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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

In the Matter of

:

PHILADELPHIA ELECTRIC COMPANY

:

Limerick Generating Stations
Units 1 and 2

: NOS. 50-352 and 50-353

GRATERFORD INMATES' MOTION IN OPPOSITION TO APPLICANT'S MOTION
FOR EXEMPTION FROM THE REQUIREMENTS OF 10 C.F.R. 50.47(a) AND (b)
AS THEY RELATE TO THE NECESSITY OF ATOMIC SAFETY AND LICENSING BOARD
CONSIDERATION OF EVACUATION PROVISIONS OF THE EMERGENCY PLAN FOR THE
STATE CORRECTIONAL INSTITUTE OF GRATERFORD

I. INTRODUCTION

The inmates for the State Correctional Institute at Graterford, through their attorney, Donald Bronstein of the National Lawyers Guild, filed a Petition to Intervene in the above-captioned licensing proceedings on September 18, 1981. On June 1, 1982, in a special prehearing conference order, the Atomic Safety and Licensing Board admitted the Graterford prisoners as a party to the proceedings, see Phildelphia Electric Company (Limerick Generating Station, Units 1 and 2) LBP-82-43(a), 15 NRC 1423, 1446-1447 (1982). On April 20, 1984, in a special prehearing conference order, the Board granted the Graterford inmates twenty days after the receipt of the evacuation plan for Graterford in order to submit specific contentions regarding such. Through no fault of the inmates, the completion of the evacuation plan was significantly delayed. On December 13, 1984, the Commonwealth sent to the prisoners an unclassified ("sanitized") copy of the Pennsylvania Bureau of Corrections,

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Radiological Emergency Response Plan for Graterford. After a review of said plan by the inmates, their counsel, Angus R. Love, who replaced Donald Bronstein and their expert, Major John Case, field director of the Pennsylvania Prison Society, a decision was made to request full disclosure of the Graterford plan. Thus, on December 19, 1984, the inmates files a motion requesting full disclosure of the plan by the Pennsylvania Bureau of Corrections and the Pennsylvania Emergency Management Agency. They further requested that the twenty day time period in which they had to file contentions would be stayed until this matter was resolved. On January 29, 1985, the Licensing Board ruled against the inmates and denied their request for further disclosure of the evacuation plan. The inmates appealed this order to the Atomic Safety and Licensing Board which rejected that appeal on February 12, 1985. Although the appeal was dismissed, the Appeals Board suggested that the parties try to work out a compromise through the Licensing Board. On the Appeals Board's suggestion, all parties met in Harrisburg on February 27th in an attempt to work out a solution to this problem.

On February 7, 1985, the applicant filed a motion for an exemption from the requirements of 10 C.F.R. 50.47(a) and (b). Said exemption requested that the applicant be permitted to operate the Limerick Generating Station at power levels greater than 5% of rated capacity prior to the completion by the Board of its considerations of any contentions which they may admit related to the evacuation provisions of the Radiological Emergency Plan at the State Correctional Institute at Graterford. This motion is filed in opposition to the applicant's request for an exemption.

II. LEGAL ARGUMENT - Issuance of an exemption from the requirements of 10 C.F.R. 50.47(a) and (b) is not in the public interest, as there has been no reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The applicant, Philadelphia Electric Company, has requested permission to operate the Limerick Generating Station in Limerick, Pennsylvania, at power levels greater than 5% of rated capacity prior to the completion by the Licensing Board of any contentions regarding the evacuation of the State Correctional Institute at Graterford, Pennsylvania. Said institution is a maximum security facility operated by the Pennsylvania Bureau of Corrections and currently housing approximately 2,500 inmates. The basis for the applicant's request for any exemption can be found at 10 C.F.R. 50.12 Specific Exemptions. In their motion, the applicant cites Section (a) which reads:

(a) The commission may, upon application of any interested party or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

The applicant also identifies Section (b) as the basis for their request, which reads:

