

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DOCKET NO: 50-352-OL
50-353-OL

PHILADELPHIA ELECTRIC COMPANY

(Limerick Generating Station,
Units 1 and 2)

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1 UNITED STATES OF AMERICA
 2 NUCLEAR REGULATORY COMMISSION
 3 ATOMIC SAFETY AND LICENSING BOARD
 4

5 In the Matter of:]
]
 6 PHILADELPHIA ELECTRIC COMPANY] Docket Nos. 50-352-OL
] 50-353-OL
 7 (Limerick Generating Station,]
 Units 1 and 2)]
 8

9
 10 Forum Building
 Commonwealth Avenue and Walnut
 11 Streets
 Green Room, Ground Floor
 12 Harrisburg, Pennsylvania 17120

13 Friday, March 22, 1985

14 The conference in the above-entitled matter convened
 15 pursuant to notice at 11:25 o'clock a.m.

16 BEFORE:

17 JUDGE HELEN F. HOYT, Chairperson
 Atomic Safety and Licensing Board
 18 U. S. Nuclear Regulatory Commission
 Washington, D. C. 20555

19 JUDGE RICHARD F. COLE, Member
 Atomic Safety and Licensing Board
 20 U. S. Nuclear Regulatory Commission
 Washington, D. C. 20555

21 JUDGE JERRY HARBOUR, Member
 Atomic Safety and Licensing Board
 22 U. S. Nuclear Regulatory Commission
 Washington, D. C. 20555
 23
 24

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21 Harrisburg, Pennsylvania22 On behalf of the Pennsylvania Bureau of Correction:23 THEODORE G. OTTO, III, Assistant Counsel
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25 Pennsylvania Bureau of Correction
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Camp Hill, Pennsylvania 1701126 On behalf of the Commonwealth of Pennsylvania:27 ZORI FERKIN, Esquire
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31 Harrisburg, Pennsylvania

32 (appearances continued)

1 APPEARANCES: (continued)

2

3 On behalf of the Prisoners of Graterford Prison:

4

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6 Montgomery County Legal Aid Service
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8 Norristown, Pennsylvania 19401

9

10 MAJOR JOHN D. CASE
11 The Pennsylvania Prison Society
12 Offender Community Service Orders Project
13 311 S. Juniper Street
14 Philadelphia, Pennsylvania 19107

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P R O C E E D I N G S

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2 JUDGE HOYT: We will come to order. This conference
3 was called by an order by the Board for this date, March 22
4 at this place to discuss the results of conferences and the
5 exchange of information that has passed between the
6 Commonwealth of Pennsylvania Office of the Department of
7 Correction, Mr. Otto and Mr. Jeffes as director, and the
8 counsel for the Graterford inmates, Mr. Love and his expert,
9 Major Case.

10 Prior to going into the details of that, I have
11 distributed prior to going on this record this morning a
12 copy of the Board order which I don't think you probably
13 have had an opportunity to receive. It was probably only
14 served yesterday and will be back in your offices probably
15 on Monday, however you have received copies of the order
16 and as an attachment to that order, we had an affidavit of
17 non-disclosure.

18 I have here copies of that affidavit of non-disclosure
19 which I will ask all the parties here to execute and as I
20 understand from Ms. Ferkin, there will be a notary present
21 here in a very few minutes who will be happy to witness all
22 of the signatures. However, I will distribute those copies
23 to you prior to that.

24 I think I would be less than candid had I not said
25 that we did not try to distribute this to the parties prior

1 to the time that we came here this morning although there
2 had been an opportunity for the staff to view the transcript
3 and we had made available to the Commonwealth of Pennsylvania
4 through Ms. Ferkin who happened to be in Washington last week
5 a copy of the transcript and she, in turn, made that available
6 to Mr. Otto and Mr. Love for their conference on Monday last
7 which was March 18th. It was all given to them with the
8 understanding that the affidavit would be executed this
9 morning and that this protective order would be forthcoming.

10 MS. FERKIN: Your Honor, it appears the notary
11 has arrived. Given that her time is being provided to us,
12 we might want to go off the record.

13 JUDGE HOYT: I think that is a very good
14 suggestion. We will now go off the record briefly until
15 the parties have an opportunity to look at the affidavit that
16 we are asking you to execute. I don't think you are going to
17 have much choice, but at least we will give you an opportunity
18 to look at it and we will get these executed here this
19 morning. Thank you very much, Ms. Ferkin, for that
20 suggestion. We will go off the record.

21 (Discussion off the record.)

22 JUDGE HOYT: Back on the record. All the parties
23 here with the exception, of course, of the staff which we
24 mentioned earlier came under a different protective mechanism
25 of this Commission who are here today have executed the

3
1 affidavit of non-disclosure and we can begin to proceed.

2 I think we had also received a filing from Mr. Otto
3 on March 15th which was the response of the Commonwealth
4 Department of Correction to the request for information
5 raised at the February 27, 1985 Atomic Safety and Licensing
6 Board conference. Taking that as the lead document here
7 this morning I wonder if we can ask Mr. Otto and then ask
8 Mr. Love for his input as to the results of the conference
9 which you gentlemen had on March 18th, last Monday.

10 MR. OTTO: Basically on March 18th the Commonwealth
11 provided to Mr. Love a copy of the new version of the plan.

12 JUDGE HOYT: Let's call it plan two. I think in
13 discussion of this distribution over the telephone, we have
14 used the identification of plan two and if nobody has any
15 objection, let's keep that as our point of reference then.

16 MR. OTTO: That was basically it. We didn't have
17 any real further discussions regarding it.

18 JUDGE HOYT: All right. Does this satisfy your
19 request for information that you made to us in the conference
20 we had on February 27, 1985?

21 MR. LOVE: If I might make a few comments in that
22 regard.

23 JUDGE HOYT: Sure, please.

24 MR. LOVE: Initially we were very pleased and I
25 think I speak for Major Case on this, to see the plan virtually

1 in its entirety noting that this plan was 86 pages, plan two,
2 whereas plan one was 27 pages. On the one hand, we were
3 very happy to see this plan and we felt it yielded a great
4 deal more information however it also raised suspicions as to
5 unreadability of the first plan which was only 27 pages.

6 So with regard to the issue of disclosure, I do
7 believe that we are satisfied and that we are willing to drop
8 that issue except for one or two points that we think need
9 clarified so I will wait until the end of the meeting before
10 I make that decision, however it seems to me that this does
11 satisfy our concerns regarding the disclosure issue.

12 JUDGE HOYT: Let's look at the contentions. Is
13 that what you are telling us here this morning remain problems
14 for you?

15 MR. LOVE: There are one or two points that we
16 would like to clarify that were discussed last time in
17 particular with regard to sheltering and then there are one
18 or two additional points that we would like to discuss.

19 JUDGE HOYT: All right. Let's take the motion then
20 first, the motion for the order requiring full disclosure.
21 You are at this time indicating that you are withdrawing that
22 motion?

23 MR. LOVE: At this time, that is my feeling, yes.

24 JUDGE HOYT: Let's get a statement that would
25 reflect the feeling more concretely than that, Mr. Love. Do

5
1 you withdraw it or don't you withdraw it?

2 MR. LOVE: Could I ask one or two questions before
3 I say that?

4 JUDGE HOYT: Surely.

5 MR. LOVE: It was told to us that the information
6 that would be deleted was primarily for security reasons.

7 JUDGE HOYT: Let's understand where we are talking,
8 are you talking about in plan two?

9 MR. LOVE: In plan two, yes.

10 JUDGE HOYT: All right.

11 MR. LOVE: There were just one or two points that
12 I wasn't sure of as to what security concerns that these
13 matters fell under, one of which was the identity of the
14 hospital.

15 JUDGE HOYT: All right. Let's look at that in the
16 plan then to see if we can relate the comments here then to
17 the portion of the plan.

18 MR. LOVE: In particular, I am referring to
19 Mr. Ott's response.

20 JUDGE HOYT: Let's look at the plan, Mr. Love, if
21 you have something wrong with the plan, let's look at that.

22 MR. LOVE: I was just going to point to the exact
23 exhibit in Mr. Otto's response, exhibit "F".

24 JUDGE HOYT: All right. If you want to proceed in
25 that fashion, let's look at exhibit "F" and let's say that

1 exhibit "F" is that exhibit attached to the response of the
2 Commonwealth of Pennsylvania, Department of Correction to
3 request for information raised at the February 27, 1985
4 Atomic Safety and Licensing Board conference which pleading was
5 filed by you before this Board on March 15, 1985.

6 MR. LOVE: This basically goes to something that I
7 was going to discuss later on but we can get to it right now
8 and that is the issue of having a hospital available for
9 radiological emergency treatment of persons who may be injured.
10 This document, exhibit "F", does not name the hospital to
11 which persons falling in this category would be taken.

12 JUDGE HOYT: My recollection, Mr. Love, of our
13 conference of February 27th is that if you knew that there
14 was a hospital that had that type of capability of treating
15 the inmates who may suffer from radiological activity or
16 be contaminated in some way, that would satisfy you.

17 Now what I am understanding you to say now is that
18 you not only want the hospital's capability identified but
19 you want the name of the hospital. That is not what you said
20 in our February 27th meeting, at least my recollection isn't
21 that.

22 MR. LOVE: Your recollection is correct, Your Honor,
23 however further research indicated the prior testimony of
24 Dr. Linnemann who testified at transcript pages 9791 through
25 9880 and 9900 through 9965 that there was --

7 1 JUDGE HOYT: That is the safety and health issue
2 portion of this case?

3 MR. LOVE: Correct, Your Honor.

4 JUDGE HOYT: That transcript was available to you
5 for how many months and literally years, Mr. Love?

6 MR. LOVE: I didn't get involved in this proceeding
7 until December 20th, I believe, when I recieved the first
8 response.

9 JUDGE HOYT: Are you talking about 1984?

10 MR. LOVE: Yes.

11 JUDGE HOYT: Mr. Love, in the correspondence and
12 the submissions before this Board that I have viewed, there
13 is certainly information indicating that you had an active
14 interest and indeed had a predecessor in that.

15 Let me tell you this, Mr. Love, very frankly and
16 up front. You take this record as you find it when you enter
17 the case. We are not going back over this case and litigate
18 something that occurred some 19,000 pages back in the history
19 of the case.

20 MR. LOVE: If I could just explain what my point is,
21 Your Honor, I still haven't gotten to that.

22 JUDGE HOYT: All right. I am trying to find out
23 whether you have a legitimate point.

24 MR. LOVE: Dr. Linnemann suggested as I interpret
25 his testimony that there were only two hospitals in the area

8

1 that were equipped to deliver the services required under the
2 regulations and these two hospitals are Pottstown Memorial
3 and the University of Pennsylvania Hospital. Pottstown
4 Memorial Hospital is approximately two miles away from the
5 facility and thus I would question whether its use would be
6 of any worth in the event of a radiological emergency. The
7 University of Pennsylvania Hospital is quite a distance away
8 and with the additional problem of construction on the most
9 commonly travelled route, the Schulykill Expressway, the time
10 to get to this hospital could be considerable.

11 Thus, it raises a concern on the part of the inmates
12 as to if there is an available facility as the regulations
13 require.

14 JUDGE HOYT: Mr. Love, why is it that the inmates
15 feel that they have a right to a better piece of information
16 than the -- better hospital facility than the general public?
17 If there are only the two facilities which is the testimony
18 and I will take the representation of the testimony as being
19 accurate, why is it the inmates want to try to litigate in
20 this case at this late date something that the general public
21 would not be provided for in any different state. Have you
22 read the decisions of this Board dealing with the health and
23 safety issue?

24 MR. LOVE: I have read some of those decisions, yes.

25 JUDGE HOYT: There have been two decisions prior to

1 to the one that this Board is writing. This will be the third
2 partial initial decision that is being written. The other
3 two had been dealing with those issues. Those are settled
4 matters.

5 You are saying at this meeting this morning that
6 you want to go back and relitigate that and very frankly,
7 Mr. Love, I don't think you have any basis to relitigate that.

8 MR. LOVE: I may be wrong but I believe the matter
9 is still pending perhaps in the appellate courts and I would
10 be happy to go with whatever decision is made in that case.

11 JUDGE HOYT: Those are the issues and unless you
12 can cite to me some portion of the initial decision that had
13 been issued by the prior board that differs from that, I am
14 going to take those issues as all being settled.

15 MR. LOVE: I will attempt to do that, Your Honor.
16 I don't have that information today. However, I will look into
17 that matter upon my return.

18 JUDGE HOYT: I also want to refresh your memory
19 that you had agreed that what you needed to know is if there
20 was a facility available for the prisoners --

21 MR. LOVE: Right, and I --

22 JUDGE HOYT: Let me finish now. I gave you an
23 opportunity and now I fully intend to exercise mine.

24 You had indicated to us at that February 27th
25 meeting that if you were given the information that the

1 prisoners would get the same treatment and have available the
2 same medical facilities which according to this exhibit "F"
3 appears to be the case --

4 MR. LOVE: I dispute that. I don't see that it says
5 that.

6 JUDGE HOYT: My reading of the English language says
7 in the last two lines of it, dealing with the treatment of
8 radioactive contaminated wounded and if that hospital has
9 that facility and this is the one that the prison contracts
10 for medical treatment for their prisoners, then that is all
11 you are going to get period.

12 MR. LOVE: May I make one more statement with
13 regard to that?

14 JUDGE HOYT: No. I want to hear from Mr. Otto.

15 MR. OTTO: Thank you, Your Honor. The problem we
16 are having here is what is the definition of area. The reason
17 I think there is a conflict is because I don't know what
18 Dr. Linnemann was testifying about in terms of his area. It
19 has been disclosed through our conferences here that the
20 inmates are going to be removed to other institutions and other
21 areas to be housed during this evacuation.

22 What we have in place at all of our support
23 institutions are ongoing hospital contracts for the care of
24 our inmates. Each institution has an ongoing relationship
25 with a hospital, a memorandum of understanding or something

1 like that. On a daily basis we take our inmates out to the
2 hospitals. We don't maintain hospitals. It just costs too
3 much and technology is shifting too fast. What exhibit "F"
4 along with exhibit "G" of that pleading intended to show is
5 that in our possession we have documents like this, exhibit "F",
6 from each of the hospitals that we are using at our support
7 institutions. That is why it is an addenda to the statement
8 of understanding.

