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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

Nunzio J. Palladino, Chairman  
Thomas M. Roberts  
James K. Asselstine  
Frederick M. Bernthal  
Lando W. Zech, Jr.

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SERVED FEB 19 1985

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

Docket Nos. 50-352-0L  
50-353-0L

ORDER

In a motion dated December 10, 1984, Limerick Ecology Action ("LEA"), an intervenor in the Limerick operating license proceeding, requested a stay of the Atomic Safety and Licensing Board ("Licensing Board") decision, LBP-84-31, which authorized the Director of Nuclear Reactor Regulation ("NRR") to issue a low-power license for the Limerick Generating Station and also requested a suspension of authorization for low-power testing.

The Licensing Board decision being challenged was issued on August 29, 1984. LEA filed a timely appeal of this decision to the Atomic Safety and Licensing Appeal Board ("Appeal Board") but did not request a stay of the decision. On November 15, 1984, after the low-power license was issued, LEA filed a motion with the Appeal Board to suspend the license.

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The Appeal Board construed the motion as a request for a stay of the Licensing Board decision, and denied it as untimely and lacking merit. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Memorandum and Order (November 23, 1984) (unpublished). The Appeal Board noted that NRC regulations require that requests for stays of decisions be filed within ten days of the decision or action. 10 CFR § 2.788(a). LEA filed its motion more than two months after the ten day period and did not present any justification for the delay. The Appeal Board stated that requests for license suspensions filed after the license issuance should be addressed to the Director of NRR by a petition filed under 10 CFR § 2.206, or the Commission itself. The Appeal Board also held that LEA had not raised any issues which would warrant a stay. Accordingly, it denied the motion.

After the Appeal Board denied its request, LEA filed a similar motion with the Commission. The primary basis for this motion is the alleged failure of the environmental review for the Limerick facility to consider design alternatives to mitigate the risk of severe accidents. The NRC staff and the Applicant, Philadelphia Electric Company, oppose this motion because a stay motion was not filed with the Appeal Board within the time permitted by NRC regulations, and because LEA had not shown why design alternatives had to be considered when the possibility of a severe accident was found to be remote and speculative.

We construe the motion for a stay of the Licensing Board decision as a request to reverse the Appeal Board's refusal to stay the Licensing Board decision. We agree with the Appeal Board that LEA's motion was untimely because it was not filed within the time permitted

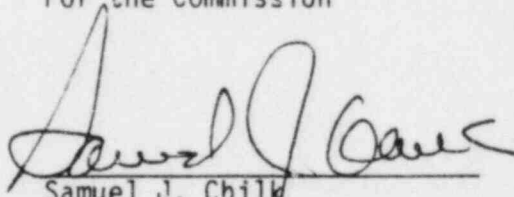
by NRC regulations. With regard to the request for suspension of authorization for low-power testing, we find that the issues raised do not merit enforcement action especially since low-power testing is substantially complete.

Accordingly, we deny LEA's motion for a stay of LBP-84-31 and request for suspension of the low-power testing authorization.

Commissioner Asselstine did not participate in this action.

It is so ORDERED.

For the Commission\*



Samuel J. Chilk  
Secretary of the Commission

Dated at Washington, DC

this 19<sup>th</sup> day of February 1985.



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\*Commissioners Bernthal and Asselstine were absent for the affirmation of this item. Had Commissioner Bernthal been present, he would have voted to approve the Order.