(b) Any person may request an exemption permitting the conduct of activities prior to the issuance of a construction permit prohibited by Section 50.10. The commission may grant such an exemption upon considering and balancing the following factors:

1. Whether conduct of the proposed activities will give rise to a significant adverse impact on the environment and the nature and extent of such impact, if any;

2. Whether redress of any adverse environment impact from conduct of the proposed activities can reasonably be affected should such redress be necessary;

3. Whether conduct of the proposed activities would foreclose subsequent adoption of alternatives; and,

4. The effect of delay in conducting such activities on the public interest, including the power needs to be used by the proposed facility, the availability of alternate sources, if any, to meet those needs on a timely basis and delay costs to the applicant and to consumers.

The activities that the applicant requests an exemption from are outlined in 10 C.F.R. 50.47 Emergency Plans. This provision reads:

(a)(1) "Except as provided in paragraph (d) of this section, no operating license for a nuclear power reactor will be issued unless a finding is made by NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency."

The next section (2) indicates that the NRC's decision will be based upon a finding of the "Federal Emergency Management Agency's findings and determinations as to whether state and local emergency plans are adequate and whether there is a reasonable assurance that they can be implemented, and on the NRC assessment as to whether the applicant's on-site emergency plans are adequate and whether there is a reasonable assurance that they can be implemented." (10 CFR 50.47 a(2). The enabling statute can be found at 42 U.S.C. 2231 which calls for "adequate protection to the health and safety of the public," prior to the issuance of a license.

At present, as was discussed in the preceding section, the inmates at Graterford have been granted status as intervenors in the licensing of the Limerick facility on June 1, 1982. They did not receive the radiological

emergency evacuation plan until December 13, 1984. At that time they received a "sanitized" version of the plan which included large portions of deleted information. Upon review by the inmates' expert, Major John Case, field director of the Pennsylvania Prison Society, it was determined that the "sanitized" version of the plan failed to give the inmates, their counsel or their expert any idea as to what provisions were being made for the safety and well being of the inmate population in the event of a radiological emergency. Thus, they have requested that they be allowed to review the plan in its entirety or in the alternative, a less "sanitized" version of the plan under a protective order of the court. This matter is currently pending and the inmates request the right to complete their portion of the emergency planning phase prior to the applicant's ascent to full power.

The emergency preparedness provisions of 10 C.F.R. 50.47 were adopted via public law 83-703 on August 8, 1980. "It is clear in retrospect that emergency preparedness was deficient in the pre-Three Mile Island era. Emergency preparedness - dealing with state and local authorities, planning for evacuation - was a subject with little visibility. Had it been more visible, however, it may have revealed inattention rather than attention to nuclear safety. Emergency preparedness was another cost affective safety measure neglected until after the TMI accident." "Nuclear Safety", William Wood, American Enterprise Institute, Studies in Government Regulations, page 60. See also Mitchell Rogovin, Director, Special Inquiry Group, Three Mile Island: "A Report to the Commissioners and the Public". NUREG/CR-1250 (Washington, D.C., U.S. NRC) January, 1980, and "Kemeny Report" - Report of the President's Commission on the accident at Three Mile Island. The accident at the Three Mile Island facility outside Harisburg, Pennsylvania in 1979 revealed what intervenors had been

arguing for years. They contend that both the Nuclear Regulatory Commission and the nuclear industry are dominated by complacent attitudes that have prevented adequate consideration of serious reactor safety issues. (See above studies.) Thus, the inmates contend that the provisions regarding emergency preparedness which were promulgated in response to the TMI accident are necessary and valid considerations which must be dealt with in their entirety prior to the applicant being permitted to go to full power at the Limerick facility. The inmates further draw the Licensing Board's attention to a recent report of the American Physical Society, which concluded that current research is not adequate to support any general reduction in source terms - estimates of the amounts of dangerous radioactive isotopes that would be released from nuclear plants in severe accidents (NW-21 Feb.1985 Extra). When reviewing this report, Chairman Nunzio Palladino of the NRC, asked the APS committee if there was enough evidence in place for some kind of emergency planning reductions. Committee chairman Richard Wilson, a professor at Harvard University, indicated that no emergency planning changes were warranted yet. See *Nuclear Week*, February 28, 1985 at page 10. Thus, this recent study reaffirms the necessity of a full and comprehensive review of the emergency plans as dictated by 10 C.F.R. 50.47.