9 It was something we got from our hospitals that we
10 currently use at our support institutions to indicate to this
11 Board that they have the capacity to take care of the
12 radioactively contaminated wounded pursuant to the recent
13 district court opinion on this matter.

14 If Dr. Linnemann was speaking about the EPZ area
15 or the southeastern part of Pennsylvania, he would be limiting
16 his area to that area where we are talking about a much
17 larger area. That is what this is all about.

18 MR. LOVE: May I respond to that?

19 JUDGE HOYT: Surely.

20 MR. LOVE: I understand that but our concern is
21 that this accreditation does not measure up to the requirements
22 of emergency planning treatment for radiologically injured
23 persons.

24 JUDGE HOYT: Whose standards, Mr. Love?

25 MR. LOVE: Dr. Linnemann testified that only two of

1 19 hospitals in the area despite the fact that all of them are
2 accredited are in fact able to treat the type of injuries
3 that are contemplated by the regulations.

4 MR. RADER: That is correct. Since I handled that
5 hearing for the applicant, I can respond to that and I can
6 also respond and amplify if I may, Your Honor, what the Board
7 found in that instance. What Mr. Linnemann testified is that
8 there were two hospitals, the Pottstown Memorial Hospital
9 and the University of Pennsylvania Hospital, which would be
10 utilized in the event that radiologically contaminated and
11 injured persons were to be treated.

12 He also testified, however, that the other hospitals
13 in the area could be utilized if need be on a stand-by basis
14 because they were accredited under the accreditation of
15 hospitals by the joint commission. This was the finding by
16 the Board and, in fact, the Board made the expressed finding
17 on the same contention made by MR. Elliott for LEA that
18 Mr. Love raises today, that there must be a different designa-
19 tion in advance and the Board found specifically that the
20 designation of the Pottstown Memorial Hospital and HOP was
21 sufficient and that further designations within the EPZ or
22 outside the EPZ were unnecessary.

23 So I think the indication here that these are
24 accredited institutions by the Joint Commission amply satisfies
25 what the Board has previously found to be sufficient under the

3
1 regulations for emergency planning.

2 JUDGE HOYT: Continuing on in that vein, Mr. Love,
3 again you will have to take this record as you find it, not
4 as you would now want to make it since that is a settled
5 issue and that is not one that this Board is going to
6 relitigate.

7 MR. LOVE: I am going to reserve the right to pursue
8 this matter further, however, I am more than willing to move
9 on to my next point.

10 JUDGE HOYT: You will have to pursue it further
11 before something besides this Board, Mr. Love.

12 MR. LOVE: That's fine. I was just noting that for
13 the record.

14 JUDGE HOYT: I just wanted to let you know that
15 that is going to be the way it is.

16 MR. LOVE: I just wanted to note it for the record.

17 JUDGE HOYT: All right. Shoot, what else do you
18 have?

19 MR. LOVE: A brief point is that we understand that
20 there as a tabletop exercise I believe on March 7th. We
21 understand that FEMA was present and is going to render a
22 report. It is our wish that we could get a copy of that
23 report when it becomes available.

24 JUDGE HOYT: Mr. Patten, do you know if that report
25 has come out yet?

1 MR. PATTEN: It has not, Your Honor. It has not
2 been received from FEMA yet.

3 MR. HASSELL: I think I may have some information
4 that might help on this. In my contact with FEMA, I have
5 been informed that FEMA has prepared a brief report of the
6 March 7, 1985 tabletop exercise and that on March 14, 1985
7 FEMA Region III transmitted that report to FEMA Headquarters.
8 Currently that report is in the review chain at headquarters
9 and it is expected to be transmitted to the NRC in the next
10 four to five working days.

11 Obviously, the staff would take on the obligation
12 of distributing it to the parties assuming, of course, the
13 Department of Correction has no problem with what is being
14 disclosed in the report. Subject to that condition, the staff
15 would of course provide it to the Board and the parties.

16 JUDGE HOYT: I will assume that you gentlemen will
17 remain in contact to assure that that could be handled as
18 expeditiously as possible. That appears to be no problem,
19 Mr. Love.

20 MR. LOVE: Fine. I will move on. With regard to
21 the issue of manpower --

22 JUDGE HOYT: Can you give us the tab that that would
23 be found under?

24 MR. LOVE: It is really throughout the report.

25 JUDGE HOYT: We are not going to take a bird shot

5
1 approach to this, Mr. Love. We are going to get some good
2 accurate rifle shots in here. Give me a point on here.

3 MR. LOVE: This particular concern doesn't go
4 exactly to the plan. It is merely a request that in light
5 of the considerable concerns about manpower that there be some
6 input from the guards union at the facility that they are
7 in fact in agreement with the plan and are more than willing
8 to carry it out.

9 JUDGE HOYT: The Guard Union is not a party to this
10 proceeding, Mr. Love. As a matter of fact, no union is a
11 party to this proceeding.

12 MR. LOVE: It is my understanding that in prior
13 testimony there was input from for example the bus driver's
14 union for SEPTA and there was testimony by Mr. Tauss, I believe,
15 his name was.

16 JUDGE HOYT: That was an LEA intervenor's witness
17 that came forth but he had nothing but testimony that the LEA
18 people wanted in relation to their contentions, Mr. Love.

19 MR. LOVE: I am just stating my concern that we
20 feel that it might be helpful to the record to have some kind
21 of assurances from the guards union that they are in agreement
22 with this concern.

23 MR. RADER: That is a rather inexact analogy in any
24 event. The SEPTA employees are not under contract with the
25 state of Pennsylvania and are not subject to sanctions for

16

1 failure to live up to their duties.

2 JUDGE HOYT: I am not at all certain, Mr. Love,
3 that what this type of contention would go to litigation,
4 that we would even accept the testimony of the union. I
5 don't know that the union has any relevant, probative testimony
6 that could be considered by this Board.

7 MR. LOVE: I would like to just note that for the
8 record, Your Honor.

9 JUDGE HOYT: You are not noting anything for the
10 record. I just told you what appeared to be the case in the
11 event that we were to be in litigation. I am just giving you
12 that as a possible indication of what if any value such
13 testimony would be. It would have to meet the standard of
14 relevant, being provative to this issue.

15 MR. LOVE: I wou'd argue that the plan is so
16 dependent upon the guard force and that they have to take such
17 extraordinary actions including the potential for moving their
18 entire families to a relocation center for a considerable
19 period of time --

20 JUDGE HOYT: Mr. Love, you are not representing the
21 guards. You are not representing the staff of this prison.
22 You sole interest in this case is to represent the interests
23 of the inmates. We are not going to at this time --

24 MR. LOVE: But it relates to the interests of the
25 guards --

17

1 JUDGE HOYT: Mr. Love, wait a second. We are not
2 going to sit here and take an expansion of this case at this
3 point in time. If the guards had had any indication that
4 they wanted to be represented, they had ample opportunity
5 in the infinitely great number of hearings that this
6 Commission and these Boards dealing with the Limerick issue
7 have heard and we have not had any testimony and we have no
8 indication whether they would even have standing is another
9 matter.

10 Did you want to say something, Mr. Hassell?

11 MR. HASSELL: I just wanted to note that the staff
12 hasn't heard Mr. Love provide any basis for any concern that
13 the guards in fact would not carry out their responsibilities.
14 I just wanted to note that for the record.

15 JUDGE HOYT: It is a good point, Mr. Hassell. There
16 hasn't been any and they have had ample opportunity to have
17 intervened in this case if they wished to be heard and Mr. Love,
18 you are not going to represent them.

19 MR. LOVE: May I move on?

20 JUDGE HOYT: Surely.

21 MR. LOVE: Another concern with regard to manpower
22 is the call-up system.

23 JUDGE HOYT: That must be under one of the tabs.
24 Can you tell me which one it is that you have a concern about?

25 MR. LOVE: I am referring once again to the response

18

1 of the Commonwealth of Pennsylvania Department of Correction.
2 It is a request for information raised at the February 27, 1985
3 Atomic Safety and Licensing Board conference, page 4, manpower.
4 As part of the SCIG Graterford Emergency Plan for any type
5 emergency there is a call-up system in place. This system is
6 available to notify additional manpower if they were needed
7 during a radiological emergency.

8 My concern is simply this. As I understand, this
9 call-up system, one individual will be assigned to call ten
10 other individuals using commercial phone lines. My concern is
11 that in the event of a radiological emergency I think it is
12 conceivable that the commercial phone lines may well be
13 overtaxed and unavailable for use and I am wondering if there
14 are any back-up provisions available in the event that this
15 occurs.

16 JUDGE HOYT: May we get a response from you,
17 Mr. Otto, if you have one?

18 MR. JEFFES: Our basic reliance, of course, would
19 be by telephone. That is the basis for the call-up system.
20 Again, because our primary back-up in terms of crisis is the
21 Pennsylvania State Police, that certainly if telephone lines
22 were down, we would rely on them to relay at least into
23 local areas where we had employees but our primary thrust
24 as with all whether it be the Corrections, the Police, et
25 cetera, is provided by the telephone system.

1 JUDGE HOYT: Let me ask you, Mr. Rader, do you
2 recall and perhaps Mr. Hassell should have some input as well
3 as Ms. Ferkin in this area, do you recall the testimony on
4 the call-up systems that were used in Montgomery County for
5 example?

6 MR. RADER: I believe those involved an automatic
7 redial system.

8 JUDGE HOYT: Is that in all of the risk counties?

9 MR. RADER: Yes.

10 MS. FERKIN: I believe it is, Judge Hoyt, yes.

11 JUDGE HOYT: That was my recollection, too.

12 Do you have anything to add, Mr. Hassell?

13 MR. HASSELL: No, Your Honor.

14 JUDGE HARBOUR: Does anybody recall if the call-up
15 systems that were utilized by the country emergency centers
16 were commercial phone lines or anything other than commercial
17 phone lines?

18 MR. RADER: They were commercial lines, yes.

19 JUDGE HOYT: So it is an automatic system but merely
20 another commercial line.

21 MR. JEFFES: I think in terms of advantages, we will
22 be having the buses coming in from other cities and we would
23 probably be in a much better position than probably some of
24 the local communities because we could call-up staff within
25 those institutional geographical districts and bring staff

1 in right on the buses if we have to.

2 JUDGE HOYT: I think also one of the points I think
3 that would be well taken is that if anything, your organiza-
4 tion is going to have better communications than probably
5 any other single community would have because you are going
6 to have back-up systems at the state facilities.

7 Mr. Love, that pretty much seems to be the
8 recollection of all the parties here, that the commercial
9 lines were used in all other instances and that the only
10 difference seems to be that there is an automatic dialing
11 system which a lot of home phones, I have one at home that
12 has the same type of thing on it.

13 JUDGE HARBOUR: Can you tell me how many outgoing
14 lines would be available for this system at the present?
15 Would there be at least four or are there more than four
16 or less than four? The reason I say that is the county
17 systems use four dedicated lines.

18 JUDGE HOYT: They did have four dedicated lines.

19 MR. JEFFES: I am not sure how many dedicated lines
20 we have at Graterford. I can certainly check for you.

21 JUDGE HOYT: Is it more than one?

22 MR. JEFFES: YES.

23 JUDGE HOYT: Less than six?

24 MR. JEFFES: We have, for example, in all of our
25 institutions we have a direct line to the State Police where

1 we just pick up the phone and it rings and each superintendent
2 of course has a private line. There are two right off in
3 addition to that. I would have to check on the exact number.
4 Each institution varies depending on the number.

5 JUDGE HOYT: If there is more than one line, Mr. Love,
6 which apparently Mr. Jeffes is telling us there is for just
7 the prison where for a community of say several hundred
8 thousand have only four lines, I think proportionately the
9 inmates are in a better position, the guards that is would be
10 in a better position to be notified than some of the county
11 personnel recalling the testimony if you want a comparative.

12 MR. LOVE: As I understand the system though, each
13 person that is called in turn calls ten other people so it
14 wouldn't just be the prison line, it would be the lines
15 throughout the community, the various private phones of the
16 various people who were called.

17 MR. JEFFES: I think one of the things you have to
18 remember is the majority of the staff at the Graterford
19 facility live outside of the area. So in terms of staff since
20 most of them live outside the area once the initial call would
21 be placed, it would seem to me that they would have better
22 access to phone lines than those particularly within the ten mile
23 EPZ.

24 JUDGE HOYT: The prison is located, I believe, at the
25 eight mile post, I think.

1 MR. OTTO: The other thing that we have that the
2 automatic dialing system doesn't have is that as was put in
3 the response, the people who are making the phone calls are of
4 sufficient rank to be able to give direct orders. We are a
5 para-military organization and the people would be ordered in
6 rather than just having an automatic system call up and say
7 you are wanted and we will be able to document and discipline
8 people who don't show up.

9 JUDGE HARBOUR: How many supervisors would be
10 initially involved in this notification?

11 MR. JEFFES: I can't tell you that exactly. Usually
12 it varies, let's see. Graterford has at least ten. If I had
13 known that was going to arise, I would have brought the
14 emergency plans for Graterford with me. We have a copy of
15 all institutional emergency plans in our central complex. We
16 can certainly find it out for you. I just have to make a call
17 and get the number.

18 JUDGE HOYT: Could you do that this afternoon before
19 we adjourn?

20 MR. JEFFES: Surely. You want to know the number of
21 staff involved in terms of making the initial calls right as
22 part of the call-up system?

23 JUDGE HOYT: Yes, and how many of those staff you
24 have that are going to be involved in this and if you could,
25 Mr. Jeffes, perhaps it might be helpful too if we could get

1 some feeling of where some of these people would be located
2 to indicate affirmatively that they are outside of the EPZ
3 and therefore their lines are not going to be as cluttered in
4 that area as they would if they were more intimately involved
5 in the area.

6 MS. FERKIN: Just to add to that before we got into
7 a discussion of the number of staff, we also had a discussion
8 about the number of lines.

9 JUDGE HOYT: Yes, number of lines, also.

10 JUDGE HARBOUR: Available at the prison.

11 JUDGE HOYT: I think you indicated it was one or more
12 would be dedicated and if you could give us an idea of how many
13 would be dedicated lines for that purpose, that would be helpful,
14 too. I think that about exhausts that area, Mr. Love.

