

993

DMB



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

RELATED CORRESPONDENCE

DOCKETED
USING

June 25, 1984

'84 JUN-2 14:19

Mr. Robert L. Anthony
Friends of the Earth of the
Delaware Valley
106 Vernon Lane, Box 186
Moylan, PA 19065

In the Matter of
PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station, Units 1 and 2)
Docket Nos. 50-352 and 50-353

Dear Mr. Anthony:

This refers to your telephone conversation with Ann P. Hodgdon this morning concerning the captioned matter. Pursuant to that conversation I have enclosed the relevant pages from the transcript of June 19, 1984 reflecting the comments of the Licensing Board and the parties on your motions of June 18 and 19, concerning the Applicant's motion for a low power license.

Sincerely,

Benjamin H. Vogler

Benjamin H. Vogler
Counsel for NRC Staff

by APH

Enclosure: As stated

cc w/o enclosure: See next page

DS07

cc w/o enclosures:

Lawrence Brenner, Esq.
 Dr. Peter A. Morris
 David Wersan
 James Wiggins
 Frank R. Romano
 Edward G. Bauer, Jr.
 Troy B. Conner, Jr., Esq.
 Marvin I. Lewis
 Joseph H. White III
 Dir. Pa. Emer. Mgmt Agency
 Martha W. Bush
 Gregory Minor
 Timothy R. S. Campbell, Director
 Atomic Safety and Licensing
 Appeal Board Panel

Dr. Richard F. Cole
 Spence W. Perry, Esq.
 Zori G. Ferkin
 Kathryn S. Lewis
 Angus Love, Esq.
 Ms. Maureen Mulligan
 Mark J. Wetterhahn, Esq.
 Charles W. Elliott, Esq.
 Thomas Gerusky
 Sugarman and Denworth
 Atomic Safety and Licensing Board
 Steven P. Hershey, Esq.
 Docketing and Service Section

DISTRIBUTION:

NRC Docket/LPDR/PDR
 FF
 Murray/Chandler
 Christenbury/Scinto
 Lieberman
 Rutberg/Lewis
 Vogler
 Hodgdon
 Wright
 Gutierrez
 ASchwencer 144
 RMartin 144
 Vogler Chron

SAW

DS07

OFC	:ELD:Hearing	:ELD:Hearing	:	:	:	:
NAME	:BVogler:cm	:JRutberg	:	:	:	:
DATE	:6/25/84	:6/ /84	:	:	:	:

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,
Units 1 & 2)

Docket No. 50-352
50-353

Location: Philadelphia, PA

Pages: 11,996 - 12,103

Date: Tuesday, 19 June 1984

TAYLOE ASSOCIATES

Court Reporters
1625 I Street, N.W. Suite 1004
Washington, D.C. 20006
(202) 293-3950

1 WITNESS LEVINE: I don't know what you mean by
2 average. People talk about the expected value loosely as
3 average but it is really not an average because events like
4 this have not happened and an average implies a statistical
5 average of data that has occurred, so it is not an average.
6 It is a comparison of expected values, which is the area under
7 the curve.

8 JUDGE BRENNER: Ms. Bush, we are ready to take a
9 break whenever it is convenient for you.

10 MS. BUSH: It is convenient at this point, your
11 honor.

12 JUDGE BRENNER: Okay, we will break until 3:30
13 using that clock.

xxx

14 (Recess.)

15 JUDGE BRENNER: Back on the record.

16 We want to digress for a moment since Mr. Anthony
17 is waiting and we will deal with his motions, which we
18 received at the start today, namely about 1:15 or so.

