historic cost records exist and in which some profit is to be derived by the affiliated interest contract. In this instance historic cost records do not exist. Estimates of cost are not reasonably possible when considering the unknowns which are involved in the rehabilitation of the property. Further, since it appears that all services rendered by GPU Nuclear Corporation will be at the actual cost of providing the services,[2/] we conclude that this is an appropriate circumstance in which to approve or disapprove the contract without the submission of cost records or estimates, as we are authorized to do by the concluding sentence of the quoted statutory provision.

The Administrative Law Judge concluded that instant filing was premature and in his recommendation urged that the Commission not act to approve the Agreement at this time, but rather to await the approval by the Federal Energy Regulatory Commission of the proposal which involves interlocking directors and officers, pursuant to Section 305(b) of the Federal Power Act (16 U.S.C. 825(d)). He further recommended that approval of the Agreement await approval by the Nuclear Regulatory Commission of the operation of the units by GPU Nuclear Corporation. As to both these concerns, we see no need to await the approvals by the Federal Commissions. In the event that one or both should not be forthcoming, approval of the Agreement by this Commission might be a fruitless act, but no harm would be done. It is obvious in this situation that someone must be the first to act; we see nothing to be gained by awaiting decisions by the Federal commission. The third condition to our approval which the Administrative Law Judge suggests is the preparation and availaility of a comprehensive plan which demonstrates that the plants will be operated in a safe, technically superior and better organized manner than the present licensee (Metropolitan Edison Company). We would not wish to suggest that this subject is not one of concern, however, we are well aware that this subject, regarding who shall be the operating licensee, is one which is within the sole jurisdiction of the

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2/ See Article 5.2 of the Agreement.

Federal government, under the Atomic Energy Act, 42 U.S.C. 2011 et seq.

Consequently, we perceive no reason why we should not act to approve the Agreement at this time if we are satisfied from the evidence of record that it "clearly appears" that the proposed agreement is "reasonable and consistent with the public interest." No party to the proceeding suggests that the record does not support such a conclusion nor does the Administrative Law Judge. The evidence of record has been reviewed with great care and we conclude that it clearly appears that the agreement is in fact "reasonable and consistent with the public interest"; THEREFORE,

IT IS ORDERED: That the affiliated interest agreement docketed at G-80060098 is approved as being reasonable and consistent with the public interest.

BY THE COMMISSION,

William P. Thierfelder
Secretary

(SEAL)

ORDER ADOPTED: May 22, 1981

ORDER ENTERED: JUL 9 1981