

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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BEFORE ADMINISTRATIVE JUDGES:
Helen F. Hoyt, Chairperson
Dr. Richard F. Cole
Dr. Jerry Harbour

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

Docket Nos. 50-352-OL
50-353-OL
(ASLBP No. 81-465-07 OL)

October 15, 1984

MEMORANDUM AND ORDER

1. This Board has before it Applicant's Motion for Confirmation of Authorization to Issue Low-Power License. The Motion was first made to the Board in a telephone conference call on October 3, 1984 and confirmed in a written motion also filed on October 3, 1984, and hand delivered or telecopied and delivered by Federal Express on October 3, 1984 to the Board and Counsel for Intervenor, Del-Aware.

2. This Board's Second Partial Initial Decision of August 29, 1984 had authorized the Director of Nuclear Reactor Regulation (NRR), upon making appropriate findings under 10 C.F.R. § 50.57(a), to issue to Applicant a license or licenses for low-power testing (up to five percent of rated power) of Limerick Generating Station, Unit 1. The Atomic Safety and Licensing Appeal Board on September 26, 1984 in ALAB-785 affirmed the Board's Partial Initial Decision of March 8, 1983, but remanded to the Board two issues with instructions that Del-Aware

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be given an opportunity to resubmit them in accordance with 10 C.F.R. § 2.714. Those two issues dealt with (1) the impact of the supplementary cooling water system on the salinity of the Delaware River, and (2) the system's impacts on the Point Pleasant Historical District. As Applicant has correctly noted in its written motion, the Appeal Board did not stay the authorization by this Board to the Director of NRR to issue a license for fuel loading and low-power testing but Applicant has been advised by the NRC Staff that the Director will not issue the license without an Order from this Board which will determine that the two remanded issues will not preclude issuance of the license.

3. The intervenor has filed its Answer to Applicant's Motion for Affirmation of Authorization. The NRC Staff Response in Support of Applicant's Motion for Confirmation of Authorization to Issue Low-Power License is also before this Board. Both of these responses were filed on October 10, 1984. The NRC Staff has correctly identified the two issues which this Board must resolve in reaching a decision. The first is a matter of the Board's jurisdiction and the second is whether those two issues remanded by the Appeal Board are unrelated to the low-power operation and thus need not be resolved prior to low-power operation. This Board responds in the affirmative to both of these questions.

4. This Board determines that it has the jurisdiction to reconfirm its authorization. If the Board has the jurisdiction to authorize the issuance of a low-power license, than a fortiori, it may exercise its authority under the same jurisdiction to reaffirm its basic

decision. That is the sole jurisdictional issue here and the Board responds in the affirmative that it has jurisdiction. Nothing this Board does here impairs, or indeed could impair, Del-Aware's rights under the rules of this Commission to pursue any other remedy before the Appeal Board or the Commission.

The Appeal Board in its decision in ALAB-785 did not stay this Board's decision on low-power operation and, indeed, did not again on denying Del-Aware's petition for reconsideration of two aspects of ALAB-785, in an Order of October 10, 1984, served on the parties on October 11, 1984. Certainly, the Licensing Board exercised its jurisdiction to issue an authorization in the first instance and absent a stay of its orders by an appellate body, a confirmation of its authorization is clearly within its jurisdiction.

Under 10 C.F.R. §2.786(b)(8), the filing of a petition for review does not stay the effect of a decision. This Board's decision has not been stayed by the Appeal Board nor has Del-Aware filed under 10 C.F.R. §2.788(a) for such a stay. Again in its Petition for Review dated October 10, 1984 of ALAB-785 addressed to the Commission this intervenor has not filed for a stay. Absent any act by intervenor to seek relief of a stay, this Board will not impair its decision by questioning its own jurisdiction.

5. This Board has on more than one occasion determined that the SCWS is not related to low-power testing and indeed that supplemental cooling water is just that--supplemental. As we stated in our Order of August 24, 1984 on supplemental cooling water

It is not needed for even full power operation for certain times of the year (generally the fall through spring months when low flow and high water temperatures do not preclude use of the Limerick plant's Schuylkill River water intake). It also is not needed for safe operation of the plant, as the ultimate heat sink for safe shutdown is the onsite spray pond.

Issuance of a low power operating license would not change this. Del-Aware provides no basis, nor does one appear, for finding that low power testing cannot be conducted at least at times (particularly from the fall of '81 into the spring of '85), if not at all times, through use of the primary Schuylkill River cooling water intake.

6. This Board confirms its Second Partial Initial Decision of August 29, 1984 authorizing the Director of NRR to issue a license permitting low-power testing up to five percent rated power, LBP-84-31, 20 NRC __ (1984). Further, this Board finds in the event contentions are filed as authorized by ALAB-785 such contentions dealing with SCWS have no relationship to fuel loading and low-power testing.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Helen F. Hoyt, Chairperson
Administrative Judge

Dated at Bethesda, Maryland
this 15th day of October, 1984.