

966

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

Docket Nos. 50-352 OL  
50-353 OL

DOCKETED  
NRC

'85 MAR-8 P3:01

OFFICE OF SECRETARY  
DOUGLAS M. MULLER  
MAR 8 1985

---

NRC STAFF'S ANSWER IN OPPOSITION TO INTERVENOR  
GRATERFORD INMATES' PETITION FOR REVIEW OF APPEAL BOARD  
ORDER DISMISSING PETITION FOR DIRECTED CERTIFICATION

---

Ann P. Hodgdon  
Counsel for NRC Staff

March 8, 1985

8503110483 850308  
PDR ADOCK 05000352  
G PDR

DS07

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of )

PHILADELPHIA ELECTRIC COMPANY )

(Limerick Generating Station,  
Units 1 and 2) )

Docket Nos. 50-352  
50-353

---

NRC STAFF'S ANSWER IN OPPOSITION TO INTERVENOR  
GRATERFORD INMATES' PETITION FOR REVIEW OF APPEAL BOARD  
ORDER DISMISSING PETITION FOR DIRECTED CERTIFICATION

---

Ann P. Hodgdon  
Counsel for NRC Staff

March 8, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

Docket Nos. 50-352  
50-353

NRC STAFF'S ANSWER IN OPPOSITION TO INTERVENOR  
GRATERFORD INMATES' PETITION FOR REVIEW OF APPEAL BOARD  
ORDER DISMISSING PETITION FOR DIRECTED CERTIFICATION

I. INTRODUCTION

On February 21, 1985, Intervenor Graterford Inmates filed with the Commission, pursuant to 10 C.F.R. § 2.786, a petition for review of an Appeal Board order of February 12, 1985, dismissing without prejudice the "Notice of Appeal" filed with the Appeal Board by the Inmates regarding an interlocutory discovery ruling by the Licensing Board set forth in an Order of February 5, 1984. For the reasons discussed below, the NRC staff opposes the Inmates' petition.

II. BACKGROUND

On December 20, 1984, the Inmates filed a motion <sup>1/</sup> requesting the Licensing Board to require full disclosure of the evacuation plan for the

---

<sup>1/</sup> Motion for Order Requiring Full Disclosure by Pennsylvania Emergency Management Agency of the Evacuation Plan for State Correctional Institute at Graterford (December 20, 1984).

State Correctional Institute at Graterford, Pennsylvania, alleging that the "sanitized" version provided to them by the Commonwealth of Pennsylvania did not provide sufficient information to allow the Inmates to form a judgment regarding the adequacy of the plan and to propose contentions regarding the plan for litigation in the Limerick offsite emergency planning hearings. The Applicant, the Commonwealth and the NRC staff filed responses generally opposing full disclosure, except that the Staff indicated that the Licensing Board should require the Inmates to specify the information needed, based on expert opinion, beyond that provided in the "sanitized" version as a pre-condition to compelling further disclosure. <sup>2/</sup> The Inmates filed a supplemental motion, indicating that their expert required full disclosure in order to make a judgment regarding the viability of the plan. <sup>3/</sup> On February 5, 1985, the Licensing Board issued a "Memorandum and Order Regarding Graterford Prison," in which the Licensing Board confirmed an order read from the bench on January 29, 1985. The Licensing Board denied the motion for full disclosure citing, among other

---

<sup>2/</sup> Applicant's Response to Graterford Inmates Motion for an Order Requiring Full Disclosure by PEMA of the Evacuation Plan for the State Correctional Institute At Graterford (December 28, 1984); Response of the Commonwealth of Pennsylvania to Graterford Inmates' December 20, 1984 Motion for Full Disclosure of Graterford RERP and Request for Additional Time to File Memorandum in Support of Said Response (December 31, 1984); Memorandum in Support of Response of the Commonwealth of Pennsylvania to Graterford Inmates' December 20, 1984 Motion (January 18, 1985); [NRC Staff] Answer to Motion of the Inmates of the State Correctional Institute at Graterford for Full Disclosure of the Evacuation Plan for State Correctional Institute at Graterford (January 2, 1985).

