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January 26, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SCHEDULING  
BRANCH

In the Matter of }  
PHILADELPHIA ELECTRIC COMPANY } Docket Nos. 50-352  
(Limerick Generating Station, } 50-353 /oc  
Units 1 and 2) }

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

I. INTRODUCTION

On December 20, 1984, the Inmates of the State Correctional Institute at Graterford, Pennsylvania (Inmates) filed a motion before the Atomic Safety and Licensing Board requesting full disclosure of the evacuation plan for the State correctional Institute. For the reasons discussed below, the NRC staff believes that additional steps should be taken before a final decision can be made on that motion.

II. BACKGROUND

In the Licensing Board's Order of April 20, 1984,<sup>1/</sup> the Board discussed the schedule for the filing of contentions for the inmates of

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<sup>1/</sup> Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-84-18, 19 NRC 1020 (1984) Special Prehearing Conference Order Ruling On Admissibility of Offsite Emergency Planning Contentions.

the State Correctional Institution at Graterford, Pennsylvania (SCIG). The Licensing Board acknowledged that the inmates were unable to present contentions during the prehearing conference because they had not had available to them the separate plan for the SCIG. The inmates were given twenty days after receipt of the plan to submit any contentions that they might have based upon the plan. The Licensing Board encouraged the inmates to discuss with the Commonwealth any concerns that they had with the plan in an effort to resolve any differences.

On December 13, 1984, the Commonwealth provided to the inmates counsel a copy of the Radiological Emergency Response Plan, Appendix E, Annex 1 prepared for SCIG. Certain information was deleted by the Commonwealth for security reasons. An explanation for the deletions was provided in an affidavit by Glen R. Jeffes, Acting Commissioner of Corrections of the Commonwealth of Pennsylvania. In response to the receipt of the plan with deletions, the inmates filed the instant motion. Staff is not aware of any discussions that may have taken place between the inmates and representatives of the Commonwealth to resolve any differences.

### III. DISCUSSION

The issue of the protection from public disclosure of certain plans and other information generally arises in NRC licensing proceedings in connection with the protection of the security plan developed for the

nuclear facility.<sup>21</sup> However, the propriety of withholding certain information in connection with a nuclear plant security plan is on its face quite similar to the issue presented by the Commonwealth and the inmates, i.e., the treatment of sensitive emergency planning information which if not properly protected could have serious consequences to the public at large.

In addressing the release of information concerning the details of a security plan, we are faced with two countervailing forces. The desire of the developer of a security plan to withhold as much information as possible about the plan from outside sources and the expressed need of intervenors to have as much detail about the plan as possible to assist in the development of its case. See, ALAB-410, supra. In the Limerick proceeding, the inmates seek more detail about the offsite emergency plans for their facility in order to determine whether contentions should be raised. Motion, at 3. With these countervailing forces in mind, the Appeal Board has determined that under certain circumstances and with specific protection it is appropriate to provide a security plan to third parties. Id. However, it is important to understand the circumstances surrounding the release of a security plan.

The Appeal Board acknowledges that there may be appropriate circumstances when a plan should be released to interested parties, however, that does not mean the plan should be released in its entirety,

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<sup>21</sup> See, e.g., Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-592, 11 NRC 744 (1980); Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-410, 5 NRC 1398 (1977).

or to anyone selected by the third party or that it should be released without protective safeguards. ALAB-410, at 1404. In the case of nuclear plant safeguards the Appeal Board, in ALAB-410, has provided guidance in making this determination. First, the Board observed that only those portions of the plan that are relevant and necessary for the litigation need be released. Secondly, as few of the "gory details" as possible need be released. Thus, a "sanitized" version of the plan may be released to the intervenor's counsel and its qualified expert, together with a general description of the types of information omitted from each section. Finally, no information is released unless an appropriate protective order and non-disclosure affidavits are executed. ALAB-410, at 1404.

While the inmates suggest that they can see no analogy between the need to protect site security and the asserted need to protect from release the evacuation plan for the SCIG,<sup>3/</sup> the Staff does believe that such an analogy exists in that the purpose and the need for protecting both types of information is the same. The Commonwealth has made a convincing presentation through the affidavit of the Acting Commissioner of Corrections as to why it needs to protect from disclosure the details and specifics of its evacuation plan for the SCIG. Affidavit, of Glen R. Jeffes.

