

LAW OFFICES
CONNER & WETTERHAHN, P.C.
1747 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006

TROY B. CONNER, JR.
MARK J. WETTERHAHN
ROBERT M. RADER
DOUGLAS K. OLSON
JESSICA H. LAVERTY
NILS N. NICHOLS
ROBERT H. PURL
BERNHARD G. BECHHOEFER
OF COUNSEL

September 18, 1985

(202) 833-3500

CABLE ADDRESS: ATOMLAW

Mr. Harold R. Denton
Director, Office of Nuclear
Reactor Regulation
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

In the Matter of
Philadelphia Electric Company
(Limerick Generating Station, Units 1 and 2)
Docket Nos. 50-352 and 50-353

Dear Mr. Denton:

This responds to the undated letter from Mr. Marvin I. Lewis on behalf of "Citizen Action in the NorthEast" (sic), which we initially obtained from the NRC's Public Document Room. Mr. Lewis requests that the Director "lift or retract" the construction permit for the Limerick Generating Station, Unit 2. By letter dated August 30, 1985, you advised Mr. Lewis that his request would be treated as a petition under 10 C.F.R. §2.206. Notice of the NRC's receipt of the request was subsequently given in the Federal Register. See 50 Fed. Reg. 36934 (September 10, 1985). As discussed below, there is no basis for this relief and the petition should be denied.

The only basis cited by Mr. Lewis in his petition is the Recommended Decision of the Administrative Law Judge of the Pennsylvania Public Utility Commission in the proceeding regarding Limerick Unit 2, Docket No. I-840381 (July 12, 1985). The scope of that proceeding before the Pennsylvania PUC was whether financing for Limerick Unit 2 would "imperil the company's continued vitality." See Section 1903(a) of the Public Utility Code, 66 Pa. C.S.A. §1903(a).

Mr. Lewis relies upon portions of the decision, now being reviewed by the PUC Commissioners, regarding the economic viability of Limerick Unit 2. Mr. Lewis asserts that those unreviewed findings should be the basis for action by the NRC in "retracting" the construction permit for Unit 2.

8509200184 850918
PDR ADOCK 05000353
A PDR

8021
110

The Recommended Decision of the PUC administrative law judge constitutes no basis for action by the NRC to revoke, suspend or modify the construction permit for Unit 2. In an earlier aspect of the hearing proceeding, the Appeal Board rejected much the same argument by Del-Aware Unlimited, Inc., holding:

Moreover, Del-Aware would have us act on the basis of rulings of other federal and state entities concerned with various aspects of Limerick and the [Point Pleasant Diversion] project. Apart from the facts that, in many instances, these rulings are not final and that overall the situation is rather dynamic, we must decide only the federal questions before us, without being unduly influenced by the decisions of others with differing concerns and responsibilities.

Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-785, 20 NRC 848, 884-85 (1984).

In this instance, exceptions to the Recommended Decision of the administrative law judge have been filed and the Recommended Decision is under review by the full Commission. Consequently, final agency action by the PUC has not yet occurred. Additionally, as the Director stated in rejecting the first of Del-Aware's petitions for relief under Section 2.206, further appeals are available to the Company even if the PUC Commissioners should adopt the Recommended Decision. Limerick, supra, DD-82-13, 16 NRC 2115, 2130 (1982). Accordingly, the Recommended Decision of the PUC administrative law judge provides no basis for legal action by the NRC.

Further, the matters raised by Mr. Lewis are beyond the statutory jurisdiction of the NRC. As the Appeal Board held in denying a stay of the issuance of the low-power license for Unit 1, "the economic concerns noted by [Friends of the Earth] in this connection . . . are not within the proper scope of issues litigated in NRC proceedings. The Commission has just recently reaffirmed its long-held view that a nuclear plant's possible effect on rates, the utility's solvency, and the like is best raised before state economic regulatory agencies." Limerick, supra, ALAB-789, 20 NRC 1443, 1447 (1984). The Appeal Board restated this

principle in denying a stay of the Third Partial Initial Decision in the Limerick proceeding:

Rate issues and the like are not cognizable under the Atomic Energy Act, which is concerned with protection of the public health and safety from radiological hazards. State utility commissions, and in some instances the Federal Energy Regulatory Commission, exercise economic regulatory jurisdiction.

Limerick, supra, ALAB-808, 21 NRC 1595, 1603 (1985).

The Licensing Board denied a similar motion to bring this issue into the licensing proceeding on behalf of Citizens Action in the Northeast only a year ago. In a Memorandum and Order dated August 22, 1984, the Licensing Board rejected Mr. Lewis' motion to admit a new contention, finding that his "generalized assertions that the Applicant has or may in the future have some 'rate base' difficulties are manifestly insufficient." Limerick, supra, "Memorandum and Order Denying Motions of CANE and CEPA to Admit or Certify Financial Qualifications Contentions" (August 22, 1984) (slip op. at 2). The Licensing Board added: "The fact that a utility may encounter some financial difficulties, or that a state ratemaking body would deny some of the return being sought by the utility, would not be a sufficient basis for waiving the regulations precluding litigation of financial qualifications in operating license cases." (Id. at 3).

Accordingly, Mr. Lewis is seeking to use Section 2.206 procedures as a means to circumvent decisions of the Appeal Board and Licensing Board rejecting its attempt and those of other intervenors to raise this issue. This contravenes the rule "now firmly established that the remedy afforded by 10 CFR 2.206 should not be used as a means to reopen issues previously adjudicated." Limerick, supra, DD-85-11, 22 NRC (July 29, 1985) (slip op. at 36). Mr. Lewis has simply confused consideration of environmental costs and benefits under 10 C.F.R. Part 51 with economic costs, which, as discussed above, are excluded from consideration under the NRC's rules.

Mr. Harold R. Denton
September 18, 1985
Page 4

Accordingly, the petition for relief under Section 2.206 should be denied.

Sincerely,

Troy B. Conner, Jr.

Troy B. Conner, Jr.
Counsel for Philadelphia
Electric Company

TBC/dlf

cc: Eugene J. Bradley, Esq.