A. Legal Standard

The applicant relies upon 10 C.F.R. 50.12(a) and (b) in its request for an exemption in order to attain full power. Initially, the inmates point out that there is considerable difference between Sections (a) and (b), as referred to in the previous section. Section (a) appears to authorize a grant of such an exemption if it is determined that they are authorized by law and will not

endanger life or property or the common defense and security and are otherwise in the public interest. Section (b), however, appears to be limited to a request for a construction site permit. The commission goes on to cite the factors which would be required to be reviewed in a request under Section (b). Despite the applicant's references to Section (b), the inmates contend that this section is irrelevant to the current matter as the request involves an ascent to full power and not a request to begin construction site activities. The cases cited in support of the applicant's request under Section (b) further reinforce the argument that the standards applicable to receiving an exemption to begin construction site activities are considerably different than those circumstances warranting an ascent to full power. The NRC notes that there is a "high threshold for unusual relief". U.S. Department of Energy, (Clinch River) 17 NRC 1 at 3 footnote 2. In this case, the court goes on to cite prior uses of this exemption power in the case of Carolina Power and Light Company, (Shearon Harris Nuclear Power Plant) Units 1, 2, 3 and 4, CLA-74-22, 7 AEC 138 (1974). In Carolina the exemption powers under Section (b) were granted in order to allow Carolina Power and Light to harvest trees, construct roads, relocate a railroad, and to construct a warehouse on the proposed site of the facility. The inmates contend that the ascent to full power represents a considerably greater risk to the public health and safety than can be contemplated by the various activities mentioned above. The applicant recognizes this distinction on page 6 of its brief in footnote 8, where it concedes that the Clinch River case relates to an exemption for site preparation activities. Thus, the inmates contend that Section (b) is inappropriate for a foundation for such an exemption request.

The appropriate standard for review should be 10 C.F.R. 50.12(a). A similar request was filed in Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1) CLI-84-8, 19 NRC 11 54, (1984). In this case, the applicant, Long Island Lighting Company, requested an exemption under subsection (a) from regulatory requirements for a low power license, despite a general design problem. The court stated, "The use of exemption authority under 10 C.F.R. 50.12 is extraordinary and is based upon a finding of exceptional circumstances, considering the equities of the situation." Id. at page 1155. The principles announced in the decision of this case, however, should not be used as a basis for the legal standard in the matter currently pending before the Licensing Board. A subsequent case entitled, Mississippi Power and Light Company, (Grand Gulf Nuclear Station, Units 1 and 2), CLI-84-19, 20 NRC, 1055 (1984), suggests that the Long Island case not be used as precedent on the issue of the granting of exemptions under subsection (a).

"The commission notes in this regard that it recently issued a decision which departed from past staff practice both with regard to the standards for granting exemptions and the circumstances where exemptions are required. Long Island Lighting Company (Shoreham Nuclear Power Plants, Unit 1) CLI-84-8, 19 NRC 1154 (1984). However, the commission subsequently stated that the Shoreham decision for the near term was only to apply to the particular circumstances of that case, and that the NRC staff should develop a comprehensive exemption policy as a generic matter. Thus, while this generic reexamination is underway, the staff should continue its practice of granting exemptions only after making the findings required by 10 C.F.R. 50.12 and documenting the information supporting its determination." Id. footnote 7 at page 1059.

Thus, the inmates contend that the appropriate legal standard for the determination of an exemption requested by the applicant in this situation should be that it will not endanger life or liberty or the common defense and security and are otherwise in the public interest. These factors will be discussed in detail in the subsequent sections.

