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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES:
Helen F. Hoyt, Chairperson
Dr. Richard F. Cole
Dr. Jerry Harbour

DOCKETED
USNRC

'85 JUN 18 A10:25

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

Docket Nos. 50-352-OL
50-353-OL OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

ASLBP No. 81-465-07 OL

June 17, 1985

SERVED JUN 18 1985

MEMORANDUM AND ORDER
ON FRANK R. ROMANO/AIR WATER POLLUTION PATROL
REQUEST TO REOPEN RECORD

By an untitled pleading¹ dated May 21, 1985, Frank R. Romano, Chairman, Air and Water Pollution Patrol (Romano/AWPP), filed a request to reopen the record in this proceeding to consider the Delaware River Basin Commission (DRBC) May 13, 1985 declaration of a drought emergency. The Board is left with uncertainty as to what aspect of the DRBC's declaration Romano/AWPP wants to litigate, but the relief it seeks is a postponement of the operating license during an unspecified period of time or the denial of a license.

¹ This petitioner seeks to invoke the provisions of "10 CFR-2.711 (a) (1) (i)-(v)." Since there is no such provision in this Commission's regulations, the Board has assumed that the pleader means 10 CFR § 2714(a)(1) and the five balancing factors (i-v) in that section for nontimely filing for intervention in a proceeding.

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Applicant on June 3, 1985 filed Applicant's Answer to Motion of Air and Water Pollution Patrol to Reopen the Record on Supplementary Cooling Water Issues opposing the request; the Staff also opposed in NRC Staff Response to Frank Romano/Air and Water Pollution Patrol Motion of May 21, 1985 filed June 10, 1985.

For the reason discussed below, the Board denies Romano/AWPP's request to reopen the record.²

We first considered the matter of jurisdiction. Unless the Board can find it has the requisite jurisdiction to decide the matter, we need not consider any further reopening the record on the matters raised by AWPP. Both Applicant and NRC Staff argued on brief that we do not have jurisdiction and that the DRBC is the proper forum. The Board agrees.

Petitioner here, on May 7, 1985, participated before the DRBC on Applicant's request for an interim supply of supplemental cooling water from the Blue Marsh Reservoir or other basin water supply storage on or near the Schuylkill River. AWPP made its appearance and commented on the request. In such action, this Board recognizes the petitioner's clear understanding that it is the DRBC who has jurisdiction over the supplemental cooling water request of the Applicant. Indeed, this is the second time the DRBC matter has come before this agency's

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The history and background of the supplemental cooling water issues in this proceeding are well known and need not be repeated here. Both Applicant and NRC Staff have reviewed the water issues in their respective answers and responses to the pleader's submission.

adjudicatory officers. Intervenor Anthony/FOE sought an order from the Atomic Safety and Licensing Appeal Board requiring the Applicant to withdraw the same application on which DRBC has now issued its ruling. The Atomic Safety and Licensing Appeal Board Memorandum and Order of May 1, 1985 pointed out to Anthony/FOE that it had no authority to order the Applicant to withdraw an application before another agency. Further, the Board noted that it "can rule on only the federal issues in connection with an application filed with the NRC for authority to conduct activities within this agency's regulatory jurisdiction."³ (Emphases in the Memorandum and Order.)

The Board finds the Appeal Board Memorandum and Order equally applicable to the Romano/AWPP pleading here. Further, issues related to supplementary cooling water for Limerick have been finally adjudicated by this Board and reviewed by the Appeal Board.

Accordingly, for the reasons stated, the request of Romano/AWPP to reopen the record in this proceeding is denied.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Helen F. Hoyt, Chairperson
Administrative Judge

Dated at Bethesda, Maryland
this 17th day of June 1985.

³ Memorandum and Order at 2.