19 Mr. Anthony, you can stay where you are --

20 MR. WETTERHAHN: You can join us at this table.

21 JUDGE BRENNER: He does not have to. We are going
22 to do all the talking, but whatever is convenient for him.

23 We received two written motions on behalf of FOE
24 which is the Intervenor in the case. They are entitled,
25 "Anthony/FOE Motion in Addition to Motion 5/18/84 versus

1 PECO Motion of 5/9/84 for Expedited Partial Decision on
2 Low Power License."

3 However, notwithstanding the caption, it deals
4 exclusively with matters related to the Part 70 new fuel
5 license and changes thereunder and actions thereunder taken
6 and proposed.

7 A companion, separate motion which we received at
8 the same time, dated June 18th -- the first motion I read was
9 dated June 19th -- the second motion is entitled, "Anthony/
10 FOE Contentions Based on New Matter, Letter from J.W. Gallagher/
11 J.S. Kemper, PECO, 6/7/84 " requesting "remaining portion of
12 a license, (Part 70)" to move fuel to the refueling for
13 inspection and storage in the fueling pool and petition for
14 a stay.

15 You have got to get a little more concise in
16 your motion captions, Mr. Anthony.

17 No answers will be necessary to these two motions.
18 We are going to deny them summarily right now.

19 They deal with the new fuel shipment. Our previous
20 order finding no health and safety or any other impact to the
21 then-proposed contentions of the actions under the proposed
22 Part 70 license and then subsequently issued, Part 70 license
23 still apply.

24 We are not going to revisit the issue again, even
25 if we had jurisdiction to do so.

1 Based on our previous order and ruling, which order
2 was affirmed quite thoroughly and our opinion by the Appeal
3 Board, a related matter raised in these motions is that
4 Mr. Anthony is still complaining that he never received a
5 stay since his appeal is still pending before the Commission.
6 That matter I can explicitly state we do not have jurisdiction
7 over. In fact that matter was raised before the Appeal Board
8 and they declined to continue a stay after reviewing our
9 decision on the merits.

10 The matter then went up to the Commission and as
11 I recall, I don't have it in front of me, the Commission
12 declined to issue a stay also. I don't have the date of the
13 order.

14 And that is where that stands. So no further
15 action by us will be taken on that aspect.

16 As to the other aspect, complaining that there may
17 be some health and safety impacts, our decision and the Appeal
18 Board's decision thoroughly takes care of that.

19 The fact that there may be changes under the
20 license or conditions does not affect the very basic findings
21 which we made in rejecting the contentions.

22 There is a premise in one of the motions that is
23 incorrect. The premise is that any further changes under the
24 license has to come before and through the Board. That premise
25 is simply incorrect given our previous rulings in this case.

1 So that terminates that matter as of now.

2 You can step up if you want to say something.

3 If you want to be comfortable, you can take a seat,
4 but we are not going to debate the matter. It is pretty
5 straightforward given our previous rulings.

6 MR. ANTHONY: I am at a little of a loss, Judge
7 Brenner, to understand your comment about not having juris-
8 diction, since I have a copy of an order from the Commission
9 dated March 22, which delegates the exercise of review functions
10 over Part 70 to this Board and I have another notification,
11 the 26th of March, also delegating authority to this Board.

12 JUDGE BRENNER: Yes, I think you didn't listen
13 very carefully to what I said. I will explain it again if
14 you want.

15 I was very careful on the jurisdictional point,
16 I thought, as to your basic premise that there are matters
17 here that may adversely affect health and safety and we should
18 litigate them, which matters are totally unspecified I might
19 add.

20 I did not say we did not have jurisdiction.

21 I said assuming we had jurisdiction, our previous
22 ruling, which we carefully considered and which the Appeal
23 Board affirmed, mandates the same result. And we have already
24 reached that result and described it in great detail and on
25 that basis we can summarily deny your further motion.

1 There is also a respectable argument that we no
2 longer have jurisdiction, having ruled under our initial
3 jurisdiction, and that ruling now being on appeal through the
4 Appeal Board first and now before the Commission.

5 But we are not using that as a reason for not
6 addressing the substance. The part that I did definitely
7 state we do not have jurisdiction over is your request for a
8 stay based on your appeal now pending before the Commission
9 of our earlier ruling.