B. The issuance of an exemption would endanger life, property, the common defense and security.

The inmates contend that an ascent to full power prior to completion of the emergency planning requirements would represent a danger to the life, property and security of the inmates and public in the event of a radiological emergency at the Limerick Generating Station. The basis for this contention is the unique nature of the institution in question and the characteristics of its population. It is also based upon an analysis of the various studies put forth by the applicant in support of their request for an exemption. These studies are designed to measure the probabilistic risk assessment (PRA). Such studies attempt to predict the consequences of various accidents that have been contemplated at a nuclear power station.

The first such study was conducted by the Atomic Energy Commission in March of 1957 and it was entitled, "Theoretical Possibilities and Consequences of Major Accidents at Large Nuclear Power Plants". WASH-740. This study indicated that the worst possible scenario at a nuclear power facility would result in 3,400 deaths, 43,000 persons injured, and 7 billion dollars in property damage. This study was revised in 1964 based upon new technology and larger power plants. The second study, entitled "WASH-740 Update File" U.S. NRC Public Document Room, 1717 H Street, NW, Washington, D.C. 20555, indicated that the worst

possible accident at a facility would result in 45,000 deaths, 70,000 to 100,000 injuries, and 17 billion dollars in property damages. The applicant's request for an exemption refers to the "Reactor Safety Study: an Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants" U.S. NRC Nuregs-75/014 (Washington, D.C. U.S. NRC, October 1975), WASH-1400. This reference is made in the accompanying affidavit of Schmidt and Kaiser, paragraph number 4, and is used to support the applicant's contention that the inmates at Graterford are under little to no risk from a nuclear accident.

These studies generated much critical feedback. "It is impossible to be sure that all potential accidents have been considered", says Henry W. Kendall in reference to the previously mentioned study. Mr. Kendall is study director of the Risks of Nuclear Power Reactors: A Review of the NRC Reactor Safety Study (Cambridge, Mass.; Union of Concerned Scientists, 1977). He goes on to comment that any omissions as to the types of accidents contemplated would bias the final probability estimates downward. See Id. page 132. He goes on to state that the reactor safety study relied upon by the applicant explicitly excluded some potential causes of accidents, such as component aging, sabotage, and terrorism. The Union of Concerned Scientists also found that the elementary data for estimating component reliability to be incomplete or uncertain, Id. chapters 2-5. The reactor safety study frequently considers the probability of a safety system working as designed. The UCS saw this as another serious shortcoming of the study, as it involved an implicit assumption that the safety system working as designed would halt the accident. Another serious difficulty in the study involved their approach, which failed to take into consideration the possibility that several components could fail at the same time. These common mode failures

make the basic fault tree or event tree invalid, since events occurring along the branches of the tree are not statistically independent as assumed. Id. chapter 3.

The applicant also relies on the Sandia National Laboratory study for the NRC in September of 1982. See U.S. Nuclear Regulatory Commission, "Technical Guidance for Setting Criteria Development", Nureg/CR-2239 (Washington, D.C. U.S. NRC November, 1982). Although this report was not released or endorsed by the NRC, statistics compiled and reported by a house subcommittee staff indicate that the calculations showed a severe accident at the Salem reactor in New Jersey could take as many as 100,000 lives; and a severe accident at the Indian Point reactor in New York could cause 314 billion in property damages. U.S. Congress, House Committee on Interior and Insular Affairs, Subcommittee on Oversight and Investigations, "Calculation of Reactor Accident Consequences for U.S. Nuclear Power Plants" (Health Effects and Costs) Conditional on a SST 1 Release (97 Congress 2d Section, November 1, 1982, pages 6 through 10.) Thus, even the studies mentioned in support of the request for an exemption indicate a substantial loss of lives and property in the event of a nuclear disaster. The applicant suggests that these estimates of substantial loss of life and property are so unlikely as to not be worthy of serious consideration. See footnote 17 on page 16 of the applicant's motion. The convenient omission of the worst possible accident, such as a core melt down render these already questionable studies even more so. Emergency planning regulations call for a review of all types of accidents and do not warrant the exclusion of the worst possible scenarios. See NUREG. .0654.