<sup>3/</sup> Supplemental Motion of the Inmates at SCIG Regarding Full Disclosure of the Evacuation Plan for SCIG (January 28, 1985).

things, the Inmates' failure to specify the information needed. Memorandum and Order at 1. Accordingly, the Licensing Board ruled that the Inmates should proceed to file their contentions on the "sanitized" plan. Id. at 3.

On February 8, 1985, the Inmates filed a "Notice of Appeal" <sup>4/</sup>, which was dismissed by the Appeal Board on February 12, 1985. In its Order, the Appeal Board noted that discovery rulings generally do not meet the standards for obtaining interlocutory review by the Appeal Board. Order at 2. Further, the Appeal Board indicated that at the time the Inmates sought review by the Appeal Board they had neither exhausted their options before the Licensing Board nor yet filed their contentions. Order at 2. Finally, the Appeal Board pointed out that the Inmates were free to seek appellate review if and when litigation of the adequacy of the plan proved finally futile. Order at 2. While declining to direct certification of the Licensing Board's ruling denying full disclosure, the Appeal Board provided guidance to the Licensing Board and parties regarding the desirability of finding a middle ground to accommodate the competing interests at stake. The Appeal Board directed the Licensing Board's attention to NRC decisions regarding the use of protective orders to protect discoverable yet sensitive information. Order at 3. The Licensing Board implemented the Appeal Board's guidance by issuing an order noticing a "conference on full disclosure" of the emergency plan for the Graterford Facility

---

<sup>4/</sup> Although the Inmates styled their filing before the Appeal Board a "Notice of Appeal," the Appeal Board construed it as a motion for directed certification pursuant to 10 C.F.R. § 2.718(i).

for February 27, 1985. <sup>5/</sup> The in camera conference noticed by that order has taken place as scheduled and another in camera conference is scheduled for March 22, 1985 to discuss the progress that has been made with regard to resolving this dispute.

On February 15, 1984, the Inmates filed contentions based on the "sanitized" plan and on February 21, 1983, they filed a petition for Commission review of the Appeal Board's February 12 Order.

### III. DISCUSSION

Although the Commission has the ultimate discretion to review any decision of its subordinate boards, a review will not ordinarily be granted unless it appears that the case, inter alia, involves an important matter that could significantly affect the environment or the public health and safety, raises an important procedural issue or otherwise raises important questions of public policy. 10 C.F.R. § 2.786(b)(4)(i). The Commission's regulations provide that petitions for directed certification will be ruled upon by the Appeal Board (10 C.F.R. § 2.785(b)) and specifically do not permit the filing of petitions for Commission review of an Appeal Board decision or action on a motion for directed certification under § 2.718(i). 10 C.F.R. § 2.786(b)(1). As noted above, the Appeal Board treated the Inmates' Notice of Appeal as a motion for directed certification pursuant

---

<sup>5/</sup> Memorandum and Order (Conference on Full Disclosure of Evacuation Plan for the Graterford Maximum Security Facility) (February 19, 1984).

to 10 C.F.R. § 2.718(i) and, thus, review by the Commission is not appropriate. For this reason alone, the request for review should be denied.

In addition, the issues raised by the Inmates concern discovery issues that at the present time are not fully resolved and are currently being considered by the Licensing Board. The Appeal Board does not normally direct certification of such issues, since these matters can be raised in the normal appeal process. Pennsylvania Power and Light Company (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 321 (1980); Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-318, 3 NRC 186 (1976). As indicated above, the process set in motion by the Appeal Board's dismissal of the Inmates' interlocutory appeal of the Licensing Board's decision is not complete. The matter pending before the Licensing Board may, in fact, resolve some or all of the Inmates' concerns. Until such time as the Inmates' request for more information with regard to the emergency plans for the Graterford Prison is resolved there are no "important" issues for the Commission to decide.

