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April 1, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
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In the Matter of)

PHILADELPHIA ELECTRIC COMPANY)

(Limerick Generating Station,)
Units 1 and 2))

Docket Nos. 50-352

50-353

NRC STAFF ADDITIONAL VIEWS ON APPLICANT'S
MOTION DATED FEBRUARY 7, 1985 FOR EXEMPTION
FROM THE REQUIREMENTS OF 10 C.F.R. § 50.47(a) AND (b)

I. INTRODUCTION

On February 7, 1985, Philadelphia Electric Company (Applicant) filed with the Licensing Board, pursuant to 10 C.F.R. § 50.12, a motion seeking an exemption from the requirements of 10 C.F.R. § 50.47(a) and (b) as they relate to the necessity of the Board to consider evacuation provisions of the emergency plan for the State Correctional Institution at Graterford (SCIG) (Applicant's Motion). On March 13, 1985, the Graterford Prisoners (Mr. Love) filed their answer opposing the Applicant's motion. On March 15, 1985, answers opposing the Applicant's motion were filed by Air and Water Pollution Patrol (Mr. Romano) and FOE (Mr. Anthony). On March 18, 1985, the NRC staff filed its answer, indicating that it was inappropriate to consider the exemption at that time. Also, on March 18, 1985, the Commonwealth of Pennsylvania filed its answer indicating that it did not support Applicant's motion. The NRC staff's additional views are set forth below.

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II. BACKGROUND

The background to this matter is lengthy and has been fully set forth in the Staff's filing of March 18, 1985. ^{1/} Consequently, the Staff finds it unnecessary to repeat it here; however, we do provide additional information that has come to our attention since our filing of March 18, 1985.

On March 7, 1985, an exercise of the radiological emergency response plan for the State Correctional Institute at Graterford (SCIG) was held. ^{2/} Reports of that exercise were prepared by the Pennsylvania Emergency Management Agency (PEMA) ^{3/} and the Federal Emergency Management Agency (FEMA). ^{4/}

On March 15, 1985, the Licensing Board issued a memorandum and order noticing an in camera conference for March 22, 1985 on the Graterford maximum security facility. ^{5/} Also, on March 15, 1985 the Commonwealth of Pennsylvania Department of Corrections filed its response to

^{1/} NRC Staff Response To Applicant's Motion Dated February 7, 1985 For Exemption From The Requirements Of 10 C.F.R. § 50.47(a) And (b) at 1-6 (March 18, 1985).

^{2/} See Letter from John L. Patten to Glen R. Jeffes, dated March 13, 1985 with enclosure "Report Of The Graterford RERP Exercise", dated March 12, 1985.

^{3/} Id. Memorandum from Richard W. Krimm to Edward L. Jordan, dated March 27, 1985.

^{4/} Memorandum from Richard W. Krimm to Edward L. Jordan, dated March 27, 1985, with Attachments.

^{5/} Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), Memorandum And Order (Conference On Graterford Maximum Security Facility)(March 15, 1985).

Mr. Love's, and his experts request for information. ^{6/} On March 18, 1985, the Commonwealth provided Mr. Love and his expert a copy of the new version of the emergency plan (Plan II) for the SCIG, which was virtually the entire plan. Tr. 20,612-13. During the March 22, 1985 conference, the Licensing Board ruled that it was providing the parties an opportunity to take additional positions or update their prior responses on Applicant's motion for an exemption. Tr. 20,672-74. The Board established a filing date of April 1, 1985. Tr. 20,673. In accordance with that Board ruling, the Staff hereby provides it additional views concerning the Applicant's Motion.

III. DISCUSSION

A. Timeliness

As we noted in our previous filing, the Staff submits that it would be premature for the Licensing Board to decide whether to grant the Applicant an exemption under the authority of 10 C.F.R. § 50.12 because the Licensing Board has not yet determined that the Graterford Prisoner's have filed at least one admissible contention, thus there are no issues in controversy related to the Graterford Prisoners. ^{7/} The NRC staff continues to hold this view since there still exists the distinct possi-

^{6/} "Response Of The Commonwealth Of Pennsylvania Department Of Corrections To Requests For Information Raised At The February 27, 1985 Atomic Safety And Licensing Board Conference" attached to letter dated March 15, 1985.