Another study that may provide some insight into the PRA analysis was conducted by Herbert S. Dennenberg, former insurance commissioner of

Pennsylvania. This study estimated the probability of a serious nuclear accident based upon the premiums charged by private insurers of nuclear power plants. See Herbert S. Dennenberg, "Testimony Before the Atomic Safety and Licensing Board, Licensing Hearing for Three Mile Island Nuclear Power Plant," November 7, 1983, reprinted in U.S. Congress, Joint Committee on Atomic Energy, Possible Modification or Extension of the Price Anderson Insurance and Indemnity Act, Hearings before the Joint Committee on Atomic Energy (94th Congress, 2d Session, 1974) pages 226 through 40. Insurance companies are in a unique position in the nuclear industry in the extent to which they bear direct financial consequences for incorrect judgment. Thus, the implications of this study may be more compelling than those of the reactor safety study group, who had little to lose if their estimates were inaccurate. Dennenberg concluded that the chances of an accident per reactor year was 0.00058, or about 1 in 1,700. In layman's terms this would mean that an average nuclear power plant could expect one accident in every 1,700 years of its life. This 1973 estimate based upon insurers' behavior indicates that the accident probabilities are many times higher than those indicated by the reactor safety study utilized by the applicant.

"There is little evidence to confirm the reactor safety study's optimism and several indications that would cast doubt on it. Recent work indicates possible consequences many times higher than the worst consequences reported in the reactor safety study. The premiums charged by private nuclear insurance carriers indicate probabilities much higher than the RSS estimates. And the absence of a catastrophic accident in the limited experience with nuclear power

can demonstrate a possibility of accidents no smaller than 1 in 600 per reactor per year. Finally, the TMI accident is consistent with accident probabilities much higher than those of the reactor safety study." Id. Wood at page 86. Thus, the studies cited in the applicant's request have been subjected to considerable amount of criticism which has challenged their basic assumptions and questioned their accuracy. It is for these reasons that the inmates believe that the potential danger to the life and property of not only the inmates, but of all other persons in the Delaware Valley, has been underestimated by the applicant and must be given full consideration by the Licensing Board through the emergency planning requirements prior to the issuance of a full power license.

In addition to the various PRA studies, the inmates contend that the unique nature of both the institution and the population at the State Correctional Institute at Graterford further increase the potential for harm in the event of a radiological disaster. The population at the facility on December 31, 1983 was 2,399 persons, representing 114% of design capacity. See Pennsylvania Bureau of Corrections 1983 Annual Statistical Report at page 8. These persons include 365 people serving life sentences; 31 people serving sentences of twenty years or more; 118 people serving sentences between 10 and 20 years; 410 persons serving sentences over 5 years; and 11 persons awaiting execution. Id. page 20. The institution has been the site of numerous disruptions over the past several years, including an institution-wide work stoppage in May of 1980, and a hostage seige involving gun-wielding inmates who took six civilian hostages in October of 1981. (See The Report of the Governor's Panel to Investigate the Recent Hostage Incident at SCIG; August 1982, Comm. of Penna.) These factors and the ever present potential of panic by either the inmates or the guard force will make the response to a radiological emergency difficult.

C. Denial of the Exemption is in the Public Interest

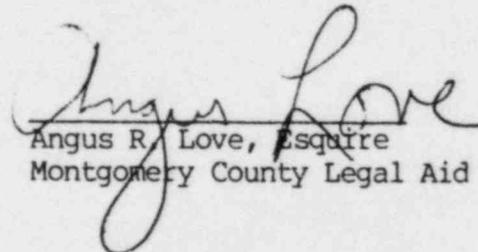
The applicant, in their request for an exemption suggests that the financial well-being of the Philadelphia Electric Company is a matter in the public interest and thus they should be granted their requested exemption. The inmates contend that the public interest goes well beyond the financial stability of the applicant. The applicant seems to suggest that the public are in a similar position as PECO shareholders, thus their concerns are the same as the concerns of the applicant. In support of this proposition, they cite numerous figures concerning monies that will be lost if this exemption is not granted. The inmates contend that this kind of reasoning is inappropriate as a basis for the granting of such exemption. The inmates would be willing to suggest a countervailing economic argument showing the tremendous excessing costs of nuclear technology, the industry's predictions of cheap meterless energy juxtaposition to the current realities of frequent rate hikes, the costs overruns involved in a Limerick facility, and a discussion of the economic viability of other energy sources, such as solar power. However, the inmates do not wish to burden the record with a debate over the costs of nuclear technology. They do contend, however, that the financial hardships of the applicant should not be a basis for the granting of this exemption. "...economic concerns are not within the proper scope of issues litigated before these proceedings. Philadelphia Electric Company (Limerick Generating Stations, Units 1 and 2) ALAB-789 November 5, 1984, slip opinion page 5.