15 MR. LOVE: Just one final comment, I have called the
16 prison on more than one occasion and have gotten that recording
17 that says that all our phone lines are busy and please try your
18 call again later. So it would still seem to me that in the
19 event of an emergency, the chances of that happening are
20 significantly increased and therefore I still am concerned about
21 this issue.

22 JUDGE HOYT: I would disagree with you, Mr. Love. I
23 would say that if there were an emergency out there, there is
24 not going to be any recording. There are going to be some
25 actual answers on those phones.

1 MR. OTTO: That is not at our facility, those are
2 the commercial phone lines.

3 MR. LOVE: That is the problem, the commercial phone
4 lines may well go dead from overuse.

5 JUDGE HOYT: We are dealing with those areas that
6 the correctional facility is using in the emergency plan that
7 they are putting out.

8 MR. LOVE: In the emergency plan it calls for the use
9 of the commercial phone lines.

10 JUDGE HOYT: All right. Go ahead to the next one.

11 MR. LOVE: With regard to the buses and drivers, a
12 couple of points.

13 JUDGE HOYT: Is that in the plan itself?

14 MR. LOVE: Once again, referring to the letters.

15 JUDGE HOYT: Nothing in the plan?

16 MR. LOVE: Yes, one statement in the plan.

17 JUDGE HOYT: Where is that statement?

18 MR. LOVE: Attachment "D" page E-1-D-1.

19 JUDGE HOYT: All right. We have found it. Go ahead.

20 MR. LOVE: In subsection (c) roman numeral one, the
21 second sentence, "Due to the security and safety considerations
22 associated with moving a large inmate population, the time
23 allotted for clearing the institution of all inmates most
24 probably will take a significantly longer period of time than
25 it is expected for the general public to evacuate the risk

1 area."

2 Upon reading that, it would seem to me it might be
3 worthy to consider whether the bus drivers should be considered
4 emergency workers under the definition of the regulations.
5 Thus, they would be given additional radiological equipment
6 and additional precautions would be taken due to the fact that
7 they are going to be exposed for a longer period of time.

8 JUDGE HOYT: Again, Mr. Love, you haven't done your
9 homework because I think that was very well litigated in the
10 previous segments of this case.

11 MR. LOVE: In this instance we are talking about
12 additional timeframes than we are with everyone else because
13 as the statement says, they will be the last to go.

14 JUDGE HOYT: That is not what the statement says, not
15 the last to go. It is recognizing a fact of life, that you
16 are moving a prison population as opposed to a population on
17 which there are no restrictions.

18 MR. LOVE: Correct. That is why I am saying maybe
19 there should be additional--

20 JUDGE HOYT: There will be bus drivers evacuating
21 persons who are given training of some sort and I have forgotten
22 what the equipment is and all the rest of the thing. I think
23 that was in the case. Mr. Hippert, do you recall whose testi-
24 mony that was?

25 MR. HIPPERT: No, I don't offhand but I know the

1 provision has been made for KI for all of the prisoners, all
2 of the inmates. Provision has been made for KI and dosimetry
3 for all the SCIG staff and the support staff. That is on the
4 very next page of the plan.

5 JUDGE HOYT: Yes, I recall reading that in there.

6 MR. HIPPERT: Incidentally, the KI is now on hand
7 at the Department of Health.

8 JUDGE HOYT: Your problem with the bus drivers is
9 that they would have the KI and dosimetry, is that the idea?

10 MR. LOVE: It is my understanding and correct me if
11 I am wrong that emergency workers, persons entitled emergency
12 workers, are given additional radiological equipment and
13 additional precautions are taken because of their probability
14 as to greater exposure than the other persons immediately
15 leaving the EPZ. My question is, is it worth considering bus
16 drivers due to the fact that they are going to be exposed to a
17 longer period of time, some additional protection?

18 JUDGE COLE: Do you mean over and above KI and
19 dosimetry?

20 MR. LOVE: Yes.

21 MR. OTTO: It is my understanding if you turn to
22 page E-1-D-2 under roman numeral two "a" where it talks about
23 staff at each support SCI employee responding to SCIG which
24 would include the bus drivers will receive two self-reading
25 dosimeters, one TLD and one bottle of KI with 14 tablets.

1 MS. FERKIN: Mr. Hippert noted that.

2 JUDGE COLE: Is your concern that that is not
3 sufficient?

4 MR. LOVE: In reading prior transcripts, it seems
5 that there was a distinction drawn between emergency workers
6 and other persons and that emergency workers got additional
7 equipment.

8 JUDGE COLE: I believe you are confusing it with the
9 school bus drivers who were not considered in the category of
10 emergency workers. That is not the case here.

11 MR. LOVE: Exactly. I am just suggesting that
12 perhaps the bus drivers in this situation be held to a different
13 standard than a school bus driver if they are going to go out
14 later.

15 JUDGE HARBOUR: That is what this is saying.

16 JUDGE HOYT: That is what this is saying, Mr. Love.
17 That is what D-1-D-2 is saying.

18 MR. LOVE: So you are saying that they are going to
19 be treated as emergency workers and not as school bus drivers.

20 JUDGE COLE: Apparently that is what it says here.

21 JUDGE HOYT: They are going to be treated with the
22 two self-reading dosimeters and the KI as listed there.

23 MR. LOVE: Are you saying that the bus drivers for the
24 schools are not getting this?

25 JUDGE COLE: That is correct. The school bus drivers

1 are not considered as emergency workers for reasons that are
2 stated in the record.

3 MR. LOVE: I am not trying to trap anybody, Your Honor,
4 and I appreciate an honest response and that does satisfy my
5 concerns with regard to this issue.

6 JUDGE HOYT: All right. Let's go on then.

7 MR. LOVE: Once again with regard to the drivers,
8 there was some suggestion that there would be some training
9 available for the civilian bus drivers who were going to be
10 driving school children and I was wondering if this same
11 training would be offered to these drivers?

12 JUDGE HOYT: Mr. Otto.

13 MR. OTTO: First of all the attachments again to the
14 response and also the discussion under roman numeral two of the
15 response indicate that school bus drivers driving buses with
16 school children is a different situation than an individual
17 driving a school bus with other than school children. A class II
18 Pennsylvania license is sufficient to drive a bus not carrying
19 school children.

20 Obviously we are going to be carrying inmates and not
21 school children and therefore a class II license is what is
22 required by the State of Pennsylvania to drive the bus.

23 It has been suggested to us that some additional
24 training would not hurt. Right now we have enough people with
25 a class II license, the numbers are in the response, to more

1 than meet the need for bus drivers if none of the bus companies
2 provided any drivers.

3 We are working to get our bus drivers, our correctional
4 officers and other staff this additional training just since
5 it was suggested to us quite frankly. It is not a requirement
6 under the Pennsylvania laws but just to insure the competence
7 we are going to go that one step further.

8 MR. LOVE: However, there will be no such training
9 offered to the civilian drivers.

10 MR. OTTO: I have no knowledge of the civilian
11 drivers.

12 MR. LOVE: That is my main concern.

13 MR. HIPPERT: No. The school bus drivers are in a
14 completely different category.

15 MR. LOVE: Why is that, sir?

16 MR. HIPPERT: Because they will be moved out earlier.
17 The schools will be evacuated just as soon as the evacuation
18 order comes in. They will be out of the EPZ before there is any
19 need for them to have dosimetry or KI and they will not be
20 returning. It is a one lift concept.

21 MS. FERKIN: Mr. Love, I think you are getting outside
22 the scope of your interest in this proceeding. The training
23 that is offered to civilian bus drivers who are going to take
24 school children out of the EPZ is wholly outside the scope of
25 your interest in representing the inmates.

1 MR. LOVE: No. My interest is the civilian bus
2 drivers who are going to take the inmates outside the EPZ and
3 what training they are going to get.

4 MR. OTTO: The civilian bus drivers will have --
5 they are licensed school bus drivers and therefore would have
6 training, they would have class IV licenses which is what needs
7 to drive a school bus with school children on Pennsylvania
8 highways. A class II license is a lesser license. It is what
9 gives you the opportunity to drive a bus without school children.

10 JUDGE HARBOUR: What is the nature of the training
11 that you are suggesting that these drivers would need?

12 MR. LOVE: The exact nature I don't know. I read it
13 in the transcript that it was offered to these individuals and
14 it seems that it could also be offered to the people in this
15 case.

16 JUDGE HOYT: Mr. Love, that is a separate and different
17 issue. We are dealing with what we are going to be talking
18 about in your inmates' problems. Whether or not there was
19 ever an evacuation hearing because of the Limerick plant, there
20 would be certain measures that this Department of Correction
21 would have to take and those drivers that are trained in that
22 fashion who handle all of those particular needs that a security
23 prison would have to have.

24 MR. LOVE: You are correct, Your Honor, but there
25 as I understand they are just a back-up. They are not the

1 primary drivers. The primary drivers would be civilian drivers
2 from these bus companies.

3 JUDGE HOYT: In part. They will be as I understand
4 it both the civilian drivers and the staff members who do drive
5 the buses. If you are proposing to change the thrust of your
6 contentions and again I am holding you to a discussion of these
7 things here today are against the framework of those contentions
8 and you are expressing something entirely different and outside
9 as Ms. Ferkin well put it.

10 MR. LOVE: May I point out, Your Honor, that the
11 second plan contained almost 50 pages more than we hadn't seen
12 before so I think I am allowed to raise new issues.

13 JUDGE HOYT: That is just a childish comparison that
14 really is not worthy of even a response. If you want to get to
15 the substance of what it is you want to talk about here, fine,
16 but how many pages or how many black lines are on a page, I am
17 not going to get into that sort of discussion.

18 MR. LOVE: One final comment then with regard to the
19 drivers --

20 JUDGE HOYT: All right.

21 MR. LOVE: -- which leads into my next issue and that
22 is the statements contained in the letters of agreement included
23 as exhibits in the response of the Commonwealth indicate a
24 timeframe of anywhere from one to three hours necessary to get
25 the buses to whatever point they are going.

1 JUDGE HOYT: Which one of the attachments are you
2 referring to?

3 MR. LOVE: All of the various letters of agreement
4 from the bus companies. I think it is "A," "B" and "C."
5 Our concern is one to three hours to get the buses to whatever
6 point they are going to given that the civilian drivers drive
7 and perhaps longer if they don't drive in that the back-up
8 drivers would require additional time to get to the buses
9 and then get the buses to wherever they are going.

10 This leads into my more general concern regarding the
11 estimated time of evacuation. I didn't see anything in the plan
12 itself and perhaps I missed it that tells us the approximate
13 time or the estimated time of the evacuation. This is one of
14 my concerns, that this is going to take a considerable amount
15 of time and how long is this whole thing going to take.

16 If I read the regulations correctly, they do have to
17 come up with some type of ETE I believe it is called.

18 JUDGE HOYT: Mr. Otto, can you respond to that?

19 MR. OTTO: We have provided and I don't believe there
20 is a specific time span in the plan itself although it is true
21 and I think in the front letter that I attached to this plan
22 it referred to the figures of six to ten hours and that is what
23 we have stated as the estimates that can make as to the time
24 it will take to evacuate the institution.

25 That six to ten hour estimate does take into account

1 the estimate of two hours and then one to three hours on exhibits
2 "A" through "C" that it would take to get the buses ready and
3 going. That is a part of that estimate.

4 MR. LOVE: The only place to my knowledge that I have
5 seen anything other than the first page of this document
6 regarding the time estimates was in Mr. Kaiser's affidavit,
7 I believe paragraph 14, attached to the applicant's request
8 for an exemption in which it stated that himself and Mr. Otto
9 had private conversations and that it said that it would take
10 six to ten hours.

11 So my question is, what is the basis for these
12 private conversations?

13 MR. OTTO: The basis is the conversations and the
14 estimates are based upon Commissioner Jeffes' expertise in the
15 area and quite frankly, it has never been done. We totalled up
16 the times between the best that we could do and looking at the
17 worst and those are the numbers we came up with.

18 JUDGE HOYT: That is the six to ten hour estimate.

19 MR. OTTO: Yes, ma'am.

20 JUDGE HOYT: The one to three hours is included in
21 that?

22 MR. OTTO: Yes, ma'am. It would not necessarily take
23 any longer to mobilize the buses if we were using our back-up
24 drivers and in fact, it may even take shorter because we can
25 have our individuals go directly to the bus depots and have them

1 go from there and pick up the buses.

2 MR. HASSELL: Mr. Otto, may I just ask you, the time
3 periods that are reflected in the attachments "A," "B" and "C,"
4 do you know whether those are maximum times based on your
5 involvement in the process? I am just curious whether you know.

6 MR. OTTO: I drafted the requests to the bus companies
7 and we asked them when you could provide us the buses and no,
8 we didn't ask for the worst case scenario or the best case.

9 MR. HASSELL: All right.

10 MR. OTTO: I am sorry.

11 MR. HASSELL: No problem. I was just curious.

12 MR. OTTO: We did ask them to provide us with these
13 documents and indicate the very least that they could offer
14 so that these are very conservative figures with regard to the
15 number of buses.

16 JUDGE HOYT: I think, Mr. Love, the Board's expert on
17 that is Dr. Cole and he can tell you a little more on this,
18 how much time is necessary.

19 JUDGE COLE: It is my understanding that the
20 regulations do not provide for any time limit during which an
21 evacuation has to take place so the time estimates have to made
22 for evacuation and reasonable estimates have to be made for
23 evacuation so that the radiological experts can make reasonable
24 decisions on what is best to do, to shelter or evacuate. That
25 is the principle reason for the time estimates as I understand

1 it.

2 Does anybody have any different understanding than
3 that?

4 (No response.)

5 JUDGE COLE: There is no limit per se. It is a
6 reasonable time estimate so that decision making can take place
7 as to what to do.

8 MR. LOVE: I see.

9 JUDGE HOYT: Because decision making is related to
10 evacuation or sheltering.

11 MR. RADER: I might add just one point. I think the
12 testimony in the litigation that we have had on emergency
13 planning also clearly established that under ordinary circum-
14 stances the bus providers would be notified at the early stages
15 of an emergency so that they could mobilize drivers and buses
16 and the drivers and buses could be ready to be sent to a
17 facility such as this at the time they were needed.