10 MS. HODGDON: Judge Brenner, may I speak?

11 JUDGE BRENNER: No. In a minute you can, though.

12 And that is the best answer I can give to your
13 question. I am not going to belabor it.

14 MR. ANTHONY: Perhaps you haven't had a chance to
15 really study the content?

16 JUDGE BRENNER: We have. I have read it at least
17 three times and I purposely waited for the break so I can
18 reread it twice carefully during the break.

19 Motions are only three pages. It does not take
20 that long to read and digest.

21 MR. ANTHONY: The request for a stay is not based
22 on the former dealings with the Part 70. This is request on
23 a current letter of June 7, which to me bypasses completely
24 just as the application of last June, a year ago, bypassed
25 me and you and this is the same situation.

1 JUDGE BRENNER: Well, you have not correctly
2 described your unwritten motion or not fully described it
3 because what you just said is inconsistent with the fourth
4 paragraph of the June 19th motion.

5 Be that as it may, your other point I have also
6 addressed, and labelled it an incorrect premise, that the
7 Applicant had to come through and before this Board each and
8 every time some change was being contemplated under the Part 70
9 license.

10 Given our prior rulings, that premise is incorrect.
11 That is as far as I want to take it now.

12 I will ask the Staff to provide Mr. Anthony with
13 a copy of the transcript pages of this matter so he can have
14 them for purposes of any rapid reference that he might want
15 to make to some of the body.

16 Now, Ms. Hodgdon --

17 MS. HODGDON: We will do that. I did not wish to
18 address the merits of this matter at all. I merely wanted to
19 point out one pertinent fact and that is that we received in
20 our office yesterday a copy of a notice that the Commission
21 had let the time expire for reviewing ALAB 765, which was the
22 Appeal Board's decision on the Part 70 matter without taking
23 review of it.

24 JUDGE BRENNER: Thank you. I did not know that,
25 but that only reinforces everything I have said so far.

1 MR. ANTHONY: What does that mean?

2 JUDGE BRENNER: It means the Appeal Board decision
3 is the final Agency action.

4 MR. ANTHONY: Thank you. And how to I proceed to
5 appeal?

6 JUDGE BRENNER: I am not going to begin to advise
7 you on this, because I think we already ruled on this the
8 last time and you have been through the appellate process.
9 That is my personal opinion.

10 MR. ANTHONY: The appeal runs from today?

11 JUDGE BRENNER: I think this matter has already
12 thoroughly been exposed of earlier today. The fact that you
13 have chosen to file additional motions of it does not in my
14 opinion give you new rights of appeal. But you pursue that
15 through whatever avenue you think is proper. I am just not
16 going to advise you on it.

17 MR. ANTHONY: And when would I have an answer on
18 the new contentions that have been submitted?

19 JUDGE BRENNER: Those are your other previously
20 filed motions?

21 MR. ANTHONY: Yes.

22 JUDGE BRENNER: You will have an answer when we
23 rule on them.

24 MR. ANTHONY: Thank you.

25 JUDGE BRENNER: We just received the Staff's

1 answer and the Applicant's answer to your Supplemental, Third
2 Supplemental Motion, the other day and we will rule on them
3 in due course. We have got priorities in this case and we
4 will decide what is important to get to when.

5 It may be we will rule on them in a partial initial
6 decision and maybe we will rule on them in a separate order in
7 advance of that. I don't know.

8 MR. ANTHONY: Thank you.

9 JUDGE BRENNER: All right.

10 I wanted to digress to this matter, since
11 Mr. Anthony had been patiently waiting and I wanted to take
12 it up while he was still here.

13 MR. ANTHONY: Thank you.

14 JUDGE BRENNER: All right. We can resume the
15 cross examination at this point.

End 7.

16

17

18

19

20

21

22

23

24

25