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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Commission

In the Matter of  
Philadelphia Electric Company  
(Limerick Generating Station,  
Units 1 and 2)

)  
)  
) OFFICE OF SECRETARY  
) DOCKETING & SERVICE  
) BRANCH  
) Docket Nos. 50-352 O C  
) 50-353 O C  
)  
)

APPLICANT'S ANSWER TO GRATERFORD  
PRISONERS' PETITION FOR REVIEW

Seventeen identified prisoners have been admitted as a consolidated party to the captioned proceeding under the collective group designated as the Graterford Prisoners.<sup>1/</sup> The Graterford Prisoners seek review of a Memorandum and Order entered by the Atomic Safety and Licensing Appeal Board ("Appeal Board") on February 12, 1985. That order dismissed without prejudice a petition filed by the Graterford Prisoners that sought directed certification of a Memorandum and Order entered by the Atomic Safety and Licensing Board ("Licensing Board") on February 5, 1985.<sup>2/</sup>

The Licensing Board had ruled that the Graterford Prisoners were not entitled to full disclosure of the plan

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1/ Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1447 (1982).

2/ Limerick, supra, "Memorandum and Order Regarding Graterford Prison" (February 5, 1985).

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for evacuating the Graterford Prison and for taking other protective action in the event of a radiological emergency at the Limerick Generating Station ("Limerick"), which had previously been released in a sanitized form. The Board ruled that, despite repeated directives to specify information allegedly needed by the Graterford Prisoners to formulate and litigate their contentions, beyond that which was disclosed in the sanitized version of the plan, they had not done so. The Board further ruled that security concerns outweighed the interest of the Graterford Prisoners in obtaining further disclosure of the plan.

The Appeal Board denied certification of that discovery order, holding that the Licensing Board's order did not meet the standard for obtaining interlocutory review and that the intervenor had not yet exhausted its remedies before the Licensing Board.<sup>3/</sup> Nonetheless, the Board encouraged the parties, with the assistance of the Licensing Board, to attempt to find some middle ground that would accommodate the competing interests at stake. It noted that a protective order could be drafted to limit time and place of access to sensitive information.<sup>4/</sup> The Graterford Prisoners then filed the instant petition for review.

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<sup>3/</sup> Limerick, supra, "Memorandum and Order" (February 12, 1985) (slip op. at 2).

<sup>4/</sup> Id. at 3.

The petition should be dismissed for three reasons. First, the Commission's rules expressly exclude Commission review of "a decision or action on a referral or certification under §§2.718(i) or 2.730(f)."<sup>5/</sup> Accordingly, no Commission review may be obtained on this matter until the Appeal Board is vested with jurisdiction over a final, appealable order issued by the Licensing Board with respect to the Graterford plan.

Second, the Licensing Board's discovery order which precipitated the appeal is now moot. On February 27, 1985, the Licensing Board convened a conference attended by counsel for the Graterford Prisoners, the Commonwealth of Pennsylvania, the Pennsylvania Department of Corrections (including Acting Commissioner Glen R. Jeffes), the NRC and Applicant to discuss fuller disclosure of the Graterford plan under a protective order. Significant progress was made, including a commitment by the Department of Corrections to release certain portions of the plan under protective order identified by counsel for the Graterford Prisoners as critical to their contentions.<sup>6/</sup> Another

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<sup>5/</sup> 10 C.F.R. §2.786(b)(1).

<sup>6/</sup> A more complete description of the precise undertakings cannot be made in the public record because the transcript has been placed under seal. See Limerick, supra, "Memorandum and Order (Conference on Full Disclosure of Evacuation Plan for the Graterford Maximum Security Facility)" (February 19, 1985) (slip (Footnote Continued)

conference has been scheduled for March 22, 1985, following review of the newly disclosed portions of the plan by counsel and appropriate representatives of the parties.<sup>7/</sup>

Third, even assuming the Commission were to review the Licensing Board's discovery order which prompted this appeal, there has been no showing that the Board abused its discretion. The only issue at this point is whether publicly available documents exist which reasonably enable the Graterford Prisoners to formulate proposed contentions. Cf. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1045, 1048 (1983). Clearly, they have received sufficient information from the previously released, sanitized plan to do so, because the Prisoners have proposed several contentions relating to transportation

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(Footnote Continued)

op. at 2). Counsel for Applicant has read the contents of this pleading describing the conference to counsel for the Department of Corrections, who stated that he has no objection to the public disclosure of this information.

<sup>7/</sup> At the time of the conference, the NRC staff offered a proposed form of protective order and affidavit of nondisclosure for consideration by the Board and parties. Objections to the form of those documents were due March 4, 1985. Applicant suggested minor changes. On March 6, 1984, Staff counsel submitted a redraft of the proposed form of protective order and affidavit which reflects the Staff's and Applicant's changes. No objections from other parties has been reported to or received by Applicant's counsel.

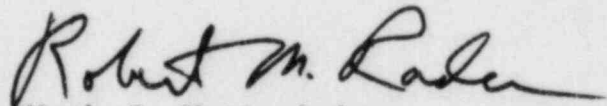
for an evacuation, sheltering, communications, radiological monitoring and supplies, and other matters.<sup>8/</sup>

The Licensing Board has not yet determined, however, that the Graterford Prisoners have filed at least one admissible contention. It is therefore premature to decide what further disclosures, if any, to which the Graterford Prisoners would be entitled in order to litigate any admitted contention(s).

For the reasons discussed above, the petition for review should be denied.

Respectfully submitted,

CONNER & WETTERHAHN, P.C.



Mark J. Wetterhahn  
Robert M. Rader

Counsel for the Applicant

March 8, 1985

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<sup>8/</sup> See Proposed Contentions of the Graterford Inmates with Regard to the Evacuation Plan (February 15, 1985).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Graterford Prisoners' Petition for Review," dated March 8,, 1985 in the captioned matter have been served upon the following by deposit in the United States mail this 8th day of March, 1985:

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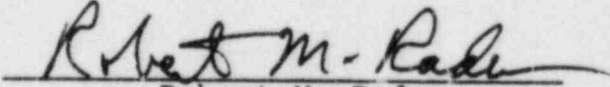
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