The applicant suggests that the Licensing Board look to the Waterford proceedings, which permitted operation of a nuclear facility without specific plans for evacuation of a correctional institute. See Applicant's Motion, page 8. The case that the applicant cites, Louisiana Power and Light Company, (Waterford Steam Electric Station, Unit 3), LPB-82-100, 16 NRC 1550 (1982), involves an average prison population at the two risk parish prisons at 55 persons. Id. See footnote 74 at page 1584. Furthermore, the two prisons identified, St. Charles Parish Courthouse Jail, and St. John's the Baptist Parish Jail, represent jails of the most minimum and short-term type of facilities in the correctional system. The inmates contend that such facilities are so different than the one in question as to make the analogy virtually meaningless. (See previous section regarding SCIG composition.) It is for these reasons that the inmates contend that the safety and security of the lives and property of the inmate population and the surrounding public have not been adequately addressed and will not be until the completion of their status as intervenors and their potential for filing valid contentions as part of the emergency planning mandate of 50.47 and the licensing requirements of 42 U.S.C. Section 2231.

III. CONCLUSION

The S.C.I.G. inmates were granted status as intervenors on June 1, 1982. For the next two and a half years, they awaited an opportunity to review the evacuation plan, as mandated by 10 C.F.R. 50.47. In December, 1984, they received a virtually unreadable document purporting to be the "sanitized" version of said plan. To date, this is the only document submitted in accordance with the emergency planning mandate. Now the applicant seeks an exemption from this litigation in order to go to full power at the Limerick Generating Station. The inmates request this exemption be denied. They contend that the issue they bring before the Licensing Board is a very serious and difficult issue to resolve. The concerns of the inmates go to the core of the emergency planning mandate. In order to assure the public and the inmates that their safety and security concerns are not a mere afterthought, we request the right to litigate our concerns in the regular course of the application proceedings. The difficult nature of our contentions, and the seriousness of potential problems, warrant full consideration of this issue.

Respectfully submitted,


Angus R. Love, Esquire
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of :
PHILADELPHIA ELECTRIC COMPANY :
(Limerick Generating Stations :
Units 1 and 2) : NOS. 50-352 and 50-353

CERTIFICATE OF SERVICE

I, Angus R. Love, attorney for the Inmates at the State Correctional Institute at Graterford, hereby certify that a true and accurate copy of the Graterford Inmates' Motion in Opposition to Applicant's Motion for Exemption, in reference to the above-captioned matter, was mailed first class, postage prepaid, on March 13, 1985, to the following list:

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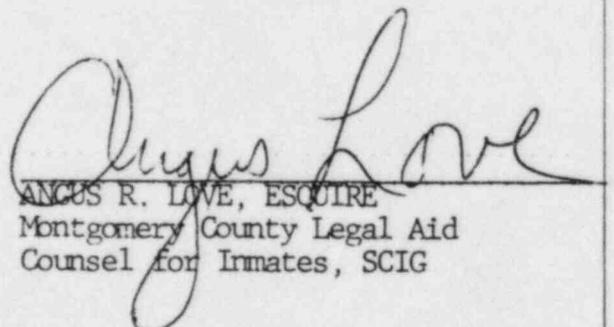
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