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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'84 SEP 28 P3:02

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Christine N. Kohl, Chairman
Gary J. Edles
Dr. Reginald L. Gotchy

September 28, 1984

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

Docket Nos. 50-352 /
50-353 / 66

ORDER

We have received a notice of appeal from intervenor Friends of the Earth (FOE), dated September 24, 1984. The appeal is purportedly from both the Licensing Board's second partial initial decision (LBP-84-31, 20 NRC ___ (Aug. 29, 1984)) and its order of September 7, 1984, concerning FOE's September 1 motion to set aside LBP-84-31 insofar as it rules on FOE contentions V-3a and V-3b.¹

FOE's notice of appeal in connection with its September 1 motion is premature. That motion is still pending before the Licensing Board. The Board's September 7 order simply denied FOE's apparently implicit stay request (not its motion to set aside), and described the information that the

¹ FOE's motion was dated September 1, 1984, but was postmarked September 3.

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forthcoming replies to FOE's motion should contain. Nor does the recent filing of the staff's reply to the FOE motion constitute a ruling by the Board, as FOE appears to believe. The proper time for filing an appeal in this regard will be within 15 days of the date that the Licensing Board serves its order actually ruling on FOE's September 1 motion. See 10 C.F.R. §§ 2.762(a), 2.710.

Insofar as FOE seeks to appeal LBP-84-31, however, its notice is too late. Appeals from that decision should have been mailed no later than September 13, 1984. Ibid. Under the Commission's Rules of Practice, FOE's September 1 motion to the Licensing Board to set aside LBP-84-31 did not automatically toll the time for filing its appeal from that decision. FOE should have specifically sought such relief from us. See generally Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-659, 14 NRC 983 (1981).


Nonetheless, we do not believe that FOE should be penalized for its confusion concerning the proper time for filing an appeal in the circumstances here. This time limit is not "jurisdictional," as are those of the courts; we are not thereby deprived of the power to entertain such an appeal. See Nuclear Engineering Co. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-606, 12 NRC 156, 160 (1980). We therefore exercise our discretion and sua sponte extend the time for FOE to appeal LBP-84-31 to 15

days from the service date of the Licensing Board's order disposing of its September 1 motion. In other words, if FOE remains dissatisfied with the Board's disposition of its motion and treatment of contentions V-3a and V-3b, it should file its notice of appeal from both that order and LBP-84-31 at the same time.²

Accordingly, FOE's September 24, 1984, notice of appeal is dismissed without prejudice.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board

Mr. Edles did not participate in this order.

² The brief in support of such an appeal will be due 30 days after the filing of the notice of appeal. 10 C.F.R. § 2.762(b).