In any event, the Inmates have not raised any issue which merits Commission review under 10 C.F.R. § 2.786. The sole legal issue raised by the Inmates is that the Licensing Board and the Appeal Board erroneously based their decisions on 10 C.F.R. § 2.790(a) (Petition at 2). Contrary to the Inmates' assertion, 10 C.F.R. § 2.790(a) was not the basis of the decision of either the Licensing Board or the Appeal Board. Section 2.790(a) concerns a test for determining when the NRC must provide documents for which privilege is claimed, not, as the Inmates state, "for determining the rights of an intervenor to review sensitive information [other than final

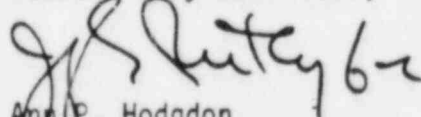
NRC documents and records] under a protective order." Petition at 4-5. The disputed discovery that is the subject of the instant petition is not a request directed to the NRC, but a request directed to the Commonwealth of Pennsylvania. The Appeal Board correctly directed the parties to 10 C.F.R. § 2.740 as a basis for resolving this discovery request.

If the Inmates' petition is viewed more broadly as raising the question of whether the Licensing Board properly balanced competing interests in determining whether the full emergency plans for the Prison should be disclosed, that matter is inappropriate for Commission review since it is the subject of continuing proceedings before the Licensing Board.

#### IV. CONCLUSION

For the reasons discussed, the Commission should deny the Inmates' petition.

Respectfully submitted,



Ann P. Hodgdon  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 8th day of March, 1985



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

Docket Nos. 50-352  
50-353

DOCKETED  
USNRC  
85 MAR -8 P3:02  
OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER IN OPPOSITION TO INTERVENOR GRATERFORD INMATES' PETITION FOR REVIEW OF APPEAL BOARD ORDER DISMISSING PETITION FOR DIRECTED CERTIFICATION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 8th day of March, 1985:

Samuel J. Chilk  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555\*

Herzel H. E. Plaine, Esq.  
General Counsel  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555\*

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

Dr. Jerry Harbour  
Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555\*

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

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

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

Ms. Phyllis Zitzer, President  
Ms. Maureen Mulligan  
Limerick Ecology Action  
762 Queen Street  
Pottstown, PA 19464

Helen F. Hoyt, Chairperson (2)  
Administrative Judge  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555\*

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

Mr. Frank R. Romano  
Air and Water Pollution Patrol  
61 Forest Avenue  
Ambler, PA 19002

Joseph H. White, III  
15 Ardmore Avenue  
Ardmore, PA 19003

Thomas Gerusky, Director  
Bureau of Radiation Protection  
Dept. of Environmental Resources  
5th Floor, Fulton Bank Building  
Third and Locust Streets  
Harrisburg, PA 17120

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

Robert L. Anthony  
Friends of the Earth of the  
Delaware Valley  
103 Vernon Lane, Box 186  
Moylan, PA 19065

Mr. Marvin I. Lewis  
6504 Bradford Terrace  
Philadelphia, PA 19149

Charles W. Elliott, Esq.  
Brose & Poswistilo  
325 N. 10th Street  
Easton, PA 18042

David Wersan  
Consumer Advocate  
Office of Attorney General  
1425 Strawberry Square  
Harrisburg, PA 17120

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

Troy B. Conner, Jr., Esq.  
Mark J. Wetterhahn, Esq.  
Conner and Wetterhahn  
1747 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

James Wiggins  
Senior Resident Inspector  
U.S. Nuclear Regulatory Commission  
P.O. Box 47  
Sanatoga, PA 19464

Zori G. Ferkin  
Governor's Energy Council  
P.O. Box 8010  
1625 N. Front Street  
Harrisburg, PA 17105

Martha W. Bush, Esq.  
Kathryn Lewis, Esq.  
1500 Municipal Services Bldg.  
15th and JFK Blvd.  
Philadelphia, PA 19107

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

Angus R. Love, Esq.  
Montgomery County Legal Aid  
107 East Main Street  
Norristown, PA 19401

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

Atomic Safety and Licensing  
Appeal Board Panel  
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\*

Timothy R. S. Campbell, Director  
Department of Emergency Services  
14 East Biddle Street  
West Chester, PA 19380

Gregory Minor  
MHB Technical Associates  
1723 Hamilton Avenue  
San Jose, CA 95125

Steven P. Hershey, Esq.  
Community Legal Services, Inc.  
5219 Chestnut Street  
Philadelphia, PA 19139

Jay Gutierrez  
Regional Counsel  
USNRC, Region I  
631 Park Avenue  
King of Prussia, PA 19406\*

  
\_\_\_\_\_  
Joseph Rutberg  
Assistant Chief Hearing Counsel