18 So if the bus companies have included a mobilization
19 time in that one to three hour period, that conceivably could
20 be reduced by prior notification to the bus provider during the
21 early stages of an emergency.

22 JUDGE HARBOUR: Is there any provision in the
23 Graterford Plan for such early notification of the bus companies
24 at the alert stage, for example?

25 JUDGE HOYT: Would that be under E-1-12, Mr. Otto?

1 It is your plan, guide me.

2 MR. OTTO: E-1-9 is where we are at the alert stage.
3 I Am looking through it myself quite frankly. The site
4 emergency stage on page E-1-10, number six, there is a reference
5 to the support SCIs pick-up the buses from transport sites
6 and assemble at SCI.

7 MR. RADER: If I may also point out on the previous
8 page with regard to alerts, on item eight it says that there
9 will be an examination to compile a current list of unmet and
10 special needs. That would certainly include transportation
11 needs which would necessitate calling the bus provider to make
12 sure that the buses were available.

13 I assume that was one of the things that was intended
14 here.

15 MR. JEFFES: Also under classification under alert,
16 under 2(5), notify all SCI's by the clean system, telephone
17 request support personnel. That is under the alert stage.

18 JUDGE HARBOUR: The bus companies would be under the
19 support personnel?

20 MR. JEFFES: Yes. They should fall under that. In
21 terms of notifying, yes. If not, I really have no problem
22 with including that.

23 JUDGE HOYT: So you have then really three references
24 that all the parties here have given you, five under the alert
25 on E-1-9 and on that same page, section eight under the alert

1 and then section "c" under the site emergency on E-1-10,
2 Mr. Love. So apparently there is that notification of the
3 bus drivers. That should apparently satisfy that point that
4 you have. Do you have your next one?

5 MR. LOVE: The next one regards sheltering. We are
6 still a little unsure as to what the criteria will be to
7 determine whether there will be sheltering at Graterford and
8 our concern is heightened by a statement made by an individual
9 by the name of Riley at transcript page 19,396 that inhalation
10 pathways inside and outside the building would be essentially
11 the equivalent in two hours which leads me to believe that
12 sheltering is only effective for a short period of time.

13 JUDGE HOYT: I think that was PEMA's expert witness.

14 MS. FERKIN: Yes. Ms. Riley is with the Commonwealth.
15 She is with the Department of Environmental Resources, Bureau
16 of Radiation Protection and that bureau is particularly
17 responsible for development of the standard within the
18 Commonwealth of Pennsylvania for sheltering of individuals.

19 As you know the general standard under Annex E is
20 that any building which is winter worthy is adequate for
21 sheltering for a period of two hours.

22 MR. PATTEN: Excuse me, Your Honor. The catering
23 service is here and planned to serve at 12:30.

24 JUDGE HOYT: Thank you very much. We will be in
25 recess.

(Whereupon, a luncheon recess was taken.)

AFTERNOON SESSION

(1:05 p.m.)

1
2 JUDGE HOYT: Back on the record. We are now going
3 to continue our discussions here. We have had a brief recess
4 for lunch and we can start up again now.

5 Mr. Love, I think you finished your last concern
6 that had about that.

7 Mr. Jeffes, during the recess did you have a chance
8 to get that information?

9 MR. JEFFES: I am getting it for you. I will have it
10 in the next few minutes.

11 JUDGE HOYT: Very well. Go ahead, Mr. Love.

12 MR. LOVE: I believe we were on sheltering and my
13 concern was what assurances do we have that the inmate population
14 will be treated the same as the general public with regard to
15 the decision of whether to shelter or to evacuate. I didn't
16 see that in the plan.

17 JUDGE HOYT: Which section of the plan deals with
18 sheltering?

19 MR. OTTO: That was one of the concerns raised at
20 the February 27th meeting. On page six of my response to
21 the request for information --

22 JUDGE HOYT: Is there anything in the plan on this?

23 MR. OTTO: The plan deals with sheltering but we are
24 taking our guidance as to shelter or not shelter from PEMA.
25 Obviously, we are not experts in that area and we are deferring

1 to them. With regard to the inmates versus the general public
2 and the standards used for sheltering or not sheltering, on page
3 six of the response filed by the Commonwealth we state that
4 the standards for inmates being sheltered is the same -- let me
5 read it directly. "The Department of Correction will use the
6 same standards for the inmates as are being used for the general
7 public with regard to sheltering, evacuation and the general
8 operations plan and there is one exception." That exception is
9 in the limited circumstances where the temperatures would be
10 very high in the summertime and there would be a great deal
11 of humidity, we would like to keep the windows open as much as
12 possible for inmate comfort as well as our staff.

13 At that time if that situation were in place we would
14 request a Department of Energy plume monitoring team to come
15 right to the Graterford Institution to monitor what was going on
16 right at the institution so that if sheltering was advised say
17 for the entire ten-mile EPZ, if the plume had not come to our
18 institution, then we could leave the windows open. We could find
19 on-site direct monitoring.

20 The plan discusses what would happen if the plume did
21 start to come at page E-1-D-1 and E-1-9. That was something
22 we were talking about at the last conference, the question of
23 what this plume monitoring team is going to do. The pleading
24 goes on further and discusses exactly what the procedure would
25 be. The team indicates the plume is coming, that information

1 is transferred to PEMA. PEMA consults with BRP and gives us
2 a recommendation and we would follow that recommendation.

3 During the time it takes to transmit that information
4 to those individuals and get a response, the Superintendent would
5 take interim actions as per his best judgment. I think the
6 time span would be relatively short, I would hope.

7 MR. PATTEN: I might add, Your Honor, we make no
8 distinction in our plan regarding Graterford or any other
9 institution. Therefore, we treat that institution as we do
10 any other entity that needs to be considered for sheltering.
11 I think the fact that we have not made any distinction should
12 give assurance to Mr. Love that there is no specific inference
13 or exception taken in the case of Graterford.

14 MR. HASSEL: Judge Hoyt, if I could just note for the
15 record it appears to the staff that at least to some extent
16 one might reasonably infer that the inmates have a certain
17 protection that is not even afforded to the general public
18 with respect to sheltering because as it provides on page
19 E-1-D-2 at section roman numeral (II)(d), the inmates will
20 have available KI for distribution and there is no member of
21 the general public that would have that protection afforded
22 them beyond the two hour exchange rate protection factor we
23 have been discussing.

24 So at least from where the staff sits, it would
25 appear that there is a protective measure provided for here that

1 is not even available to the general public in the event of
2 evacuation.

3 JUDGE HOYT: I thought you were going to mention,
4 Mr. Hassell, the thing that came to my mind and that is that
5 there are certain monitoring devices on site that are not
6 afforded to the general public also with input into the shelter-
7 ing scenario as needed. I think that is if anything, the general
8 public might have a standing to litigate this aspect but I think,
9 Mr. Love, the inmates do have as several of the parties here
10 have indicated additional help there.

11 MR. LOVE: That clarifies my concern and satisfies
12 that.

13 If I recall at the last meeting Commissioner Jeffes
14 stated that there would be notification, direct notification,
15 of the inmates. Let me just find the quote.

16 JUDGE HOYT: Does anybody have that reference in the
17 transcript?

18 MR. LOVE: "The plan will include notification to
19 inmates."

20 JUDGE HOYT: Do you recall where that was in the
21 transcript?

22 MR. HASSELL: I believe it is 20,532.

23 MR. LOVE: As I read the plan, notification to the
24 inmates is not direct in that there is no siren to my knowledge
25 that they would be -- and maybe I am wrong there -- that they

1 could hear.

2 JUDGE HOYT: Excuse me, Mr. Love, just let me get
3 that page reference. Please continue.

4 MR. LOVE: My concern is that there is some kind of
5 direct notification of the inmates and I wonder how that is
6 going to transpire.

7 JUDGE HARBOUR: I recall at the last meeting that
8 the statement was made that there was a siren as part of the
9 emergency system either on the grounds or immediately adjacent
10 to the grounds plus the fact there was a discussion about
11 the inmates having radios and televisions and access to that
12 kind of communication. Who was it that made the statement
13 about their being a siren, an emergency siren on the site?

14 MR. LOVE: I do recall that statement, however there
15 is nothing in the plan about a siren. That is why I wanted
16 to go over it.

17 JUDGE HARBOUR: I don't believe the siren was a
18 Graterford siren. I thought it was a county siren.

19 MR. CASE: I believe it was located on the Graterford
20 grounds or close to it or something like that. I don't know
21 how made the statement.

22 JUDGE HOYT: I think the reference that Mr. Hassell
23 made here which is at transcript page 20,532 that Mr. Jeffes
24 in regard to the issue and I can't recall specifically, but I
25 think it is addressed in the Graterford. If it is not addressed,

1 we will assure you that we will have as part of the plan a
2 mechanism by which inmates are notified of the major changes
3 in status. That was the end of the quote.

4 I don't recall in this submission that you gave,
5 Mr. Otto, that that was picked up on. Do you recall why it
6 wasn't or if it was and I have just missed it? This is the
7 submission of response to the Commonwealth of Pennsylvania
8 Department of Correction to the information raised at the
9 February 27th meeting. This was the one that was filed by
10 the Commonwealth Department of Correction on March 15.

11 MR. OTTO: Quite frankly I guess my recollection was
12 that the representations we made at that hearing on the 27th had
13 satisfied the concerns basically. Obviously we have a captive
14 audience and we also have an institutional intercom system
15 that would be used as well as the regular public access types
16 of things like radios and TV's and the inmates would be kept
17 abreast of what was going on.

18 JUDGE HOYT: I think that was one of the points in
19 the filing of either Mr. Anthony or Mr. Romano that everybody at
20 the prison is going to be up-in-arms because they would have
21 been notified by radio. We have one side maintaining one
22 thing and Mr. Love's concern that there isn't going to be any
23 notification. I think somewhere in between there is some
24 additional information that was developed in the record other
25 than this reference at 20,532. Do you have those, Mr. Hassell

1 MR. HASSELL: Yes. The reference is 20,528. I
2 didn't mean to suggest that there weren't other references.
3 You were referencing a statement for providing for notification
4 of inmates. I didn't mean to suggest that Mr. Jeffes had not
5 spoken to that issue. That is on 20,528.

6 JUDGE HOYT: If I may refresh everyone's recollection
7 if they don't have the transcript and they shouldn't, it is at
8 20,528 that Mr. Hassell mentioned and the quote was "Well what
9 I am saying to you, yes, we would advise the inmates again
10 either by the public address system within the institution. We
11 do not have a closed circuit channel..." I beg your pardon.
12 "We do have..." do have, "We do have a closed circuit channel
13 by TV. That would be two methods by which we would notify
14 the population in total and of course, we would be constantly
15 in contact with our housing officers who have information
16 coming out of the control tower. So I think that in terms of
17 notifying the inmates, we have a system and a method by which
18 we would and could and would certainly notify the inmates."
19 That was the reference at that page, Mr. Love. That was the
20 quote from Mr. Jeffes again. If you would like to see this,
21 I would be happy to pass the transcript down to you.

22 MR. LOVE: I take your word for it. We were hoping
23 for a more direct notification system such as the siren system.
24 However, I guess that will have to suffice.

25 MR. HASSELL: As I recollect in terms of having read

1 the transcript there was a reference to the fact that one of the
2 sirens is on the grounds.

3 MR. LOVE: Close to the grounds, something like that.

4 MR. PATTEN: The siren system does not notify in any
5 event. The siren system is merely a warning device that tells
6 the general public that you should turn to your emergency
7 broadcast system. It is not a direct warning system that tells
8 you to take some action other than to turn to the radio or the
9 television set from which you would get amplifying instructions
10 if there is any confusion about the purpose of the sirens and
11 there is some generally, so that needs to be clarified.

12 JUDGE HOYT: There are more references in the
13 transcript here. If you want to look at this particular section
14 again, Mr. Love, I think you will find that there are a number
15 of references.

16 MR. LOVE: Fine. I will move on to a final concern
17 and I want to quote from the Louisiana Power and Light Company
18 case, Waterford Steam Electric Station Unit Number Three at
19 16 NRC 550 and this quote appears on page 562 and being that
20 this is the only other case involving a prison facility in the
21 EPZ, I think it is worth mentioning.

22 "The Board recognizes that excessive anxiety on the
23 part of the public could result in an overreaction and possible
24 disruption of the plans for a protective action. It would most
25 likely take the form of a spontaneous evacuation." This is a

1 comment that I had heard from numerous inmates who were concerned
2 about the panic factor that there may be some kind of a stampede
3 to the front door and if you trace the history of the Graterford
4 Institution, there has been over the last four or five years
5 there have been a number of very incidents that have occurred
6 in the prison such as an institution-wide work stoppage in
7 May of 1980, a hostage seige in October of 1981 in which
8 inmates with two shotguns and two handguns took six civilian
9 and 32 inmate hostages and held them for five days. There was
10 a power outage and a resulting riot on "C" Block in 1983. Just
11 last September a woman by the name of Katherine Martin was
12 arrested and convincted by trying to smuggle in nine rounds of
13 22-caliber ammunition. Just last year an inmate being
14 transported from the facility pulled a gun on a sheriff and
15 escaped.

16 I think in light of the dangerous population at
17 Graderford that there should be serious consideration given to
18 this possibility for panic. That is one of the reasons why we
19 are here to go over this matter. I just thought I would state
20 that for the record.

21 JUDGE HOYT: I certainly think, Mr. Love, the
22 rather free expression by all the parties that have participated
23 both in this conference and the previous one, I think certainly
24 these prisons are probably better informed about radiation and
25 evacuation than probably any other prison population around.

1 I think your figures although interesting and certainly
2 in reference to the prison, I think you could probably find
3 comparable figures for practically every institution of its
4 size and staff and sylte of incarceration of people.

5 I also wanted to point out to you one thing that the
6 decision that you have cited, the Waterford case, was a
7 Licensing Board decision and so far as I recall the Waterford
8 case and Ms. Ferkin or Mr. Hassell can check it out on this
9 one, I don't think that was ever litigated any further on that
10 particular point.

11 MS. FERKIN: I don't believe the particular issue if
12 we are talking about the issue of spontaneous evacuation, I
13 don't believe that particular issue went up on appeal. There
14 was, of course, appellate consideration of the Licensing Board
15 decision that Mr. Love cites. By the way, I don't believe
16 Mr. Love gave the correct page citation.