^{7/} See NRC Staff Response To Applicant's Motion at 6-9 (March 18, 1985).

bility that there will be nothing to litigate regarding Graterford given the substantial progress that was made during the March 22, 1985 conference in resolving to the satisfaction of the Graterford Prisoners (Mr. Love) most of the issues raised by their three proposed contentions. During the conference, Mr. Love, the representative for the Graterford Prisoners, agreed to withdraw one of the three general contentions. Tr. 20,677-78. Further, Mr. Love agreed that about 13 out of the approximately 15 specific bases for the proposed contentions reflected in his February 15, 1985 filing have now been resolved. Tr. 20,678-94. The few remaining areas could very well be disposed of by further filings by the parties and a Licensing Board decision ruling on the Graterford Prisoners contentions.

The absence of any FEMA review or evaluation of the SCIG plan was the other important reason for the Staff's position that it was premature for the Licensing Board to consider the use of the exemption authority under 10 C.F.R. § 50.12(a). ^{8/} However, this concern has now been adequately resolved since an emergency planning remedial exercise of the SCIG plan was held on March 7, 1985 and was observed and evaluated by FEMA. ^{9/} FEMA found that the Department of Corrections has adequately demonstrated an understanding of the emergency response procedures and

^{8/} See, NRC Staff Response To Applicant's Motion at 8-9 (March 18, 1985).

^{9/} Memorandum from Richard W. Krimm to Edward L. Jordan, dated March 27, 1985, with Attachments.

the ability to adequately implement them. ^{10/} Consequently, the Staff submits that the Licensing Board would be in a posture to consider the Applicant's exemption request should the Board determine that the Graterford Prisoners have profered at least one admissible contention.

B. Standard For Deciding Exemption

The Staff submits that the "exigent circumstances" test discussed by Applicant in its motion (Applicant's Motion at 5-7) is not the proper standard to be applied in determining whether the exemption is warranted under 10 C.F.R. § 50.12(a). The Commission's Clinch River Breeder Reactor decision cited by the Applicant involved an exemption to permit site preparation activities under 10 C.F.R. § 50.12(b). ^{11/} In that decision, the Commission reviewed Commission precedent in determining what standard to apply and decided that the "exigent circumstances" test would apply. ^{12/} Every case cited by the Commission as precedent involved a situation where an exemption was sought to permit pre-construction site preparation activities under 10 C.F.R. § 50.12(b). ^{13/} Accordingly, it is the Staff's view that the

^{10/} Id; The Staff would note that PEMA also prepared a report of the exercise where it determined that the Department of Corrections had done a good job in demonstrating its capability to evacuate the inmates at Graterford. See, Letter from John L. Patten to Glen R. Jeffes, dated March 13, 1985, with Enclosures.

^{11/} United States Department of Energy, et al., (Clinch River Breeder Reactor Plant), CLI-83-1, 17 NRC 1 (1983).

^{12/} 17 NRC at 2-6 (1983).

^{13/} 17 NRC at 2 n. 1, 4-6 (1983).

standard of "exigent circumstances" has been previously considered a factor only in Commission cases involving exemptions pursuant to 10 C.F.R. § 50.12(b) for pre-construction site preparation activities, except for the Shoreham ^{14/} case. However, the Commission's Shoreham decision does not provide support for the use of the "exigent circumstances" test for an exemption under 10 C.F.R. § 50.12(a) in this case. While the Commission, in the Shoreham case, did indicate that the "exigent circumstances" standard was to be applied when the Applicant sought an exemption under 10 C.F.R. § 50.12(a), ^{15/} the Commission, subsequently, explicitly limited the Shoreham decision as it related to the standards for granting exemptions and the circumstances where exemptions are required to that case alone. ^{16/}

In the event this proceeding reaches the stage where the Licensing Board has to decide whether to grant the Applicant's request for an exemption pursuant to 10 C.F.R. § 50.12(a), the Staff is of the view that the Board should apply the regulatory standards set forth explicitly in 10 C.F.R. § 50.12(a). Nevertheless, the Staff would also observe that should there be litigation of one or more of the Graterford Prisoners' contentions it appears that 10 C.F.R. § 50.47(c)(1) constitutes authority by which the Licensing Board could grant Applicant's relief from

^{14/} Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-84-8, 19 NRC 1154 (1984).

