

106
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

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

DOCKETED
USNRC
May 21, 1985

'85 MAY 21 P4:33

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket Nos. 50-352 OL
50-353 OL

SERVED MAY 22 1985

MEMORANDUM AND ORDER

On May 17, 1985, the inmates of the State Correctional Institution at Graterford, Pennsylvania, intervenors in this operating license proceeding, filed a notice of appeal from the Licensing Board's May 9, 1985, order. That order purported to grant the February 7, 1985, motion of applicant Philadelphia Electric Company (PECo) for an exemption from the requirements of 10 C.F.R. § 50.47(a) and (b) insofar as the emergency evacuation plan for the inmates at the Graterford facility is involved. Our review of the Board's order, however, leads us to conclude that it is not final and thus not appealable. We therefore dismiss the inmates' appeal without prejudice.

The language of the Board's May 9 order is ambiguous, and, thus, we can understand the inmates' precautionary action in filing an appeal. The order grants PECo's motion

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for exemption and states: "any final impediment to the issuance of a full power license has been removed."

Licensing Board Order of May 9, 1985 (unpublished) at 8.

But the order goes on to invite comments from any party

"opposing the issuance of such order." Ibid. The customary

language explicitly authorizing the Director of Nuclear

Reactor Regulation to issue a full-power license is missing

from the order, and we cannot find any such direction in the

Board's earlier partial initial decision on offsite

emergency planning, LBP-85-14, 21 NRC ___ (May 2, 1985).

Moreover, we do not understand how the Board could properly

weigh the exemption criteria of both 10 C.F.R. §§ 50.12(a)

and 50.47(c)(1) (as well as pertinent case law) before it

has determined whether any exemption will even be necessary

-- i.e., whether the inmates have proffered an admissible

contention.¹ We therefore construe the Licensing Board's

May 9 order as merely tentative or proposed. In the

circumstances, it is not ripe for review.

The inmates' May 17, 1985, appeal is dismissed without prejudice.

¹ In ALAB-806, 21 NRC ___ (May 1, 1985), we set May 15 as the deadline for the inmates to submit revised contentions to the Licensing Board. They did so on May 13, and, after awaiting possible objections from the other parties, presumably then the Licensing Board will determine if any admissible contention has been stated.

It is so ORDERED.

FOR THE APPEAL BOARD

Barbara A. Tompkins

Barbara A. Tompkins
Secretary to the
Appeal Board