

570

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Christine N. Kohl, Chairman
Gary J. Edles
Dr. Reginald L. Gotchy

February 12, 1985 13 P12:09

DOCKETED
USNRC

OFFICE OF SECRETARY
DOCKETING

SERVED FEB 13 1985

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

Docket Nos. 50-352 OL
50-353 OL

MEMORANDUM AND ORDER

By an "appeal" filed February 8, 1985, the inmates of the Pennsylvania State Correctional Institute at Graterford seek our review, via directed certification, of a recent interlocutory Licensing Board ruling in the offsite emergency planning phase of this operating license proceeding.¹ In its ruling, the Board denied the inmates' motion for full disclosure, pursuant to a protective order, of the evacuation plan for the Graterford maximum security facility. Tr. 20,479-81; Licensing Board Memorandum and Order of February 5, 1985 (unpublished). Graterford lies within the emergency planning zone for the Limerick nuclear

¹ The Graterford inmates did not serve the NRC staff and some of the other parties to this proceeding with their notice of appeal. Such service is required under 10 C.F.R. § 2.701(b), and we remind the inmates of their responsibility in this regard.

DS02

plant. The Pennsylvania Emergency Management Agency (PEMA), which developed the Graterford evacuation plan in conjunction with the Commonwealth's Department of Corrections, provided a "sanitized" copy of the plan to the inmates in December 1984. The inmates have until close of business February 18 to submit contentions based on this version of the plan.² Counsel for the inmates has indicated his intention to make such a filing. Tr. 20,481-82.

We have repeatedly noted that discovery rulings -- such as that involved here -- generally do not meet either of our standards for obtaining interlocutory review. See, e.g., Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-780, 20 NRC 378, 381 & n.13 (1984). Moreover, in this instance, the inmates have not yet exhausted all of their options: as already noted, they have indicated their intent to file a contention on the evacuation plan. If or when their effort to litigate the adequacy of the plan proves finally futile, they are then free to seek promptly our appellate review. Thus, in these circumstances, the inmates' request for our intercession is, at best, premature. We therefore dismiss their "appeal"/petition for directed certification without prejudice.

² Because February 18 is a legal holiday, we assume the Licensing Board order meant close of business February 19. See 10 C.F.R. § 2.710.

We recognize that we may well be only deferring the inevitable. We are also aware, on the basis of our reading of the hearing transcript (Tr. 20,424-82) and the papers filed with the Licensing Board prior to its ruling, of the novel and sensitive nature of the issues raised by this dispute. It is likewise apparent that this matter has developed rather quickly, leaving little time for serious efforts to resolve the problem without formal Board intervention. We thus encourage the parties involved, with the assistance of the Licensing Board, if necessary, to attempt to find some middle ground that would accommodate the obvious competing interests at stake here. See 10 C.F.R. § 2.759; Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333, 1347 (1984).


In this connection, several additional observations are pertinent. Under the Commission's Rules of Practice, parties may obtain discovery of any matter relevant to the proceeding, but not privileged. 10 C.F.R. § 2.740(b)(1). Because disputes often arise concerning matter of a discoverable, yet sensitive nature, protective orders are the favored means of handling such problems. See 10 C.F.R. § 2.740(c). Protective orders can be drafted to limit the time and place of access to the sensitive information, as well as the individuals who may see it. See, e.g., Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-600, 12 NRC 3, 14-17 (1980); Consumers

Power Co. (Midland Plant, Units 1 and 2), LBP-83-53, 18 NRC 281, 289-91 (1983), aff'd, ALAB-764, 19 NRC 633 (1984). Lastly, we have stated on more than one occasion that we assume protective orders will be obeyed, unless good cause is demonstrated by appropriate affidavits that the individuals subject to a potential protective order will not abide by it. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19, 25-26 (1983).

The February 8, 1985, appeal/petition for directed certification of the Graterford inmates is dismissed without prejudice.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board