^{15/} Id. at 1155.

^{16/} Mississippi Power & Light Company, et al. (Grand Gulf Nuclear Station, Unit 1), CLI-84-19, slip op. at 8 n. 7 (October 25, 1984).

10 C.F.R. § 50.47(a) and (b). cf. In the Matter of Union of Concerned Scientists, DPRM-83-1, 17 NRC 719, 726 (1983); 44 Fed. Reg. 75167-71 (December 19, 1979). Under either authority, the Staff submits that it is appropriate for the Licensing Board to consider the following circumstances: (1) the fact that an emergency plan has now been developed for the SCIG; (2) a remedial exercise has been conducted at the SCIG on March 7, 1985; (3) PEMA has reviewed the SCIG emergency response plan, evaluated an exercise based on that plan and found that the Department of Corrections officials demonstrated an adequate capability to evacuate the inmates at Graterford; (4) FEMA has observed and evaluated the remedial exercise of the SCIG plan and found that the Graterford authorities adequately demonstrated (a) an understanding of emergency response procedures, and (b) an ability to adequately implement those procedures; (5) FEMA has determined that the Category A deficiency it previously identified for Graterford has now been corrected ^{17/}; (6) the costs of delay associated with litigating any contention found admissible; (7) the fact that the exemption is being requested only for the period of time for the Commission to consider any additional contentions (see, Applicant Motion at 7); and (8) the fact that the resources needed for an evacuation of the Graterford inmates have been identified and, in most cases, have been or will be obtained shortly (i.e. transportation, manpower, security equipment,

^{17/} Memorandum from Richard W. Krimm to Edward L. Jordan, dated March 27, 1985, with Attachments.

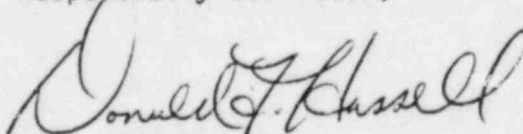
communications equipment, radiological equipment, medical services, monitoring) 18/.

In view of the very limited scope of the few issues which appear to remain in dispute (Tr. 20,682-94), summary disposition (10 C.F.R. § 2.749) may also be available to expeditiously complete the proceeding should any contention be found admissible by the Licensing Board.

III. CONCLUSION

Based on the foregoing, the Staff is of the view that this matter is still not ripe for Licensing Board consideration until it determines there is at least one admissible contention. Should the Board determine that the Graterford Prisoners have at least one admissible contention, the Staff submits that it would then be appropriate for the Board to consider whether to grant the Applicant's motion for an exemption from 10 C.F.R. § 50.47(a) and (b).

Respectfully submitted,



Donald F. Hassell
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 1st day of April, 1985

18/ See, Response Of The Commonwealth Of Pennsylvania Department of Corrections To Requests For Information Raised At The February 27, 1985 Atomic Safety And Licensing Board Conference (March 15, 1985).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ADDITIONAL VIEWS ON APPLICANT'S MOTION DATED FEBRUARY 7, 1985 FOR EXEMPTION FROM THE REQUIREMENTS OF 10 C.F.R. § 50.47(a) AND (b)" 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 1st day of April, 1985:

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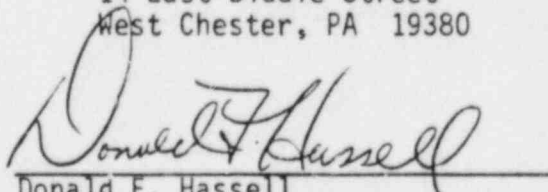
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