17 MR. HASSELL: I think he meant to say and did not say
18 1550 and 1562.

19 MR. LOVE: I stand corrected.

20 MR. HASSELL: I would also like to note for the
21 record that the Board there concluded with respect to the very
22 issue that you are talking about, if I might quote just a
23 sentence, "We conclude that public overreaction to a nuclear
24 accident is likely to be minimized provided the guidance in
25 NUREG-0654 is followed and we conclude that no additional

1 measures need be taken to cope with the public's anxiety." I
2 think this puts his quote in context in that case. I have
3 nothing further.

4 JUDGE HOYT: I think we also have the Supreme Court
5 decision of Payne, the Payne case touching somewhat on that
6 panic issue idea, emotional part of the issue.

7 MR. RADER: If I may, Your Honor, one final point.
8 I would also note that the plan itself expressly states that
9 the security actions will be taken at the early stages to
10 prevent just that kind of problem and that the Commissioner
11 has the option of declaring a lock-down status at the site
12 emergency stage. Certainly, that would be done at the general
13 emergency stage I presume before the prisoners were notified
14 of the actions that would be taken to protect them.

15 MR. LOVE: Those are my concerns. I will drop my
16 motion for further disclosure. I am quite satisfied with the
17 information that has been forthcoming however, I would reserve
18 the right to file additional contentions based upon the
19 discussions today.

20 JUDGE HOYT: I think we might have some opposition on
21 that, Mr. Love. I suppose the first opposition we would get
22 would probably be from the applicant.

23 MR. RADER: You are certainly correct and accurately
24 predicted.

25 JUDGE HOYT: That was a safe one. Mr. Love, you

1 developed those contentions and you have filed them and if
2 anything, your discovery is eliminating part of those concerns
3 that you had expressed at the prior meeting. I can see no
4 reason that this Board should permit the amendment of it.

5 MR. LOVE: It is my understanding my initial
6 contentions were filed on the basis of plan one which was
7 as I said earlier some 20-odd pages long. I feel that now
8 that we have finally gotten to the stage where we have seen
9 the entire plan and we have had some meaningful discussions
10 that I still should have the right in light of the fact that
11 I am dropping my action for further disclosure, I think I should
12 still have the right to modify my initial contention.

13 JUDGE HOYT: The disclosure that you have had,
14 Mr. Love, is far beyond what ordinarily a party gets in
15 discovery. You may get a bit or piece of information. In this
16 case you got not only discovery but you got a lot of information
17 that you didn't even ask for in many cases.

18 I would frankly in looking at the plan when it came
19 to our office was very surprised that you got that clean a
20 version of the plan.

21 MR. LOVE: I was quite happy with the plan I received.

22 JUDGE HOYT: I think in light of that certainly as you
23 have indicated there is no additional discovery, so therefore
24 you are not giving up anything by merely withdrawing your
25 motion because your motion for any additional discovery would be

1 denied summarily, I might add, because there isn't anything left
2 to discover.

3 MR. LOVE: There is the FEMA Report, for example.

4 JUDGE HOYT: It has been indicated to you that as soon
5 as the FEMA Report is available, you will get that. We can't
6 give you what we don't have. You can't get discovery on what
7 isn't there to discover or in existence even. What I am truly
8 concerned about is what is there left in the contentions that you
9 have. You have the plan. You have all of the concerns that
10 you have expressed. There has been a total and frank disclosure
11 by all the parties.

12 I think the cooperation of everyone here has
13 certainly given you those concerns. To carry this any further
14 I think you would somewhat step away from your statement to us
15 in the previous conference that the inmates just felt that they
16 had been left out.

17 After all of this time and all of the effort that has
18 been put in this, I certainly think that that is no longer the
19 case and we have met and this Board has certainly tried to
20 provide the forum to get every speck of the information that you
21 want and need and now you tell us that you still want to litigate.

22 What I am trying to indicate to you is that there
23 is nothing else to litigate.

24 MR. LOVE: I agree with you that initially I felt
25 that the inmates initially were left out and now after further

1 discovery and discussions now I find that they are not left out.
2 However, they are the last to go and that is why I wish to
3 continue this matter.

4 JUDGE HOYT: Last to go. Do you mean within the
5 timeframe of three to ten hours?

6 MR. LOVE: Within the section of the plan saying that
7 they will more or less take a lot longer than the general
8 public to evacuate and they will therefore be exposed to a
9 greater extent.

10 JUDGE HOYT: Mr. Love, if we sat here and litigated
11 it until the well known warm spot turns to boiling water, you
12 are not going to get any more information.

13 MR. LOVE: Your Honor, I think the fact that I have
14 come at the very end of this was not my fault and yet I think
15 I am being penalized in not being able to present these issues
16 to the court to go through the process that various other
17 intervenors were allowed to with regard to filing contentions
18 and having testimony with regard to those contentions and having
19 discovery with regard to those contentions and that is why I
20 think it is --

21 JUDGE HOYT: Mr. Love, you have already indicated
22 that there is no more discovery.

23 MR. LOVE: I don't think I have indicated that. You
24 have, but I didn't.

25 JUDGE HOYT: That is what I understood you to say a

1 few minutes ago, there is nothing else left to discover.

2 MR. LOVE: I don't recall saying that.

3 JUDGE HOYT: Can you tell me what discovery you want?

4 MR. LOVE: The FEMA Report, for example.

5 JUDGE HOYT: Mr. Love, you have already been told
6 that when that is available, you will get it.

7 MR. LOVE: That is my position. You can rule as you
8 wish but that is not going to change it.

9 JUDGE HOYT: Believe me, we will.

10 MR. LOVE: I am sure you will.

11 JUDGE HOYT: What we are trying to do is avoid a
12 great deal of very costly litigation that this applicant and
13 this commission and these parties have been put to.

14 MR. LOVE: It is my understanding that the mandate
15 for emergency planning is that the public is allowed to have
16 input into this process.

17 JUDGE HOYT: You know, Mr. Love, when you get right
18 down to it, you are very fortunate to have been a participant
19 in this case in the first place even as late as you indicated
20 that you have been participating because I don't find it
21 absolutely positively certain that you would have been a party
22 to this case had there been a different board in effect. So
23 let's don't play that one too far afield here.

24 MR. HASSELL: I don't know if it would be helpful, but
25 if I understand Mr. Love what he is concerned with, his

1 principle concern at this stage is the time consideration for
2 evacuating the inmates.

3 JUDGE HOYT: That is the only one he has indicated,
4 yes.

5 MR. LOVE: That is one of my concerns, yes.

6 MR. HASSELL: That was based upon what he seems to be
7 saying and as Judge Cole indicated earlier there is no minimum
8 time for evacuation.

9 MR. LOVE: I understand that.

10 MR. HASSELL: So it is not clear to me what litigation
11 would demonstrate. If in my mind he could demonstrate some
12 purpose that would be served by litigation, that is one thing.
13 But I am not sure at least in my mind you set out what would you
14 accomplish by the litigation. They have told you the best they
15 can do. There is no minimum federal requirement in which you
16 have to get them out.

17 MR. LOVE: I understand that. My concerns are two-fold
18 in that the inmate population will be exposed for a longer
19 period of time than the general public and the various other
20 populations and then there is a possible equal protection
21 argument that could be raised with regard to the timeframes
22 that the various people are being evacuated in. If there is a
23 significant difference between the timeframes for one group as
24 opposed to another group, then there could be an equal
25 protection argument.

1 MR. HASSELL: I don't think that is a rational basis
2 and in any event, they also have KI. I have no further
3 response.

4 JUDGE HOYT: Ms. Ferkin, would you care to respond?

5 MS. FERKIN: I believe Mr. Hassell just in his last
6 statement mentioned the two points that I was going to mention
7 in my response. The prisoners unlike the general public are
8 being provided in appropriate circumstances KI, potassium iodide
9 which is a protective drug, and the general public is not
10 provided only in an extreme circumstance and only on the
11 recommendation of the Department of Health.

12 Secondly, I would echo Mr. Hassell's statement that
13 the guidance that this Board is under, NUREG-0654, does not
14 specify an evacuation time per se for either the general public
15 or any special institutions within the plume EPZ.

16 JUDGE HOYT: I think the same argument, Mr. Love,
17 could be made by any other special interest group such as the
18 various hospitals and facilities where it requires additional
19 care in the evacuation. So I don't think that that is truly a
20 legitimate argument. I think you have gotten the two points of
21 view from both the staff and PEMA and to try to litigate that,
22 I don't know what there is to litigate really.

23 So you could present a witness who would say that the
24 evacuation would occur in "x" number of hours, something less
25 than what is in Mr. Otto's letter and that would simply be

1 responded to by their experts from the Department of Correction
2 and the Board would be right back where it is now.

3 MR. PATTEN: Your Honor, in fact because of the nature
4 of Graterford there are preparatory actions taken at that
5 institution at the Department of Correction that precede actions
6 taken for the general public simply because of the nature of
7 having to mobilize resources and provide them to the Department
8 of Correction.

9 In fact, there is a higher level of assurance that
10 the inmates will have assets available to them before the same
11 kind of actions are taken for the general public.

12 JUDGE HOYT: I think that certainly has been
13 abundantly demonstrated in these two conferences, Mr. Love.
14 I think Mr. Patten is quite correct in what he is saying. Again,
15 what do you have left to litigate? You are going to get the
16 FEMA plan. Let's not talk about that.

17 MR. LOVE: We can rehash the various other issues
18 that I have brought up today regarding the hospitals, regarding
19 the bus drivers that I am not satisfied with the answers that
20 were given today. I know you are, but I am not. This is
21 additionally the panic factor.

22 JUDGE HOYT: Have you had an opportunity to consult
23 with your expert, Mr. Love? Would you like to take a couple of
24 minutes and let him go through some of these with you as an
25 expert in prison matters, I think Major Case may have some more

1 sharply focused indications to you.

2 MR. LOVE: He has informed me that there is nothing
3 wrong with the ETE problem however the issues that I have raised
4 with regard to the hospital, the guard union input.

5 JUDGE HOYT: Recap for us, Mr. Love, what those issues
6 are on the hospital.

7 MR. LOVE: With regard to the issue of the hospital,
8 I still have no reasonable assurance that there will be a
9 hospital fully equipped to treat the radiological injuries that
10 could be suffered such as trauma, contamination and radiation
11 injuries. That is one issue. I don't consider the answers to
12 be satisfactory.

13 JUDGE HOYT: Mr. Otto indicated that he wanted to add
14 something at this point.

15 MR. OTTO: I just wanted to make sure that our
16 position is clear for the record and perhaps would take care of
17 some Mr. Love's concerns, the hospital resources that we are
18 going to use in the operation of this plan are the same
19 hospitals that we use during our ongoing operation.

20 The recent D.C. Circuit decision required these to be
21 identified. We already have an ongoing relationship with them
22 obviously much more than just mere identification.

23 Furthermore, there was some question as to whether or
24 not these hospitals would be able to handle radiologically
25 contaminated wounds or trauma wounded individuals. Exhibit "F"

1 to our response to the request for information deals specifically
2 with the radioactively contaminated individuals as well as
3 attaching as exhibit "G" the JCHA standards that these hospitals
4 meet. I don't quite frankly know anything else we could do.

5 MR. CASE: May I ask a question?

6 JUDGE HOYT: Yes, Major Case.

7 MR. CASE: For the record on the hospital issue, I
8 would like to make this statement and see if I am correct. If
9 an inmate has to go to one of these designated hospitals, if the
10 hospital found that it were not able to provide the treatment
11 needed, would they not then transfer that inmate at the hospital's
12 order to any other place where that treatment could be provided
13 as they do now routinely with all other kinds of trauma that
14 gets inmates into the hospitals.

15 MR. OTTO: Right.

16 MR. CASE: In other words, you would go from wherever
17 your hospital is to the University of Penn or wherever to get
18 the treatment that is needed if that is what the doctor and
19 the hospital says, right.

20 MR. JEFFES: Right. It should be obvious to Mr. Love
21 being from Montgomery County that the inmates out of Graterford
22 right now are in a variety of outside hospitals depending upon
23 where that type of care is most needed.

24 It is obvious that if a hospital in the immediate
25 area cannot provide the type of treatment necessary, we are

1 going to have to move him. We do that all the time.

2 MR. OTTO: Just to make perfectly clear, what I was
3 representing in this response, at each support institution to
4 which these inmates would be transferred we have identified
5 a hospital. Frankly, it is the one we have a contract with
6 right now. From each of those hospitals, for each of the
7 institutions where these inmates would be going, each hospital
8 has signed a document identical to exhibit "F," each hospital.
9 So for every support institution, we have a hospital for that
10 institution one of these as well as the joint JCAH standards as
11 well.

12 Obviously if we need more resources, we can get them
13 but in terms of reasonable assurance we have more than most, I
14 think in this area.

15 MS. FERKIN: Mr. Love, if your concern is with the
16 ability of a JCAH accredited hospital to treat radiologically
17 contaminated injured individuals, I believe this Board's ruling
18 in its second partial initial decision takes care of that
19 concern.

20 MR. LOVE: I understand that. I may be wrong and this
21 is one of the reasons I have to do a little more research on
22 this that this issue is still pending perhaps in appeal.

23 MR. RUTBERG: I would like to address that for a
24 second. I think Mr. Love is correct. It is pending on appeal
25 but the issue that is pending is not that there are

1 not only two hospitals out of the 21 hospitals in the area that
2 are capable of dealing with the problem but only two hospitals
3 have agreements. I think the testimony is that all of the
4 hospitals are probably capable of dealing with this problem
5 and the difference that has developed before the Licensing Board
6 was that maybe there should be another agreement.

7 In this case we have before us many more additional
8 agreements which would reflect that this goes above and beyond
9 what the Licensing Board had found earlier was acceptable.

10 JUDGE HOYT: I think there the inmates are in a little
11 bit better position than the general public was in the previous
12 case because for each of these institutions that service the
13 inmates of Graterford, you have this agreement and you have
14 additionally the statement of exhibit "G" here which is the
15 ability.

16 MR. LOVE: I go back to Mr. Linnemann's testimony
17 that despite the fact that 19 hospitals in the area have
18 received that particular accreditation only two of those
19 hospitals are equipped to deal with radiological emergencies.

