

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

Before the Commission '84 AGO 15 AIO:55

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

APPLICANT'S ANSWER IN OPPOSITION TO THE PETITION OF
FRIENDS OF THE EARTH TO REVIEW ALAB-778

Introduction

On August 1, 1984, Robert L. Anthony for himself and for Friends of the Earth (collectively "FOE") served a pleading dated July 31, 1984 entitled "Appeal to the Commission from the Memorandum and Order of the Atomic Safety and Appeal Board, 7/23/84 (ALAB-778), vs, Anthony/FOE Appeal of 7/3/84." FOE seeks to invoke the Commission's jurisdiction to review a decision of the Atomic Safety and Licensing Appeal Board, ("Appeal Board") ALAB-778.^{1/} In that decision, the Appeal Board found no merit in FOE's appeal from an oral ruling of the presiding Atomic Safety and Licensing Board ("Licensing Board"). The Licensing Board had denied

^{1/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-778, 20 NRC ____ (July 23, 1984).

FOE's June 18, 1984 and June 19, 1984 pleadings, ^{2/} which sought to raise contentions relating to the movement of new fuel from its already authorized onsite outdoor storage location to the reactor building and its storage therein, in an oral ruling of June 19, 1984. (Tr. 12057-63). In that ruling, the Licensing Board found that a previous decision, LBP-84-16, ^{3/} in which it had determined that no health and safety or other impact related to the requested action still controlled.

FOE had previously contested the issuance of the Part 70 license involving the storage and handling of unirradiated fuel at Limerick and had requested a stay which would have prevented fuel from being received onsite. See LBP-84-16, supra. In that instance, the Commission declined to review the Appeal Board decision, ALAB-765, affirming the Licensing Board's decision. ^{4/} FOE has appealed that matter

^{2/} "R.L. Anthony/FOE Contentions Based on New Matter, Letter from J.W. Gallagher/J.S. Kemper, PECO., 6/7/84, Requesting 'Remaining Portion of the License' (Part 70) to Move Fuel to the Refueling Floor, Inspection, and Storage in the Fuel Pool, and Petition for a Stay" (June 18, 1984) and "Anthony/FOE Motion in Addition to Motion of 5/18/84 vs. PECO Motion of 5/9/84 for Expedited Partial Decision and Low Power License" (June 19, 1984).

^{3/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-16, 19 NRC 857, aff'd, ALAB-765, 19 NRC 645 (1984).

^{4/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-765, 19 NRC 645 (1984).

to the Court of Appeals for the Third Circuit, which has denied its request for a stay.^{5/}

Discussion

It is not at all clear what specific matters FOE is seeking to advance in support of its request for Commission review and it is difficult to attempt to trace them to FOE's pleadings before the Appeal Board and Licensing Board. To the extent that FOE attempts to raise matters contained in pleadings filed prior to June 18, 1984, the Commission has previously considered them and determined they did not warrant its review.^{6/}

FOE's request for Commission consideration contains six numbered paragraphs. None present any matter which would warrant Commission review under the standards of 10 C.F.R. §2.786(b)(4). The first paragraph complains principally that the Appeal Board wrongly denied the contentions proffered it. FOE failed to file any contentions before the Licensing Board. The Appeal Board found that the four "contentions" proposed for the first time before it were clearly deficient. Limerick, supra, ALAB-778 (slip op. at 11-16). FOE has failed to point to even a single error of fact or law in the Appeal Board's disposition of these

^{5/} Anthony v. Philadelphia Electric Company, No. 84-3409, (3d Cir. July 12, 1984) (Order denying stay).

^{6/} Memorandum for Board and Parties in the Limerick Proceeding from Samuel J. Chilk (June 15, 1984).

contentions, let alone anything warranting Commission review.^{7/}

In the second paragraph, FOE states that it did not have an opportunity to submit contentions to the Licensing Board. However, it had Applicant's revision to its license application in hand prior to its filing with the Licensing Board. There was no reason why FOE could not have filed contentions in a timely manner before the Licensing Board. In any event, as discussed supra, the Appeal Board considered the proffered contentions and found them to be deficient without penalizing FOE for its lack of timeliness.

