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NUCLEAR REGULATORY COMMISSION

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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

ORDER

On July 31, 1984, Robert L. Anthony, on behalf of himself and Friends of the Earth in the Delaware Valley (collectively referred to as "FOE"), intervenors in this operating license proceeding, petitioned the Commission for an immediate stay of revisions to Philadelphia Electric Company's (PECo's) license permitting the movement of unirradiated fuel into the reactor building pursuant to 10 C.F.R. Part 70. FOE also requested a stay of a low-power license. The Licensing Board summarily denied FOE's motions concerning the Part 70 license. The Appeal Board affirmed the denial and refused to stay the Part 70 license. ALAB-778, 19 NRC ____ (July 23, 1984).

First, FOE's request for a stay of the low-power license is not properly before the Commission and is, therefore, denied. A stay of the Licensing Board's low-power license decision must be sought in the first instance either before the Appeal Board or the Licensing Board. 10

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C.F.R. 2.788(f). FOE did request a stay before the Appeal Board but this request was premature because it was made before the Licensing Board authorized a low-power license. Therefore, the Appeal Board did not address the request. See, ALAB-778, ____ NRC ____, Slip op. at 4 n.3. Subsequently, the Licensing Board authorized issuance of a low-power license on August 29, 1984. ____ NRC ____, LBP-84-31 (1984). Any stay of that decision must be submitted in accordance with 10 C.F.R. 2.788(f).

Second, we have examined FOE's arguments concerning the Part 70 license in light of the criteria set forth in 10 C.F.R. 2.788(e) for granting a stay.¹ FOE has not shown it is likely to prevail on the merits. FOE states that the contentions it filed with the Appeal Board should have been remanded to the Licensing Board for consideration because the summary dismissal denied FOE the right to a hearing. This argument is not likely to prevail because the Appeal Board considered all the contentions and found that they were not admissible. Therefore, a remand would serve no useful purpose. The contentions relating to

¹The four factors to be considered under § 2.788(e) are:

1. whether the movant has made a strong showing that it is likely to prevail on the merits;
2. whether the party will be irreparably injured unless a stay is granted;
3. whether the granting of a stay will harm the other parties; and
4. where the public interest lies.

PECo's January 24, 1984 Amended Application were untimely because they should have been filed on February 23 with FOE's other contentions concerning this application. The contentions relating to revisions of the application were examined in detail. The Appeal Board determined that they lacked sufficient basis to be admissible because FOE did not indicate how the alleged deficiencies could impact health and safety.² The remaining contentions related to a low-power license which was not authorized by the Licensing Board's action.³ The Appeal Board found that these contentions were not ripe for review. FOE has not shown how these rulings were erroneous.

FOE next contends that the notice of the Part 70 application was improper. This argument is also not likely to succeed because PECO complied with all NRC notice requirements and sent a copy to FOE. Finally, FOE contends that the Appeal Board erred in failing to consider the criteria for a stay. There was no need to consider granting a stay pending review after review was complete. Therefore, FOE has not made a strong showing that it is likely to prevail on the merits.

²The provision in an accident scenario for ten inches of water over the fuel when wet storage is used was not a requirement. As such it could not invalidate the dry storage option which the Appeal Board determined provided greater protection from accidental criticality than wet storage. Therefore, the Appeal Board did not have to specifically address the provision.


³The Licensing Board subsequently authorized the low-power license on August 29, 1984.

The other stay criteria all favor the denial of FOE's stay request. FOE does not indicate how it will be irreparably harmed if the Part 70 amendment is not stayed. The Part 70 license does not authorize operation of the reactor and FOE does not explain how any of the alleged deficiencies could result in accidental criticality. A stay, however, could harm the applicant by upsetting the schedule for fuel loading and low-power testing authorized by the Licensing Board's decision of August 31, 1984. Moreover, FOE makes no showing that a stay would be in the public interest and we perceive none.

In our view, all of the stay criteria set forth in 10 C.F.R. 2.788 favor denial of FOE's stay request. Accordingly, the petition for an immediate stay of the Part 70 license and the low-power license is denied.

It is so ORDERED.

For the Commission



SAMUEL J. CHILK
Secretary of the Commission



Dated at Washington, DC,
this 5th day of October 1984.