

RE: Philadelphia Electric Co. Limerick Gen.Sta.
Units 1 & 2.

Docket: 50-352,353.
July 31, 1984 /ac

APPEAL TO THE COMMISSION FROM THE MEMORANDUM AND ORDER OF THE ATOMIC SAFETY AND APPEAL BOARD, 7/23/84 (ALAB -778), vs, ANTHONY/FOE APPEAL OF 7/3/84

R.L. Anthony, for himself, and Friends of the Earth in the Delaware Valley petitions the Nuclear Regulatory Commission to reverse the decision of the Appeal Board, ALAB- 778 (# 778) and to require the Atomic Safety and Licensing Board to hear our contentions on PECO's nuclear fuel, in our motion of 5/18/84, 5/30/84, 6/18/84, and 6/19/84, and to grant the requested stay.

1. We point out that ALAB agreed that these contentions are new matter and we are "entitled to some form of adjudication". It also approved our submission of these Part 70 matters to ASLB. (#778 pp.8,9). ASAB was wrong to deny our contentions without referring them back to ASLB, and ASAB did not consider at all our ^{fifteen} contentions in our 5/18 and 5/30/84 ^{motions} submitted as a part of our 7/3/84 Appeal.

2. We do not agree that the ASLB decision of 6/19/84 "constitutes harmless error" (778,p.10). We did not have the opportunity to submit contentions to ASLB on 6/19/84 because our motions were denied summarily without regard to the substance of the contentions.

3. We deny that it is "harmless" that " all that the Commission's regulations seem ^(emphasis added) to require with respect to Part 70 applications is submission to designated NRC staff (sic) offices".(778-10) We claim that the protection of our health and safety is neglected by the loose requirements for Part 70 applications as reinforced by ASAB, footnote 9 (778-10). We insist that the intent of the Atomic Energy Act and NRC regulations are bypassed and flaunted by a Part 70 application and amendments via a licensee's letter without even a reference to a docket or license number(7/3/84,p.1.) PECO-Gallager/Kemper to NRC- R.G. Page 6/7/84. We ask the Commission to require PECO to submit its revisions ^{of the license} to ASLB under the jurisdiction assigned by the NRC to the ASLB for Limerick Part 70 matters, and to stay ^{the} moving or opening ^{of} the fuel until ASLB has held a hearing on these revisions.

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4. We agree with ASAB that ASLE's ruling was "ambiguous" (778-fn 8). We also assert that it was superficial and hasty. We appreciate having ASAB's written decision but we also find that it is incomplete. ASAB did not consider the evidence in all the incidents and examples we submitted that prove PECO is not ready to safely handle the fuel inside the building. This evidence is conclusive that the public health and safety cannot be guaranteed by NRC inspections and that the ASLB has an essential role to fill, which it did not carry out in this instance. Unfortunately ASAB also did not assume its responsibility to us and the public generally in its review which sidestepped vital safety issues. One of these is PECO's defiance of 10 CFR 50.57 (c) (6/19/84 Motion para.5) by seeking a low power license up to 5 % without any provision for testing as required by the regulations. PECO cannot at this time be trusted to safely handle or store nuclear fuel while it proposes to defy the regulations in its use.

5. In connection with storage of the fuel, ASAB did not consider on page 3 of our Appeal, in PECO's revisions (p.24 Sec 2.3.2, para.1), PECO itself specified a water thickness of 10 inches over the stored fuel to guarantee against "adverse reactivity effect". Therefore, PECO's dry storage option denies PECO's specifications.

6. ASAB did not evaluate or consider the four criteria for a stay which we submitted in accordance with 10 CFR 2.788 (e) (Appeal p.3.). We now reassert these and stress their validity. On the basis of these and the presentation in our Appeal to ASAB and our Appeal herewith we petition The Commission for an immediate stay as specified in our Appeal (7/3/84 p.3 para "Relief" # 2 and #3)

RELIEF: We ask the Commission to reverse the ASAB-778 decision of 7/23/84 and to grant an immediate stay to protect our health and safety and that of the public.

I certify that the following have been served by 1st class mail: Respectfully submitted,
 Judges ASAB
 Judges L. Brenner, R.F. Cole, P.A. Morris ASLB
 NRC Docketing, NRC Staff Counsel, PECO-Phila.
 M.J. Wetterhahn, Wash, D.C., C.W. Elliott, Easton, Pa.
 Z.G. Ferkin, Harrisburg, Pa., A. Love, Norristown, Pa.

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