20 JUDGE HOYT: All right. Let's step away from what he
21 said in regard to the general public. Forget about whether it
22 is correct or incorrect. In this case, Mr. Love, if I understand
23 Mr. Otto correctly all of the institutions servicing the
24 prisoners at Graterford have this addenda attached to their
25 statement or contract of agreement. Is that correct, Mr. Otto?

1 MR. OTTO: Yes, Judge Hoyt. Each institution --

2 MR. LOVE: Are you referring to the standards or to
3 the letter?

4 MR. OTTO: I am saying that each hospital at each
5 institution has executed a document like exhibit "F." It is the
6 same document.

7 MR. LOVE: I understand that.

8 MR. OTTO: What that document reflects is that those
9 hospitals meet the standards under exhibit "G" for treatment
10 of people with radiological injuries which is indicated on the
11 second page of that exhibit "G" at line 45 where they start
12 going through that type of thing.

13 MR. LOVE: It is my understanding that that particular
14 accreditation standard is more or less for the hospitals
15 dealing with their own radiological equipment and any potential
16 hazards and dangers that may flow from the use of radioactivity
17 in X-rays and various treatments of cancer or whatever and
18 that these particular --

19 JUDGE COLE: That is just not the case.

20 MR. LOVE: That is what I gleamed from Dr. Linnemann's
21 testimony that there had to be some additional equipment
22 in order to deal with the radioactive injuries contemplated
23 by the emergency planning regulations and that these hospitals
24 don't have it.

25 JUDGE HOYT: That is what Dr. Cole has just told you

1 is not the case. This exhibit "G" apparently is the policies
2 and the procedures that will be guided for treatment of
3 patients in an emergency of individuals who have actual or
4 expected exposure to radiation or who are radioactively
5 contaminated. This is found on the bottom of the third page or
6 rather the second page of that document in the last paragraph
7 there, line 43.

8 MR. LOVE: On transcript page 9812 through 9821 it is
9 my understanding that Dr. Linnemann said at the time of his
10 testimony which I believe was in July of 1984 that Pottstown
11 was not fully equipped despite receiving accreditation from
12 the JCAH but has since been equipped, has been equipped since
13 his testimony.

14 That leads me to conclude that the accreditation is
15 not satisfactory to achieve the requirements of the emergency
16 planning regulations.

17 JUDGE HOYT: Mr. Love, if the accreditation is not
18 going to suffice, then what is? The Board has to look to some
19 standard and this is the only standard that the Board has looked
20 at.

21 MR. LOVE: That is why I assumed Dr. Linnemann testi-
22 fied to clarify the issue and to tell the Board what hospitals
23 were equipped and he did.

24 JUDGE HOYT: Let me share with you some of the thinking
25 that you would have to go through in making that decision. You

1 would have to be willing to accept one witness' testimony as
2 opposed to the overwhelming weight of the evidence represented
3 by a body like a hospital accreditation board and I don't think
4 that most boards --

5 MR. LOVE: I am not saying that the accreditation
6 board is wrong.

7 JUDGE HOYT: No, and I don't think Dr. Linnemann is
8 necessarily correct either but where you have conflicting
9 testimony and a Board has to weigh it, we are always -- any
10 judge is going to have to look to the best authority available
11 and in that case where you are going to have the competing
12 forces, I don't think it takes a genius to figure out which
13 way the Board is going to have to go on that.

14 MR. LOVE: I don't think it takes a genius either
15 but I am not going to waive that issue.

16 JUDGE HOYT: First of all, your contentions have not
17 been admitted yet, Mr. Love. Let's don't put the horse way
18 ahead of that cart.

19 MR. LOVE: I am not going to waive the right to at
20 least attempt to file such a complaint.

21 JUDGE HOYT: Is there anything else we can work out
22 here this afternoon?

23 MR. JEFFES: In response to the previous question, I
24 have the answers for that.

25 JUDGE HOYT: All right, sir.

1 MR. JEFFES: We have five dedicated phone lines at
2 Graterford, three in the institution proper plus the private
3 line of the superintendent and the State Police so that makes a
4 total of five. In our call-up system, we involve a total of
5 41 supervisors because it is a 24-hour operation basically
6 one-third of our staff is off at all times. In the call-up
7 system of the 41 staff just doing a random sample, for example,
8 six of those would be in the Philadelphia area, six in
9 the Norristown area and there are 22 in the Pottstown area
10 and there are seven who are from outside of the area period,
11 a greater distance. Most live within a hour to 45 minutes
12 from the institution.

13 JUDGE HOYT: I don't want to cut you off, Mr. Love,
14 do you have anything else you wanted to share with us on the
15 concerns.

16 MR. LOVE: No, I really don't. I think I have voiced
17 my concerns.

18 JUDGE HOYT: All right. Where I believe the Board
19 is at this time is we have two items before us. One of course
20 is the motion for an exemption filed by the applicant. We have
21 responses in that. In light of our present situation in this
22 case, the Board will entertain any updates that the staff or
23 PEMA may wish to make amendments to their previous filing.

24 MR. RADER: Your Honor, in that regard the applicant
25 would request permission to file a reply brief to answer some

1 of the questions which I think you might have been anticipating.

2 JUDGE HOYT: That is the next thing I was going to say.
3 We think you should have that opportunity as well.

4 MR. RADER: Thank you.

5 JUDGE HOYT: That will answer that. We would like
6 those within ten days from today. We will take it on Monday,
7 April 1, 1985.

8 MR. RADER: That is in-hand receipt by the Board on
9 that date.

10 JUDGE HOYT: In-hand receipt prior to five o'clock
11 and Ms. Kerr, my secretary, departs, fourth floor, knock on the
12 door and you will be admitted.

13 MS. FERKIN: Your Honor, can we clarify the filing
14 that we are asking for right now. I am not sure I understand.

15 JUDGE HOYT: What we have before us now, the first
16 thing I mentioned was the motion for an exemption under 50.47
17 by the applicant. In view of the fact that those filings made
18 by you, by staff and that is all, I believe, well we had other
19 submissions from Mr. Romano and Mr. Anthony, I think had filed
20 a pleading on it and what we would like to have you do if you
21 wish, there is nothing compulsory about it, but if you wish to
22 make an additional or take additional positions or update that
23 response to the applicant's motion for an exemption in the
24 50.47 we would entertain such additions.

25 The second thing is that Mr. Rader has asked if he

1 could get a response to some of the positions previously taken
2 by the staff and by PEMA or the Commonwealth of Pennsylvania,
3 and we had indicated yes, we did want that because there was
4 some responses to your previous filing that may be of interest
5 to you. Certainly it isn't anything that we say here and just
6 the opposite, we would be pleased if the parties for the
7 applicant, the staff and PEMA work together in perhaps present-
8 ing one paper if you wished to do that way. We would not
9 necessarily encourage or discourage either way in which you
10 wanted to work with the pleading. If there is such a unified
11 position, then that would be helpful for the Board to have as
12 well. That is the first thing.

13 The next thing is that the Board will now take the
14 pleadings that have been filed by you, Mr. Love, I believe
15 on February 15, 1985 and are the contentions of the inmates at
16 Graterford and we will rule upon those contentions.

17 We will have no additional conferences on the
18 contentions and indeed we will have no additional discovery.

19 MR. LOVE: Will I have the right to modify those
20 contentions in light of the second plan?

21 JUDGE HOYT: No, sir. We are going to rule on the
22 contentions as they were issued.

23 MR. LOVE: The contentions that I filed on the basis
24 of the first plan.

25 JUDGE HOYT: You filed them and we are considering the

1 matters that were brought forth in the discussions which are now
2 somewhat classified under plan two heading as to be that
3 discovery which you would have been entitled to under the
4 previous filing.

5 MR. LOVE: Then I might reconsider my motion to
6 withdraw the prior litigation.

7 JUDGE HOYT: I don't think that you have withdrawn
8 any prior litigation.

9 MR. LOVE: Fine. Then I take back my statement that
10 I am dropping my motion for further disclosure.

11 JUDGE HOYT: If you wish to make the motion now, I will
12 give you a ruling now.

13 MR. LOVE: I know the ruling. I don't even have to
14 ask.

15 JUDGE HOYT: I think you do. I honestly can't think
16 of anything that has not been given to you that you have asked
17 for and if you want to go home and think up some more, please
18 file them under some additional motion for discovery if you wish.
19 But you have asked for everything and everything has been given
20 to you that you have asked for.

21 MR. LOVE: I appreciate that and that is not the
22 reason I am doing that.

23 JUDGE HOYT: I am not too certain, Mr. Love, but at
24 any rate the effort has been made and I feel that I have
25 discharged the duty that the appeal board placed on me.

1 MR. LOVE: I think you have just created an additional
2 litigation but that is my opinion.

3 JUDGE HOYT: Fine, Mr. Love. I guess we all have to
4 call them as we see them.

5 MR. LOVE: Right.

6 JUDGE HOYT: Very well. That will be our two
7 rulings. We will hold off on making any rulings on the
8 contentions until we have disposed of the motion for an
9 exemption and then we will make our rulings.

10 If there is anything else we can do while we are
11 here, if there are any points that have been left out that you
12 gentlemen can think of, feel free to bring them out.

13 MR. RADER: Your Honor, Mr. Love did indicate
14 certain of his concerns but I take it from what was not mentioned
15 that many of his concerns in the contentions as originally
16 pleaded have been satisfied. I take it that Mr. Love is willing
17 or has at least implicitly indicated that he is willing to drop
18 some of the contentions as originally framed.

19 I wonder if it would be helpful if we could go through
20 those contentions and Mr. Love could indicate which contentions
21 he is dropping.

22 JUDGE HOYT: Do you want to try it, Mr. Love?

23 MR. LOVE: I will tell you where I am satisfied. I
24 am perfectly willing to do that.

25 JUDGE HOYT: All right. Let's give everybody a chance

1 to get those contentions out. Those were the contentions that
2 were filed on February 15 and those contentions are the three
3 on page three. There is no reasonable assurance that the
4 evacuation plan will protect the staff and inmates at the
5 State Correctional Institution at Graterford.

6 I guess that each one of these contentions are
7 supported in some fashion in whole or in part by the lettered
8 specific basis for contentions number three.

9 MR. LOVE: Three.

10 JUDGE HOYT: It is difficult sometimes to relate to
11 a specific basis to any one of the contentions. It seems like
12 they are almost --

13 MR. LOVE: If I might, I would be happy to go through
14 this very quickly.

15 JUDGE HOYT: Sure.

16 MR. LOVE: The specific bases for the contentions
17 with regard to transportation, we are satisfied that there
18 will be sufficient number of buses and ambulances, however the
19 driver issue is still up in the air.

20 JUDGE HOYT: Mr. Love, are you leaving in tact all
21 three of the contentions as stated here?

22 MR. LOVE: Yes. Wait one second. The third one we
23 will drop.

24 JUDGE HOYT: Is that "C," there is no reasonable
25 assurance that the evacuation plan will provide for a safe and

1 secure return.

2 MR. LOVE: Right.

3 JUDGE HOYT: All right.

4 MR. LOVE: There was no mention in their original
5 plan about their safe return and we are happy to see that
6 was included and that was the basis for "C." Do you want me
7 to go on to the specific basis for the contentions?

8 JUDGE HOYT: Sure. On the transportation, you said
9 that you were satisfied with the buses?

10 MR. LOVE: We are satisfied with the number of buses,
11 vans and ambulances however the driver issue is still up in the
12 air.

13 With regard to number two, I believe we are satisfied
14 as to the assurance with regard to ambulances. We are
15 satisfied.

16 JUDGE COLE: Mr. Cole, you say the driver issue is up
17 in the air. Is that with respect to driver training as you
18 mentioned before?

19 MR. LOVE: Driver training and the possibility that
20 they be considered emergency workers.

21 JUDGE HOYT: I thought that had been resolved, Mr. Love.

22 MR. LOVE: We discussed it but we didn't come to any
23 conclusion that I was satisfied with.

24 MR. OTTO: They are treated as emergency workers.

25 JUDGE COLE: They are reconsidered to be emergency

1 workers.

2 MR. LOVE: Then I am fine. I will drop that right
3 there. Then it is simply the training issue.

4 MR. OTTO: Maybe we are missing something. What
5 specifically about the training?

6 MR. LOVE: Civilian training, the potential that
7 the civilian bus drivers receive some type of training.

8 MR. RADER: If I may, Your Honor, it appears that
9 Mr. Love is now attempting to orally amend his previous written
10 submission and I totally object to that.

11 MR. LOVE: I am trying to go through this, you asked
12 me what is still left and that is what I am trying to tell you.

13 MR. RADER: I believe the Board's inquiry was what
14 was left of the written submission.

15 JUDGE HOYT: Exactly.

16 MR. LOVE: Well, when I see the word "drivers" in
17 there, that comes to mind, the training issue.

18 MR. RADER: It says a sufficient number of drivers.
19 It doesn't say adequate arrangements from their training,
20 Your Honor.

21 JUDGE HOYT: Where are you reading?

22 MR. RADER: The first line of paragraph roman III-A-1,
23 there is no reasonable assurance that PEMA has made arrangements
24 to provide the sufficient number of drivers. It says nothing
25 about training.

1 MR. LOVE: Mr. Rader is right in that as far as that
2 specific statement is worded at that point in time he is right.

3 JUDGE HOYT: That is what you are being held to,
4 Mr. Love. That is what we are telling you.

5 MR. LOVE: That is really not what I intend to take
6 up on appeal.

7 JUDGE HOYT: Mr. Love, what you take up on appeal
8 is a matter, of course, that is within your province. What I
9 have indicated to you here is what we need to know that is left
10 in this submission, this pleading that you have here, that we
11 can rule upon.

12 MR. LOVE: Fine. Then take Mr. Rader's word for it
13 then and move on.

14 JUDGE HOYT: Mr. Love, that is an unfair statement.
15 I think people here have given you a much fuller advantage of
16 their time and effort than to be worthy of that type of comment.

17 MR. LOVE: I am trying to reconcile that what has
18 happened, the information and make this a little bit more
19 meaningful discussion. However, if you want to stick with this
20 document in that timeframe --

21 JUDGE HOYT: That is exactly what we are sticking with.
22 We are sticking with this document.

23 MR. LOVE: Fine. Then we will drop that one.

24 JUDGE HOYT: All right. So driver training has no
25 bearing and the number of drivers, are you reiterating that you

1 are again bringing up the number of drivers?

