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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
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ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

Docket Nos. 50-352, 50-353 DL

MOTION FOR SUSPENSION OF LOW-POWER
FACILITY OPERATING LICENSE NPF-27

Limerick Ecology Action, Inc. (LEA), intervenor in the above captioned licensing proceeding, moves the Appeal Board for an Order suspending the authorization for a low-power operating license for the above facility, and sets forth the following in support thereof:

On or about September 3, 1984, LEA filed a timely appeal to this Board from the Partial Initial Decision (PID), of the Atomic Safety and Licensing Board (ASLB), which, inter alia, authorized the Director of the Office of Nuclear Reactor Regulation to issue the operating license.

On or about October 3, 1984 LEA filed a brief in support of its appeal, setting forth in detail various errors in law, and violations of the National Environmental Policy Act, the Administrative Procedure Act and Commission regulations by the

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ASLB. LEA's arguments therein are hereby incorporated in their entirety by reference thereto.

Based upon the arguments set forth in its Brief, LEA believes that it has made a "strong showing" that it is likely to prevail on the merits of its position.

Irreparable Injury to LEA

LEA will be irreparably injured unless the suspension is granted. Among the bases which LEA set forth for reversal of the ASLB partial initial decision below is the failure of the environmental review for Limerick to consider design alternatives to mitigate the risk of severe accidents. LLA's membership is among the population exposed to this risk, and would be among the beneficiaries of a reduction of this risk.

Hidden from NEPA review and excluded from licensing consideration are Staff analyses of a range of potential risk reduction measures which may be available for implementation at Limerick. However, the cost-effectiveness of such measures, the practicability of backfitting such measures into the Limerick design and the radiation exposure of workers involved in the implementation of such measures will all be adversely affected by low-power operation of the facility which will contaminate plant systems.

Thus, low-power operation may forever make unavailable design alternatives which could substantially reduce the public risk to LEA's membership. As the ASLB stated below:

It is commonly recognized that as construction continues, the costly corrective action to minimize environmental harm may increase, even to the point where such action is not reasonably possible.

Philadelphia Electric Co. (Limerick Generating Station) LBP-82-92A, 16 NRC 1387 (1982). Plant operation may well cause an "irretrievable and irreversible commitment" to a particular, and needlessly risky, plant design.

The public accident risk from operation of Limerick exceeds that of any facility in the United States with the sole exception of Indian Point in New York. See NUREG-0974, Final Environmental Statement related to the operation of the Limerick Generating Station, pp. 5-116 - 5-124. Remedial risk reduction measures unavailable at Indian Point due to its history of plant operation may still be available for Limerick.

In addition, the NEPA, APA, and regulatory violations set forth in LEA's Brief, unless corrected prior to plant operation, will irreparably harm LEA's interest in lawful decision-making for the Limerick facility.

Harm to Other Parties

The granting of suspension will not harm the cognizable

interests of other parties. The only party whose interests may reasonably be said to be adversely affected by such a suspension would be the Applicant. Yet the only such interests so affected are solely economic in nature - concerns which, as this Appeal Board has expressly noted, are "not within the proper scope of issues litigated in NRC proceedings".^{1/} Philadelphia Electric Co. (Limerick Generating Station) ASLB-789, ___ NRC ___ (November 5, 1984), slip. op. p. 5 (rejecting such concerns in the context of a stay of a license).

To the extent that such solely economic interests are deemed cognizable, LEA submits that the interest in the health and safety of the public must necessarily outweigh the monetary and private interests of the utility. Further, such economic impacts to the utility are speculative at best, because the ultimate full-power and commercial operation of Limerick cannot now be presumed, in the face of extant challenges to the adequacy of off-site emergency planning which remain to be litigated as

^{1/} Indeed, it would be arbitrary and capricious for the Commission to consider claims of economic harm to the utility caused by a licensing delay, yet exclude claims of economic harm to the rate-payers and the public occasioned by the licensing of a nuclear facility, which like Limerick, the need for which is dubious at best. If the Appeal Board intends to consider such claims of economic harm to the utility, LEA respectfully requests an opportunity to set forth the economic harm to its membership and the public resulting from facility licensing and operation.

a condition to full-power operation and whose outcome cannot permissibly be prejudged. Indeed, the Appeal Board has precisely rejected a claim that even the grant of a low-power license begins the "inexorable" process to full-power licensure. Philadelphia Electric Co., supra, slip. op., p. 5.

