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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Before the Commission

In the Matter of	)	
	)	
Philadelphia Electric Company	)	Docket Nos. 50-352 <i>OL</i>
	)	50-353 <i>OL</i>
(Limerick Generating Station,	)	
Units 1 and 2)	)	

APPLICANT'S ANSWER TO REQUEST  
BY FRIENDS OF THE EARTH FOR A STAY

Preliminary Statement

On November 10, 1984, intervenor Friends of the Earth ("FOE") filed a pleading in which it "appeal[s] the issuance of a low power license to PECO and petition[s] the Commission for an immediate stay." As discussed below, FOE's appeal is now before the Atomic Safety and Licensing Appeal Board ("Appeal Board"). FOE's appeal to the Commission is therefore premature. Further, FOE's stay request is entirely without merit and should be denied for the reasons expressed by the Appeal Board in ALAB-789, which issued on November 5, 1984.

Argument

As explained in the Appeal Board's unpublished Memorandum, dated October 29, 1984, FOE has appealed the Second Partial Initial Decision of the presiding Atomic Safety and

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Licensing Board,<sup>1/</sup> which authorized the issuance of a low-power operating license to Applicant. Under the schedule established by that Memorandum, FOE's brief is due on November 23, 1984.<sup>2/</sup> Accordingly, there is no appealable decision by the Appeal Board on the correctness of the Second Partial Initial Decision for the Commission to review at this time.

With respect to FOE's stay application, the Appeal Board properly determined in ALAB-789 that FOE had failed to satisfy any of the four requirements for obtaining interim relief and that its stay request was untimely as well.<sup>3/</sup> In its request, FOE states nothing of substance not already considered and rejected by both the Appeal Board. Essentially the same arguments have also been rejected by the United States Court of Appeals for the Third Circuit in an

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1/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-31, 20 NRC \_\_\_\_ (August 29, 1984).

2/ FOE's assertion that it was "not notified of the issuance of this license" is contradicted by the record. A copy of the letter from Mr. Eisenhut to Applicant, dated October 26, 1984, stating that the license had been issued, was served upon all parties to the Limerick proceeding (with a copy of the enclosed license), including Mr. Anthony, the representative of FOE.

3/ Limerick, supra, ALAB-789, 20 NRC \_\_\_\_ (November 5, 1984) (slip op. at 6).

action filed by FOE regarding the receipt of fuel at the Limerick plant.<sup>4/</sup>

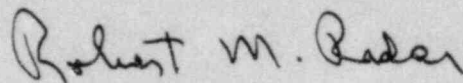
Moreover, the Commission itself rejected FOE's arguments in denying the previous request for a stay of revisions to Applicant's Part 70 license. FOE's repetitious and wholly unsupported assertions provide no basis in fact or law for issuing a stay of the low-power license for Limerick.

Conclusion

For the reasons discussed above, the Commission should deny FOE's request for a stay and dismiss its appeal.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



Troy B. Conner, Jr.  
Robert M. Rader

Counsel for the Applicant

November 16, 1984

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<sup>4/</sup> As the Appeal Board noted in ALAP-789 (slip op. at 4-5), the Third Circuit denied Mr. Anthony's request for a stay on July 12, 1984.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Request by Friends of the Earth for a Stay," dated November 16, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 16th day of November, 1984:

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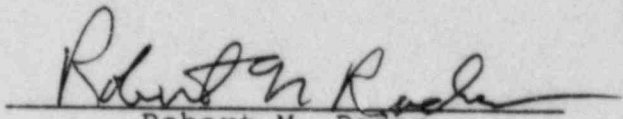
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