2 MR. LOVE: No.

3 JUDGE HARBOUR: He is satisfied with the number of
4 drivers.

5 JUDGE HOYT: You are satisfied with the number of
6 drivers.

7 MR. LOVE: Right. I am satisfied with the number of
8 ambulances. With regard to manpower, as to the amount of
9 manpower we are satisfied with that.

10 JUDGE HOYT: Is that "B" "1" "A".

11 MR. LOVE: Yes.

12 MR. RADER: May we take these in order? Were you done
13 with B-1-A. You are satisfied with that?

14 MR. LOVE: Yes.

15 JUDGE HOYT: That is out as a basis.

16 MR. LOVE: And "B".

17 JUDGE HOYT: All right. Then the next one is
18 security equipment.

19 MR. LOVE: Yes, we are satisfied. Obviously, we will
20 be happy when it is in place and we don't think that a license
21 should issue until it is and that goes the same with the
22 communications and the radiological equipment.

23 MR. HIPPERT: The communications equipment is on hand.

24 JUDGE HOYT: Does that eliminate number "3" then,
25 Mr. Love?

1 MR. LOVE: Yes.

2 JUDGE HOYT: All right. That is communications
3 equipment. You are satisfied with that.

4 MR. LOVE: Right. Number "4" the same thing, we are
5 satisfied with it when it is in place.

6 MS. FERKIN: Mr. Love, you have representations from
7 the Commonwealth regarding the provision of dosimetry and KI.
8 Does that satisfy your contention?

9 MR. LOVE: Yes, but there is additional matters that
10 haven't been ordered. I don't even know if they are, TLD's or
11 whatever.

12 MR. HIPPERT: For TLD's, the contract has been
13 sent to the vendors. The contract is being reviewed by the
14 vendors, signed by the vendors and sent back to the Commonwealth.

15 JUDGE COLE: Do you accept that representation as
16 meeting your requirement?

17 MR. LOVE: Yes.

18 JUDGE HOYT: All right. That knocks out then "4,"
19 radiological equipment and notification to the public.

20 MR. LOVE: I am satisfied.

21 JUDGE HOYT: Of "C?"

22 MR. LOVE: Right.

23 JUDGE HOYT: Medical services?

24 MR. LOVE: No. That is the hospital issue.

25 JUDGE HOYT: All right.

1 MR. LOVE: I am satisfied with the monitoring, "D" and
2 "E" I just want to see the plan.

3 JUDGE HOYT: The FEMA report under monitoring.

4 JUDGE HARBOUR: Under "F."

5 JUDGE HOYT: Wait a minute. I had not gotten "E"
6 yet. That had been previously settled. That is "F" then. Are
7 you satisfied on that one?

8 MR. LOVE: With receipt of the plan and I assume there
9 will be no problem with it, however, I would reserve the right
10 obviously if there is a problem with the plan and I get it, I
11 would reserve the right to raise that again.

12 MS. FERKIN: Do you mean by plan, Mr. Love, do you
13 mean the report of FEMA on the tabletop exercises?

14 MR. LOVE: Correct.

15 MS. FERKIN: You understand, Mr. Love, that disclosure
16 of the FEMA Report in its entirety is subject to the Department
17 of Correction review.

18 MR. LOVE: Correct.

19 MR. OTTO: If I might make this representation, we will
20 excise to the same degree that we have in this plan two so we
21 don't have any question of the standard of excision or
22 anything.

23 MR. HASSELL: If I could just narrow it down a little
24 further, when you say any problem, are you saying regardless of
25 the degree? I would assume and correct me if I am wrong in my

1 assumption that the area of concern that you would have is if
2 there is a concern that might preclude FEMA from finding, let's
3 say, reasonable assurance under category "A." I am not trying
4 to thrust that on you, but you are saying "any concerns" and
5 as you know after seeing some of these evaluation reports,
6 there can be a lot of things and there is an ordering of
7 priority of the importance of them. Are you just saying
8 anything at all or significant matters?

9 MR. LOVE: Any significant matters.

10 MR. HASSELL: I understand you haven't seen it.

11 MR. LOVE: I am just assuming that if you say that
12 this exercise was no good, then I would be concerned and if you
13 say that it is fine, then that would end my concern. I assume
14 that you have a lot more expertise in this than I do.

15 JUDGE HOYT: Those reports do point out deficiencies,
16 Mr. Love, and the purpose for that is so that those deficiencies
17 can be corrected. So if you see a deficiency noted in there,
18 that is not necessarily a sufficient concern. Are you agreeing
19 with me as to what I am indicating to you?

20 MR. LOVE: Yes, I understand what you are saying, yes.

21 JUDGE HOYT: Very well. On the training.

22 MR. LOVE: On the training, I would once again go back
23 to the bus driver training and the potential for civilian bus
24 driver training.

25 MR. PATTEN: Your Honor, while we are on the subject

1 of training because it impacts on actions that we will have to
2 take subsequently if that is deemed necessary, exactly what are
3 you talking about by way of training, Mr. Love? Are we talking
4 about driver training or are we talking about emergency response
5 training? We need some specificity as to what you are referring
6 to.

7 MR. LOVE: Emergency response training. From what I
8 read in the testimony regarding this issue, there was some type
9 of radiological preparedness training going to be offered to
10 civilian drivers if they are interested in it. Mr. Tauss said
11 that they wouldn't oppose it and their members could go ahead
12 and have it if they wanted to.

13 JUDGE HOYT: That is the training that is provided
14 by the Applicant's consultants, Energy Consultants.

15 MR. LOVE: Yes.

16 MR. PATTEN: I might offer, Your Honor, that we have
17 already conducted training for the Department of Correction in
18 radiological response training. They have had a number of
19 representatives from their department that have participated in
20 the training with us. That training has been completed.

21 Department representatives would be on the buses.
22 I am not really sure what we are talking about in the requirement
23 for training for drivers and that is what I am trying to get at
24 because it dictates what we have to do.

25 JUDGE HOYT: If I understand Mr. Patten correctly,

1 Mr. Love, he is saying that the Department of Correction people
2 have already had more training than that training that actually
3 would have been provided had Energy Consultants been performing
4 it.

5 MR. LOVE: I still see it potentially beneficial to
6 offer to civilian drivers the same training.

7 MR. OTTO: If I might make this one statement, in the
8 situations where the civilian bus drivers are driving the
9 buses to Graterford, there will be Department of Corrections
10 employees who have been trained in the radiological procedures
11 from the trainers that we have had trained by PEMA and there
12 will be sufficient equipment. If the bus driver wants a
13 dosimeter or whatever, that equipment will be available. I
14 don't know if that satisfies the concerns about the civilian
15 bus drivers getting actual training themselves.

16 JUDGE HOYT: Those civilian bus drivers as I understand
17 it, Mr. Otto, are always accompanied by a Department of
18 Corrections personnel aboard those buses who have had some of
19 this training. Is that the idea?

20 MR. OTTO: That is correct. Obviously we have to
21 send someone with the buses to maintain order of the inmates.

22 JUDGE HOYT: That seemed logical to me, too.

23 MR. PATTEN: The other point being made, Your Honor,
24 in offering the training, how we close the loop on that? That
25 is something else that I would need to know. If we offer

1 training and no one accepts it, then what is our obligation and
2 how do we close the loop with you that in fact it has been
3 offered. I am just trying to lay out then what our course of
4 action is and how we meet those requirements?

5 JUDGE HOYT: Did you hear the conversation I had with
6 Mr. Otto, Mr. Love?

7 MR. LOVE: Yes, I do.

8 JUDGE HOYT: Those people aboard that bus will have
9 had training.

10 MR. LOVE: Well, to address his question first,
11 perhaps the companies that have been contracted for could write
12 a letter to the various employees saying that this is a
13 possibility and if you feel that you would like to have more
14 knowledge about this issue, this training session is available.
15 That would satisfy me. I think if in fact this were offered
16 there would be a greater chance that these civilian drivers
17 would take part in the evacuation when it was ordered.

18 If they have no idea what it is about and they get a
19 phone call saying, "Okay, after hearing stuff on the radio that
20 there is an accident at Limerick," they are told, "Go drive to
21 Limerick and pick up some inmates and drive back." I think if
22 they had training or had been offered training that there is a
23 greater chance they would be involved.

24 JUDGE HOYT: I wish you had been with us during the
25 days that we were hearing a great deal of that kind of testimony,

1 Mr. Love. I think you would have a little different point of
2 view.

3 MR. OTTO: Mr. Love, I understand your concern is to
4 make sure that the inmates are evacuated from the institution
5 at Graterford. If these civilian bus drivers don't show up
6 because they don't have training or because they don't feel
7 like it or because for whatever reasons, the Department has in
8 place right now more than a sufficient number of bus drivers
9 to drive those buses.

10 I just don't understand. You put forth that the
11 bus drivers might be more likely to show up if they had training.
12 Quite frankly, they are not necessary.

13 MR. LOVE: It is my belief that this might help.
14 That is all. It is just that simple.

15 MR. OTTO: We have enough individuals right now, more
16 than enough, to pull off the evacuation.

17 MR. HIPPERT: Those drivers have training, don't they?

18 MR. OTTO: The bus drivers --

19 MR. HIPPERT: The staff drivers have training. They
20 have been trained.

21 MR. OTTO: They will be trained if they have not been
22 as well as the individuals riding the buses whether it is a
23 civilian bus driver or a department bus driver.

24 JUDGE HOYT: Above and beyond everything else, Mr. Love,
25 that was said here is also the fact that all of these bus

1 companies in this area that are going to be involved in the
2 evacuation of either the Graterford inmates or the civilian
3 population, all of these bus companies have come under the
4 perview of the Energy Consultants who have given these
5 training sessions.

6 The record in this case is repleat with information
7 about how many of those sessions were held, where they were
8 held, who attended and how much was done. I think Mr. Rader
9 could give us endless volumes of that probably off the top of
10 his head. I would say that it would be almost impossible to
11 find a civilian bus company that would service any contract
12 within the EPZ that hasn't had some sort of training.

13 MR. OTTO: With all due respect, Your Honor, our bus
14 companies all are coming outside the EPZ.

15 JUDGE HOYT: All right. I will back off from that.

16 MR. OTTO: I am sorry, no offense.

17 JUDGE HOYT: No. I am sorry.

18 MR. LOVE: I am glad that the Board recognizes the
19 benefit of the training and that is why I think it could be
20 extended to these people. That is my point.

21 MR. OTTO: May I ask one question? Mr. Love, if we had
22 a civilian bus driver who had not received the training and
23 agreed to drive a bus, would we be excluded from using that
24 bud driver?

25 MR. LOVE: No. You can't force these people to be

1 trained. I just think it is out there. The training is
2 available and it might be -- it seems to me a good idea to make
3 it available to these individuals just as it was made available
4 to the SEPTA drivers and various other people.

5 JUDGE HOYT: There is always going to be somebody
6 aboard that bus, Mr. Love, who has had that training.

7 MR. LOVE: Not necessarily on the way there.

8 MR. OTTO: Yes. They are bringing in staff with them
9 on the buses.

10 MS. FERKIN: Mr. Love, would it satisfy your concern
11 if a letter from the Commonwealth through PEMA was sent to the
12 civilian bus companies which have been recruited by the
13 Department of Corrections to provide services in the event of an
14 evacuation of Graterford offering the same level of training?

15 MR. LOVE: Yes. That is all I am asking.

16 JUDGE HOYT: All right. Will you see that that is
17 done, Ms. Ferkin, and would you serve copies of it with the
18 appropriate excised portions of the identification of the
19 company to us, whether it is you or the Department of Correction.

20 MR. OTTO: Up to this point representation that they
21 have been sent and examples of the documents that were sent
22 were sufficient. Would that still be sufficient? That is what
23 we provided in our response.

24 JUDGE HOYT: Yes, this type of thing that you provided
25 earlier.

1 MR. LOVE: Sure, that would be fine. That is my
2 only concern on that one. Shall we move on to "H?"

3 MS. FERKIN: We can do that, Mr. Love.

4 MR. LOVE: Fine. "H," I have no problem with, "I,"
5 I have no problem with, "J," I would just reiterate what I
6 previously said with regard to panic, the estimated time of
7 evacuation and I still think there should be some input from the
8 guards union.

9 JUDGE HOYT: I will give you a quick ruling on that,
10 Mr. Love. Never.

11 MR. LOVE: That is why there are appellate courts.

12 JUDGE HOYT: That's right.

13 MS. FERKIN: Mr. Love, do you have a basis for your
14 concern that the guards may have some shall we say reluctance to
15 participate?

16 MR. LOVE: The inmates certainly do.

17 MS. FERKIN: Do you have a basis from the guards.

18 MR. LOVE: What they have told me and they have told
19 me in conversations and of course it is hearsay, that the guards
20 have told them that they are leaving the minute anything happens
21 and they don't care. What can I say? I represent these people.

22 JUDGE HOYT: We are not going to expand though the
23 scope of coverage. You are representing the inmates only,
24 Mr. Love.

25 MR. HASSELL: Might I suggest that with respect to

1 the what I would characterize as the residual concerns of
2 Mr. Love that have not been accommodated by the two in-camera
3 sessions, that those residual concerns, it would be in the
4 staff's view helpful if those residual concerns were put in
5 writing with the understanding that they would not go outside
6 of the scope of what has already occurred in the two in-camera
7 sessions.

8 JUDGE HOYT: This record constitutes that, Mr. Hassell.

9 MR. HASSELL: Once that is done, the parties be given
10 an opportunity to respond in writing to Mr. Love's statement
11 of these residual concerns.

12 MR. LOVE: I think that is a good idea.

13 JUDGE HOYT: Mr. Hassell, that has already been done
14 on this record. Those are his concerns and just to restate them
15 is just to open it up again.