The Public Interest

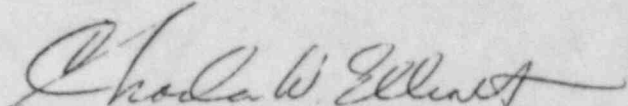
The requested suspension would serve the public interest, because it (1) protects the public interest in avoiding undue risk in nuclear power plant operation; (2) permits time to fairly and comprehensively consider risk mitigation alternatives; (3) avoids an "irreversible and irretrievable commitment" to resources in the face of violations of National Environmental Policy Act safeguards; (4) protects the public interest in principled and lawful decision making.

We anticipate the Applicant's arguments that the public interest would be disserved by any asserted increased costs due to delay in testing and commercial operation. Therefore, we reiterate the Appeal Board's rejection of the cognizability of "a nuclear plant's possible effect on rates." Id., slip. op. p. 5. And, in any event, whether the Commission will authorize full power operation by such time so as to make the suspension LEA requests a material factor in any delay of commercial operation impacting rates is utterly speculative; even more speculative is

what actual significant impact, if any, such a delay might actually have upon rates.

What is not speculative is the fact that contamination of plant systems by low-power testing will make design change backfitting more dangerous, more difficult, and more expensive, and may thus irrevocably shift a close cost-benefit ratio against risk reduction.

For all these reasons, Limerick Ecology Action, Inc. respectfully requests this Board to suspend the low-power license granted to the Applicant pending adjudication of LEA's appeal on the merits.


Charles W. Elliott, Esquire

1101 Building
Easton, PA 18042
(215) 258-2374

Dated: November 15, 1984

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of LEA's "Motion for Suspension of Low-Power Facility Operating License NPF-27" dated November 15, 1984 in the captioned matter have been served upon the following by deposit in the United States mail this 16th day of November, 1984:

Christine N. Kohl, Esquire
Chairman, Atomic Safety and
Licensing Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Gary J. Edles
Atomic Safety and
Licensing Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Reginald L. Gotchy
Atomic Safety and
Licensing Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Helen F. Hoyt, Esquire
Chairperson
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Richard F. Cole
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Jerry Harbour
Atomic Safety and
Licensing Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Ann P. Hodgdon, Esquire
Counsel for NRC Staff
Office of the Executive
Legal Director
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Troy B. Conner, Jr.
Conner & Wetterhahn
1747 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Philadelphia Electric Company
ATTN: Edward G. Bauer, Jr.
Vice President &
General Counsel
2301 Market Street
Philadelphia, PA 19101

Mr. Frank R. Romano
61 Forest Avenue
Ambler, Pennsylvania 19002

Mr. Robert L. Anthony
Friends of the Earth of
the Delaware Valley
106 Vernon Lane, Box 186
Moylan, Pennsylvania 19065

Miss Phyllis Zitzer
Limerick Ecology Action
P.O. Box 761
762 Queen Street
Pottstown, PA 19464

Zori G. Ferkin, Esq.
Assistant Counsel
Commonwealth of Pennsylvania
Governor's Energy Council
1625 N. Front Street
Harrisburg, PA 17102

Jay M. Cutierrez, Esq.
U.S. Nuclear Regulatory
Commission
631 Park Avenue
King of Prussia, PA 19406

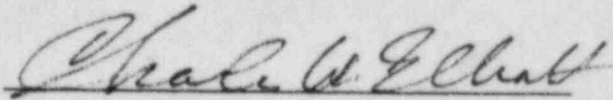
Angus Love, Esq.
107 East Main Street
Norristown, PA 19401

Robert J. Sugarman, Esq.
Sugarman, Denworth &
Hellegers
16th Floor, Center Plaza
101 North Broad Street
Philadelphia, PA 19107

Director, Pennsylvania Emergency
Management Agency
Basement, Transportation
and Safety Building
Harrisburg, PA 17120

Martha W. Bush, Esq.
Kathryn S. Lewis, Esq.
City of Philadelphia
Municipal Services Bldg.
15th and JFK Blvd.
Philadelphia, PA 19107

Spence W. Perry, Esq.
Associate General Counsel
Federal Emergency
Management Agency
500 C Street, S.W., Rm. 840
Washington, D.C. 20472


Charles W. Elliott, Esq.