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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKET

ATOMIC SAFETY AND LICENSING APPEAL BOARD NOV 23 P3:28

Administrative Judges:

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

November 23, 1984

SERVED NOV 23 1984

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

Docket Nos. 50-352 OL
50-353 OL

MEMORANDUM AND ORDER

In a motion served November 16, 1984, intervenor Limerick Ecology Action, Inc. (LEA), seeks a suspension of the low-power license recently issued to Philadelphia Electric Company (PECo). For the reasons set forth below, we dismiss the motion.

Although the pleading is styled a motion for suspension of the low-power license, it is, in fact, a motion for stay of the Licensing Board's August 29, 1984, partial initial decision, authorizing the issuance of the license. See LBP-84-31, 20 NRC __. Under the Commission's Rules of Practice, 10 C.F.R. § 2.788(a), LEA should have filed its stay motion within 10 days of service of LBP-84-31. See ALAB-789, 20 NRC __, __ (Nov. 5, 1984) (slip opinion at 6). LEA's stay request is thus more than two months late. Further, LEA fails to acknowledge the delay and makes no attempt whatsoever to explain the reason for it.

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In an apparent attempt to circumvent the usual time limit for stay motions, LEA has seized upon our treatment of two earlier stay motions as requests for suspension of the low-power license. This strategy, however, must fail. Last month, two other intervenors, Friends of the Earth (FOE) and Del-Aware Unlimited, Inc., filed motions that sought, in effect, a stay of the issuance of the low-power license. Unbeknown to us and before we had received either stay request, the Director of Nuclear Reactor Regulation (NRR) issued the license. In this circumstance, we treated each stay request as a motion for suspension of the license, applied the stay criteria of 10 C.F.R. § 2.788(e), and ultimately denied both motions. ALAB-789, supra, 20 NRC ___. We did not suggest that it would be proper for a party to allow the time for seeking a stay to lapse, to wait for the license to be issued, and then to seek suspension rather than a stay of the license.¹ Our treatment of the two earlier stay requests as motions to suspend arose solely from the peculiar procedural circumstances applicable to FOE

¹ Indeed, in ALAB-789, we found FOE's request to be untimely under 10 C.F.R. § 2.788(a). 20 NRC at ___ (slip opinion at 6).

and Del-Aware.² Those circumstances do not exist as to LEA, which timely filed a straightforward appeal of LBP-84-31.

Simply stated, our power to treat a post-license-issuance stay request as a motion to suspend, or to entertain a motion for license suspension, extends only to limited circumstances -- for example, where the license has already been issued but a party nevertheless has a colorable right to seek a stay within the time limit of 10 C.F.R. § 2.788(a). Otherwise, requests for license suspension are more properly addressed to the Director of NRR via a petition under 10 C.F.R. § 2.206, or to the Commission itself.

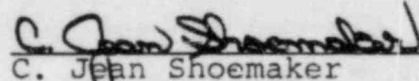
Finally, we gave full consideration in ALAB-789 to the merits of the two earlier stay requests. Even if LEA's motion were timely, it raises nothing that would warrant a change in our previous decision denying FOE's and Del-Aware's stay motions.

LEA's motion to suspend PECO's low-power license is dismissed.

² FOE apparently and mistakenly believed that it need not have sought a stay until the Licensing Board resolved a pending FOE motion to reopen. Del-Aware actually sought a stay of an October 15, 1984, order of the Licensing Board, and thus its stay motion was timely under the rules. Id. at __, __ (slip opinion at 6, 2).

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board