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USNRC

May 29, 1984

'84 MAY 30 P3:56

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
PHILADELPHIA ELECTRIC COMPANY)
)
(Limerick Generating Station,)
Units 1 and 2))

Docket Nos. 50-352 *OL*
50-353 *OL*

NRC STAFF RESPONSE TO APPLICANT'S MOTION FOR AN
EXPEDITED PARTIAL INITIAL DECISION AND ISSUANCE OF A
LOW-POWER LICENSE FOR FUEL LOADING AND LOW-POWER TESTING

I. INTRODUCTION

On May 9, 1984, the Philadelphia Electric Company (Applicant) filed "Applicant's Motion For An Expedited Partial Initial Decision And Issuance Of A Low-Power License For Fuel Loading And Low-Power Testing" (Applicant's Motion) pursuant to 10 C.F.R. § 50.57(c). For the reasons stated below the Staff supports Applicant's Motion.

II. DISCUSSION

The Applicant asserts that, based on a recent assessment of construction status, it will be ready to load fuel in Unit 1 on or about September 15, 1984. Consequently, pursuant to 10 C.F.R. § 50.57(c)^{1/} the

1/ 10 C.F.R. § 50.57(c) provides:

(c) An applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing, pursuant to this paragraph (c), for an operating license authorizing low-power testing (operation at not more than 1 percent of full power for the purpose of

[Footnote continued on next page]

Applicant has requested the Atomic Safety and Licensing Board Panel (Licensing Board) to issue an expedited Partial Initial Decision (PID) and an operating license authorizing the Applicant to load fuel in the Limerick Generating Station, Unit 1 reactor and to operate the facility at power levels not to exceed five percent of power, consistent with required time frame. (Applicant's Motion, pages 1-2).

The Applicant has assessed the evidentiary hearing schedule and the schedule for the submission of proposed findings of fact and conclusions of law for the remaining contested issues and concluded that there appears to be no conflict with its request. The Staff concurs. Evidentiary hearings are currently being held regarding the NEPA severe accident contentions, and

1/ [Continued from previous page]

testing the facility), and further operations short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties of the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Prior to taking any action on such a motion which any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy, in the form of an initial decision with respect to the contested activity sought to be authorized. The Director of Nuclear Reactor Regulation will make findings on all other matters specified in paragraph (a) of this section. If no party opposes the motion, the presiding officer will issue an order pursuant to § 2.730(e) of this chapter, authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on the matters specified in paragraph (a) of this section and to issue a license for the requested operation.

Thus, contrary to the Applicant's request, this Board may not itself issue an operating license but rather, upon making favorable findings on those matters in controversy which are pertinent to the requested license, the Board should authorize the Director of Nuclear Reactor Regulation to issue the license upon making appropriate findings on all other, uncontested matters.

litigation of this issue should be completed by June 22, 1984.^{2/} A schedule for submission of proposed findings of fact and conclusions of law for the NEPA severe accident contentions has not yet been established by the Licensing Board. It is the view of the Staff that if the evidentiary record closes on or about June 22, 1984, findings could be filed shortly thereafter, thus permitting the issuance of a PID consistent with the fuel loading schedule the Applicant has proposed.

The remaining contested issue to be heard involves offsite emergency planning. However, this should not affect Applicant's request. Under 10 C.F.R. § 50.47(d):

(d) . . . [N]o NRC or FEMA review, findings, or determinations concerning the state of offsite emergency preparedness or the adequacy of and capability to implement State and local offsite emergency plans are required prior to issuance of an operating license authorizing only fuel loading and/or low power operations (up to 5% of the rated power). Insofar as emergency planning and preparedness requirements are concerned, a license authorizing fuel loading and/or low power operation may be issued after a finding is made by the NRC that the state of onsite emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The NRC will base this finding on its assessment of the applicant's emergency plans against the pertinent standards in paragraph (b) of this section and Appendix E of this part.

The hearing on onsite emergency preparedness issues was held on April 23-25, 1984, and the Licensing Board has established a schedule for submission of proposed findings of fact and conclusions of law on those issues, resulting in the last submittal on the issue being filed on July 9, 1984.^{3/}

^{2/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), "Order Confirming Rulings and Schedules Made at Special Prehearing Conference On NEPA Severe Accident Contentions", Slip opinion, dated May 2, 1984. Limerick, "Memorandum and Order Denying Motion For New Contention Based On IE Notice No. 84-17, Slip. op. at page 6, dated May 1, 1984.

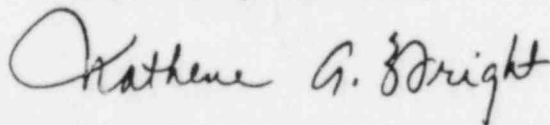
^{3/} Limerick, "Order Scheduling Proposed Findings," Slip op., dated April 27, 1984.

Thus, it appears that the Licensing Board should be able to make their findings on onsite emergency preparedness in the proposed expedited Partial Initial Decision on or about September 15, 1984. Hearings on all other contested issues have been concluded, and the proposed findings of fact and conclusions of law of all parties have been filed, or shall be filed by July 9, 1984, with the Licensing Board.

III. CONCLUSION

Inasmuch as no other contested issues relevant to activities involving fuel loading and low-power testing remain to be litigated after June 22, 1984, it is the view of the Staff that the Licensing Board should grant the Applicant's Motion insofar as it requests the issuance of an expedited Partial Initial Decision.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mathene A. Wright".

Mathene A. Wright
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 29th day of May, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO APPLICANT'S MOTION FOR AN EXPEDITED PARTIAL INITIAL DECISION AND ISSUANCE OF A LOW-POWER LICENSE FOR FUEL LOADING AND LOW-POWER TESTING" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 29th day of May, 1984:

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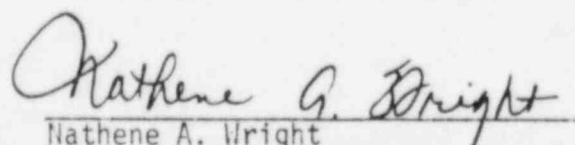
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