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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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JUL 24 1985

COMMISSIONERS:

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SERVED JUL 25 1985

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

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

MEMORANDUM

CLI-85-13

Pending before the Nuclear Regulatory Commission ("NRC" or "Commission") are comments by intervenor Limerick Ecology Action ("LEA") on whether the Commission should make effective the Atomic Safety and Licensing Board's ("Licensing Board") Partial Initial Decisions LBP-84-31, 20 NRC 446 (1984), and LBP-85-14, 21 NRC \_\_\_\_ (May 2, 1985), which would constitute part of any decision to authorize the Director, Office of Nuclear Reactor Regulation ("Director") to issue to the applicant Philadelphia Electric Company ("PECo") a full-power license for the Limerick Generating Station ("Limerick").

By a separate Memorandum and Order, CLI-85-11, 21 NRC \_\_\_\_ (June 12, 1985), the Commission declined to authorize issuance of a full-power

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operating license pending further consideration of the hearing rights of one of the parties, the inmates at the State Correctional Institution at Graterford, Pennsylvania.

This memorandum does not affect that determination. Rather, the purposes of this memorandum are to advise LEA and the other parties of the Commission's view that: (1) the concerns expressed by LEA do not appear to warrant staying the effectiveness of the Licensing Board's Partial Initial Decisions; and (2) no other aspect of those Partial Initial Decisions appears to warrant a stay of effectiveness.

In conducting an immediate effectiveness review, the Commission applies the criteria in 10 CFR 2.764(f)(2)(i) to parties' comments to determine whether to stay the effectiveness of a Licensing Board's decision.<sup>1</sup> The Commission has applied these criteria to the comments which LEA has submitted pursuant to 10 CFR 2.764(f) and, for the reasons stated below, finds nothing in those comments which would warrant staying the effectiveness of the Licensing Board's decisions.

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<sup>1</sup>The criteria in 10 CFR 2.764(f)(1)(i) are:

1. the gravity of the substantive issue;
2. the likelihood that it has been resolved incorrectly below;
3. the degree to which correct resolution of the issue would be prejudiced by operation pending review; and
4. other relevant public interest factors.

LEA has challenged the following Licensing Board actions:

(1) post-hearing verification by the NRC staff that license conditions on traffic control and staffing needs have been satisfied; (2) the finding of adequate assurance that the radiological emergency response plans will be implemented; (3) the use of survey rather than census data to determine the number of transportation-dependent individuals; (4) the refusal to admit contentions to additional measures to mitigate the consequences of a severe accident; and (5) various procedural rulings on time for cross-examination and consideration of evidence. The Commission has reviewed LEA's comments based on the criteria in 10 CFR 2.764(f)(2)(i) and finds, for the reasons below, that a stay of effectiveness is not warranted.<sup>2</sup>

First, LEA contended that its rights to a hearing under Section 189a of the Atomic Energy Act were denied by the license conditions imposed by the Licensing Board. Those conditions left to the NRC staff the responsibility to make post-hearing verifications that post-accident traffic control measures have been implemented and that emergency planning staffing has been accomplished. The Commission's preliminary

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<sup>2</sup>The Commission notes that Atomic Safety and Licensing Appeal Board ("Appeal Board") has reviewed these same issues in denying LEA's stay request pending the resolution of the appeal and determined that LEA did not make a strong showing on any of these arguments. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2) ALAB-808, 21 NRC \_\_\_\_, slip op. at 5 (June 11, 1985).

review of those conditions indicates that areas of concern are quite narrow and are arguably within the scope of matters which can be left to post-hearing verification by the NRC staff. Therefore, the issues are neither grave nor substantially likely to have been incorrectly resolved by the Licensing Board, and operation pending review will not prejudice further review.

Second, LEA contended that the record does not support a finding of adequate assurance that the radiological emergency response plans will be implemented because some of the local organizations have not adopted the plans. However, LEA acknowledged that formal plan adoption is not required by the NRC's emergency planning regulations. The Licensing Board determined that the plans can be implemented and that the local organizations have agreed that they will implement a plan. Based on our preliminary review we are not prepared to say that the Board was incorrect in its analysis of this issue. Moreover, we believe that operation pending the review will not prejudice further review.

Third, LEA contended that transport-dependent individuals were not adequately identified by survey data. The Licensing Board appears to have adequately explained the adequacy of such data. Therefore, this issue does not appear substantial. Moreover, licensing will not prejudice any appeals of this issue.

Fourth, LEA contended that the Final Environmental Statement for Limerick is incomplete for failure to consider design alternatives to mitigate the risk of severe accidents. This issue does not raise

serious safety concerns because the Licensing Board has found that the public's health and safety is adequately protected by the equipment already incorporated into the Limerick facility for mitigating the effects of severe accidents. Moreover, at oral argument before the Appeal Board, LEA conceded that this issue could be resolved after licensing. Therefore, there is no dispute that even if the Licensing Board's decision is found to be incorrect, correct resolution of the issue would not be prejudiced by operation pending review.


Finally, LEA contended that the Licensing Board made some incorrect procedural rulings. These rulings do not appear to raise grave to issues and our preliminary review does not suggest any substantial likelihood that the rulings were incorrect.

LEA has also alleged that a stay would not adversely affect the Applicant because a shortage of cooling water currently would prevent the plant from going to full-power; and a stay would not affect the public because sufficient inexpensive electricity is already available. In view of our analysis of the other factors, these arguments do not support a stay.

For the foregoing reasons, the Commission has determined that nothing in LEA's comments would warrant staying the effectiveness of the Licensing Board's Partial Initial Decisions, LBP-84-31 and LBP-85-14. The Commission has also reviewed these decisions sua sponte and finds nothing in them which would warrant staying their effectiveness. This conclusion is without prejudice to the Appeal Board's pending review of these issues.



For the Commission

  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, DC  
this 24th day of July, 1985.