Mr. Jeffes asserts in his affidavit that the SCIG is a high security prison, with a large number of dangerous criminals who could take

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<sup>3/</sup> We note that inmates in fact acknowledge that a protective order is appropriate under these circumstances. Motion at 3.

advantage of the classified information to assist in planning an escape. Moreover, he asserts that relatives of inmates could use the classified information to assist inmates in planning an escape. Jeffes Affidavit, at 4-5. Mr. Jeffes' qualifications, which are set forth in his affidavit, clearly demonstrate that he has sufficient expertise in this field to support his opinions. On the other hand, the inmates present no expert opinion and rely exclusively upon the representation of counsel. See, Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19 (1983). 4/

The Commonwealth also argues that it cannot reveal additional information, even under a protective, because of experiences that it has had where "attorneys have, or have been suspected of, divulging to inmates materials almost as sensitive as this plan. Jeffes Affidavit, at 5. Thus, they claim that there is a reasonable suspicion that, even though they are given assurances by an attorney for the inmates that the plan will not be divulged, that it will be divulged to the inmates in some form or another. Jeffes affidavit, at 5. The Appeal Board has addressed this very same argument and has found that once it is determined that a "sanitized" version of the plan is available and an appropriate protective order is issued with a signed non-disclosure affidavit there must be a specific

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4/ In Byron, the Appeal Board stated in rejecting an effort by the Staff to protect from disclosure certain information that, "The difficulty with this line of argument is that it is advanced by Staff counsel, entirely unsupported by the affidavit of any NRC official actually responsible for the conduct of either inspections or investigations." Likewise, the inmates have presented no affidavit of an expert knowledgeable in the evacuation of prisoners.

and factual basis for precluding the attorney and a qualified expert from reviewing the plans. 5/ In connection with the pending matter no showing has been made that the attorney for the inmates will not comply with an appropriate protective order and nondisclosure affidavit.

Accordingly, the Staff believes that the inmates have not made an adequate showing supported by the affidavits of experts establishing that it needs specific information beyond that which the Commonwealth has made available. On the other hand, the Commonwealth has provided a "sanitized" version of its plan of the SCIG and has supported its exclusions by an expert in the field. We suggest that in keeping with the directions of this Licensing Board in its April 20, 1984 order and consistent with the guidance of the Appeal Board, the inmates should be required to specify the information they need, based on expert opinion, which is beyond that provided in the "sanitized" version. By providing this type of information, the inmates will place this Licensing Board in a position to rule on specific concerns as opposed to the present motion which seeks the entire plan. In the event that the inmates show that they are entitled to additional information beyond that already provided by the Commonwealth then the Licensing Board should issue an appropriate protective order and any authorized person who seeks to review the classified information should execute a nondisclosure affidavit.

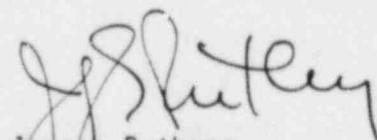
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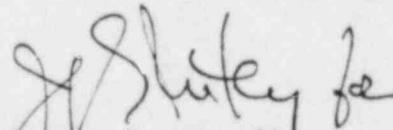
5/ Pacific Gas and Electric Co. (Diablo Canyon, Units 1 and 2), ALAB-592, 11 NRC 744 (1980); Pacific Gas and Electric Co. (Diablo Canyon, Units 1 and 2), CLI-80-24, 11 NRC 775 (1980); see also, ALAB-735, supra. (disclosure of sensitive material pursuant to a protective order provides protection of the disclosure of such information on the assumption that protective orders will be obeyed).

IV. CONCLUSION

Based on the foregoing, the NRC staff submits that the Licensing Board should require the inmates to follow the steps outlined above before finally ruling on their motion.

Respectfully submitted,

  
Joseph Rutberg  
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Donald F. Hassell  
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Dated in Bethesda, Maryland  
this 2nd day of January 1985

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CERTIFICATE OF SERVICE

I hereby certify that copies of "ANSWER TO MOTION OF THE INMATES OF THE STATE CORRECTIONAL INSTITUTE AT GRATERFORD FOR FULL DISCLOSURE OF THE EDUCATION PLAN FOR STATE CORRECTIONAL INSTITUTE AT GRATERFORD" 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, or as indicated by a double asterisk by hand-delivery, this 2nd day of January 1985:

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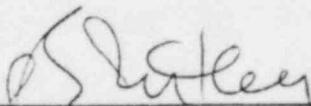
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