In the third paragraph, FOE states that it was prejudiced because Applicant's letter did not have a docket or license number. Considering that all parties as well as the Licensing Board and Appeal Board were served, the prejudice suffered by FOE is entirely unclear. Certainly, this does not rise to the level of an important factual or legal matter warranting Commission review.

In the fourth paragraph, FOE claims that the "evidence is conclusive that the public health and safety cannot be guaranteed by NRC inspections" Such a sweeping attack on the NRC is totally unjustified. To insinuate

^{7/} FOE would be "entitled to some form of adjudication" only if it fulfilled the requirements pursuant to 10 C.F.R. §2.714 which, inter alia, includes the requirement to state contentions with specificity and bases.

without the slightest evidence that the NRC will not inspect a facility and assure that prerequisites for license issuance have been fulfilled is irresponsible. Merely because a number of items have been identified as incomplete at some point in time does not mean that they will not be completed prior to fuel loading.^{8/}

Moreover, in a number of cases, FOE fails to distinguish between readiness for the activity under consideration, the movement of fuel, and fuel loading. Obviously, not all prerequisites for operation of the facility must necessarily be completed before movement of fuel to the reactor building is permitted.^{9/}

In the fifth paragraph, FOE apparently misunderstands the fundamental physical principles and technical bases underlying the safe storage of new fuel. The Appeal Board explained in ALAB-765 that because of underlying physical

^{8/} FOE's argument that Applicant's motion for a low power and testing license evidences a defiance of the regulations is nonsensical. Initially, as the Appeal Board noted, the matter of the motion for low power license was not relied upon by the Licensing Board and is not ripe for appellate review. Procedural niceties aside, the accusation that any utility would purposefully circumvent NRC requirements with regard to low power testing and that the NRC would condone such a course of conduct is scandalous and entirely without basis and should be stricken.

^{9/} On July 20, 1984, the NRC Office of Inspection and Enforcement found that Applicant was ready to safely move fuel to the reactor building with a few minor matters which were to be corrected shortly. (Inspection Report 352/84-30)

principles, as far as reactivity was concerned, dry storage was as safe as underwater storage. Limerick, supra, ALAB-765 (slip op. at 13). The section cited by FOE, §2.3.2, speaks to the lack of an adverse reactivity effect were a fuel assembly to be hypothetically dropped on top of a fuel rack because of the 10 inches of water between the fuel postulated to be laying on top of the fuel racks and the fuel already in the rack. Were there no water in the pool, there would be no moderator and no reactivity problem whatsoever.^{10/}

The sixth paragraph is a renewal of FOE's request for a stay, incorporating by reference a section of its filing before the Appeal Board. FOE merely asserts generally that the standards for a stay have been met. This is certainly not sufficient, particularly now that the Appeal Board and Licensing Board, each on two occasions, have found against FOE on the merits. See Applicant's Brief in Opposition to Request By Intervenor Friends of the Earth for a Stay of Onsite Storage of Unirradiated Fuel (March 28, 1984 at 3-8) which is incorporated herein by reference for a discussion of the criteria for a stay. FOE has not shown itself entitled to the relief which it seeks.

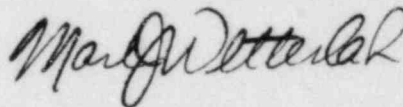
^{10/} Note that this paragraph was unchanged by the recent amendment. Thus, any contention based upon this paragraph would be inexcusably late.

Conclusion

Contrary to the requirement of 10 C.F.R. §2.786, FOE has failed to identify any important question of fact, law, or policy worthy of Commission review. Moreover, it has shown no substantial conflict between the Appeal Board and Licensing Board on any factual matters. For these reasons, the Commission should not accept review of the Licensing Board and Appeal Board decisions.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.

A handwritten signature in dark ink, appearing to read "Mark J. Wetterhahn", written in a cursive style.

Mark J. Wetterhahn
Counsel for Philadelphia
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August 13, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer in Opposition to the Petition of Friends of the Earth to Review ALAB-778," dated August 13, 1984 in the captioned matter, have been served upon the following by deposit in the United States mail this 13th day of August, 1984:

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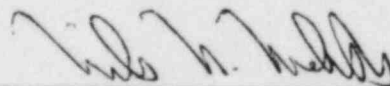
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