16 MR. HASSELL: In any event, I am not so sure that the
17 staff has had the opportunity to respond in writing.

18 JUDGE HOYT: If you wish to respond in writing based
19 upon your analysis of the record, we would take that.

20 MR. HASSELL: Fine.

21 JUDGE HOYT: Do you wish to do the same, Ms. Ferkin?

22 MS. FERKIN: I am sorry. I was conferring with PEMA.

23 MR. LOVE: It doesn't make sense. My being locked
24 into the first review is insane. We just wasted a lot of time.

25 JUDGE HOYT: Mr. Hassell was representing that he

1 wanted Mr. Love to express again or I guess edit out what he
2 has now indicated he doesn't have any further interest in and
3 state affirmatively those things he does. I think this
4 record comprises that.

5 MS. FERKIN: In other words, to respecify his
6 contentions.

7 JUDGE HOYT: Right, to respecify the basis for his
8 contention. He has left in tact "A" and "B." Am I correct,
9 Mr. Love, that contentions "A" and "B" are left in tact and
10 the basis for the contentions are those portions of the bases
11 that he has not eliminated.

12 MR. LOVE: I think it is an excellent idea which will
13 save us a lot of work.

14 MR. OTTO: It may turn out if you review the hospital
15 regulations more fully, that you might drop that issue.

16 MR. LOVE: It might. It is conceivable. That is why
17 I don't like to be locked into these first contentions and
18 those first contentions only because I think we are missing a
19 few additional points.

20 JUDGE HOYT: That is the reason I don't want to go
21 through a respecification. We have this particular pleading.
22 This is the one we are going to rule on.

23 MR. LOVE: With regard to my final statement in that
24 contention as to the general concept of the evacuation, I think
25 that some of the concerns that I still have could be fit into

1 that particular contention.

2 JUDGE HOYT: Mr. Love, you are locked into what you
3 have here.

4 MR. LOVE: I think I can express it --

5 JUDGE HOYT: If we go through this exercise again
6 we will simply have another set of bases.

7 MR. LOVE: If you let me --

8 MR. RADER: Your Honor, the applicant entirely
9 endorses the Board's approach and we feel that we have already
10 spent two and three hours going over these contentions in two
11 different sessions --...

12 JUDGE HOYT: And this record constitutes the position
13 that you have taken, Mr. Love, on all those points. A
14 respecification of it would not I think do anything more than
15 provide another opportunity to as you have already admitted
16 here respecify these in the light of what you have now seen.

17 MR. LOVE: I would not go beyond the scope of the
18 transcript. However, I would just clarify what I have left.

19 JUDGE HOYT: We will take a response if you want to
20 file one, Mr. Rader, and one from the staff and one from PEMA
21 but respecification would serve no useful purpose at this point
22 in time.

23 MR. LOVE: I just want to add, Your Honor, why did I
24 even see the second plan if you won't allow me to modify my
25 contentions.

1 JUDGE HOYT: Mr. Love, you saw the second plan because
2 you wanted to see the second plan and it was done in the spirit
3 of the discovery under which you had already filed a motion.

4 MR. LOVE: After you complete discovery, aren't you
5 allowed to modify your original statement? Isn't the purpose
6 of discovery?

7 JUDGE HOYT: Not always.

8 MR. LOVE: Any court that I have been in has been
9 except for this one.

10 JUDGE HOYT: That is not going to get you any
11 favorable ruling, Mr. Love.

12 MR. LOVE: I don't anticipate that it will.

13 JUDGE HOYT: The point of it is we had issued --

14 MR. LOVE: I had --

15 JUDGE HOYT: Do you want to talk or do you want to
16 talk over, Mr. Love?

17 MR. LOVE: I am sorry. Go ahead. Excuse me.

18 JUDGE HOYT: You had asked for this conference on the
19 basis of your motion for discovery. We had given you the
20 complete discovery that you asked for. We have gone through two
21 sessions.

22 MR. LOVE: I only asked to update my information.

23 JUDGE HOYT: After having received the information
24 you wanted under discovery, now you want to change the ball game.

25 MR. LOVE: I don't want to change the ball game. I

1 just want to use the information found to clarify the issues.

2 JUDGE HOYT: And you have, sir, here in this
3 proceeding.

4 MR. LOVE: Thank you.

5 MR. RADER: For the record I would like to make one
6 other point. Although Mr. Love has stated that his examination
7 of the second plan has resulted in his desire to respecify
8 certain matters, I don't think that has been shown. The only
9 thing that Mr. Love has brought out today outside the scope of
10 his original contentions relates to identification of hospitals
11 and something about the evacuation time estimates. I think that
12 was just as clear from the original plan, in fact without
13 even any plan being in existence as with regard to the second
14 plan.

15 I don't think the second plan told Mr. Love anything
16 more about those particular aspects or those matters than he
17 knew when he filed his contentions.

18 JUDGE HOYT: Well, Mr. Rader, I pretty much got the
19 idea because if the discovery was that complete, there wasn't
20 anything else left anyway.

21 MR. RADER: I agree and in that respect I think it
22 was clear on the record of the last session that the reason that
23 the second plan was disclosed to Mr. Love was not for the
24 purpose of specifying other contentions but rather to determine
25 whether or not his concerns had been satisfied as pleaded in the

1 initial set of contentions and Mr. Love was going to get back to
2 us and tell us which concerns still remained.

3 MR. LOVE: I had no choice but to file those initial
4 contentions. I objected to the filing of those contentions.

5 JUDGE HOYT: You had a choice, Mr. Love.

6 MR. LOVE: You rejected my stay.

7 JUDGE HOYT: You chose to file.

8 MR. LOVE: I wanted to have full disclosure and then
9 file my contentions which makes sense. Now that we have had
10 full disclosure or at least to my satisfaction, I think I
11 should have the opportunity to make the contentions based upon
12 the information that I have received and not guesswork which
13 was what the first contentions were based upon a virtually
14 intelligible document.

15 JUDGE HOYT: Mr. Love, if anything the disclosure has
16 been more of a enlightenment to you as a matter of interest
17 but the very same contentions that you so forcefully articulated
18 in our first conference have remained with us today and remain
19 with us after the disclosure. That, to me, is the disheartened
20 part of the process.

21 MR. LOVE: I am willing to drop one-half to two-thirds
22 that I originally raised.

23 JUDGE HOYT: Mr. Love, I don't think you would have
24 ever seriously contended much of what you had expressed in those
25 bases anyway and I think you have gotten as full and complete a

1 disclosure as you wanted and if you want to litigate this, we
2 will litigate but we will first find out what the parties want
3 to respond in this. Since you have had a full opportunity here
4 today to express your views we will give them an opportunity to
5 express theirs in writing if they wish.

6 MR. HASSELL: Is there a date certain for that?

7 JUDGE HOYT: We are already looking at April 1, 1985
8 for one pleading. I will entertain any suggestions from the
9 parties?

10 MR. RADER: I assume the parties have been working
11 on this to some extent and there are only a few contentions
12 left and I think the parties should be able to respond by next
13 Friday. I think a week is sufficient.

14 JUDGE HOYT: We ordered the transcript on a weekly
15 delivery rather than a next day delivery on the assumption
16 that we would need this transcript but I think we are.

17 Let's make it then April 5, 1985 which would be the
18 Friday. April 1, 1985 for the first pleading and then April 5
19 for the second one.

20 MR. RADER: Inasmuch as we have already had two
21 prehearing conferences on these contentions in whatever form
22 they were ultimately admitted if any, would the Board consider
23 setting a hearing date at this time for the contentions?

24 JUDGE HOYT: We certainly would.

25 MR. HASSELL: I guess I am not following what is

1 happening now in the sense as I understand it, you are talking
2 about establishing a hearing date for contentions that have
3 not yet been admitted.

4 I don't know to what extent what witnesses if any
5 possibly might have to be available or anything else.

6 JUDGE HOYT: I think what Mr. Rader is considering
7 or at least my understanding of it is that he wants to get some
8 idea of when we could go to hearing with these things if, in
9 fact, any contentions were to be admitted and I think that is
10 a fair thing. We are not going to take this as an absolute
11 time but I do think the parties are entitled to some timeframe.
12 If you don't want them, we don't have to go through the
13 exercise.

14 MR. HASSELL: It was not a question of not wanting
15 them, Judge Hoyt. I was just expressing my difficulty in
16 trying to rationalize any kind of a schedule without seeing
17 issues in controversy. That is all.

18 JUDGE HOYT: The issues in controversy, the maximum
19 would be those that are left in the contentions.

20 MR. HASSELL: I understand.

21 JUDGE HOYT: That would be any of the contentions
22 of the two that would be admitted, those would be the bases for
23 them and when would we go to hearing on those and to give you
24 a tentative date.

25 MR. HASSELL: All right.

1 JUDGE HOYT: Would that be helpful to you? If it
2 wouldn't, we don't have to go through the exercise.

3 MR. HASSELL: That would be helpful.

4 JUDGE HOYT: Very well. We would want an exchange of
5 witness list at least a week before the hearing. We have
6 commitments in the middle of May. I would say that if you
7 exchange witness lists on April 15th that we could go to hearing
8 on April 22. Those are tentative dates. These are not to be
9 considered firm or fixed schedule.

10 MS. FERKIN: Your Honor, for reasons -- I understand
11 that we all face competing obligations but would Your Honor
12 consider a hearing date of April 25th or 26th?

13 JUDGE HOYT: Surely.

14 JUDGE COLE: That is a Thursday and Friday.

15 MS. FERKIN: Yes. I am also assuming that we are not
16 going to be involved in extended protracted litigation if we
17 do make it to a hearing.

18 JUDGE HOYT: We are setting aside a day.

19 MS. FERKIN: I understood that to be your intention.
20 I certainly hope that we can abide by that.

21 JUDGE HOYT: The exchange of witness lists would then
22 be on the 15th of April. The hearing would be probably in
23 Bethesda on Thursday, April 25, 1985. We are going to get the
24 responses to the 8th. We would rule on the contentions some
25 time during the week of the 8th.

1 MR. HASSELL: Our responses if any are to be filed
2 on the 5th, is that correct?

3 JUDGE HOYT: Right. Exchange of witness lists and
4 exchange of prefiled testimony all on the same date. I would
5 take it that we could get all of our testimony prefiled.

6 MR. RADER: I would assume that given that we are
7 going to have one day, I think only one day will be necessary
8 but perhaps prefiled testimony would not be necessary given
9 the fact that I think at most we have two issues, the necessity
10 for bus driver training and medical services.

11 MR. OTTO: It is my understanding that the bus driver
12 training will be taken care of if we supply a letter.

13 JUDGE HOYT: Which would only leave us with the one
14 issue --

15 MR. RADER: That is essentially a legal issue, I think,
16 as Mr. Love expressed it. It is essentially a legal issue
17 as to whether or not the joint committee accreditation is
18 sufficient. The Board has already ruled it is so if there were
19 a hearing and I don't to presume the Board's ruling on the
20 admission of contentions, but if it were admitted, I don't see
21 what evidence would even be presented. I assume that Major Case
22 is not the medical expert. As I understand, his expertise is
23 security.

24 MS. FERKIN: Do you have any kind of idea as to what
25 kind of evidence you might present on the medical services

1 issue?

2 MR. LOVE: I would have to review that further and
3 go over Dr. Linnemann's testimony again and find out if, in fact,
4 that decision was appealed and whatever happened if it were
5 appealed. I don't know that right now.

6 MS. FERKIN: I guess I am asking what kind of expertise
7 would you be looking for in the way of testimony? I tend to
8 agree with Mr. Rader here.

9 MR. LOVE: It may well be a legal issue. I don't deny
10 that.

11 MS. FERKIN: If it is, I would agree with Mr. Rader
12 that there is no hearing time needed to be spent upon it.

13 MR. LOVE: That may well be the case.

14 JUDGE HOYT: Let me ask you this. We are so darn close
15 it seems to me it is a pity to sit here and talk about hearing
16 days and expert witnesses and testimony when there might be some
17 way. Mr. Love, is this truly your last concern?

18 MR. LOVE: Of course not. I have listed four or five
19 concerns here but you won't let me respecify them so I have to
20 fight through the courts to get the right to file new contentions.

21 JUDGE HOYT: What did you think the contentions that
22 you filed were, Mr. Love, if not those issues that you wanted to
23 litigate?

24 MR. LOVE: The contentions that I filed were taken
25 from the emergency planning because when you read the emergency

1 plan, it says certain things must be provided. This plan told
2 me nothing. The emergency plan told me what was required.
3 That was the basis of my contentions. I objected to having
4 to file those contentions at that time based upon an intelligible
5 plan.

6 Now that I have seen the plan, I am not allowed to
7 file more contentions. I am in a very difficult position. I
8 have no choice but to pursue the matter on appeal.

9 JUDGE HOYT: If there were a way in which I could
10 resolve that, I would be willing to do it.

11 MR. LOVE: I think Mr. Hassell here had the best
12 suggestion in allowing me to respecify my contentions.

13 JUDGE HOYT: I didn't understand that to be
14 Mr. Hassell's suggestion. Was that your statement?

15 MR. HASSELL: If I might restate it, as I recall my
16 suggestion was that it might be helpful if Mr. Love restates
17 the residual concerns, those concerns that were left over after
18 we went through the February 15th document and identified what
19 areas were satisfied. As I understood you, there were still
20 some matters that were kind of left over. You characterized them
21 as residual.

22 MR. LOVE: Right.

23 MR. HASSELL: I thought it would be helpful that if
24 Mr. Love were given the opportunity to refocus those based solely
25 on the information that is currently in both of the two

1 in-camera sessions --

2 MR. LOVE: That is what I want to do, to incorporate
3 what I have learned through discovery.

4 MR. HASSELL: -- so that all the parties would have
5 a very focused set of whatever you want to characterize them
6 as, respecified contentions, residual concerns or whatever
7 and that it could be that possibly we could dispose of it by
8 pleadings. You might not agree --

9 MR. LOVE: It is possible.

10 MR. HASSELL: -- but at least the parties would have
11 had the opportunity to do that. That was my suggestion. In any
12 event, it would have represented a clear statement if we do
13 go to hearing on what precisely what we are going to hearing on
14 which I think is very important for framing the testimony.

15 JUDGE HOYT: That is not what Mr. Love is reading into
16 it, Mr. Hassell. That was the problem. As you see now what he
17 wants to do is he wants to take the two contentions which are
18 rather broadly phrased, then to respecify his basis for those
19 which now develop all sorts of other concerns that he has
20 developed since we have been in these two conferences. That
21 is where I say you have to draw the line.

22 MR. HASSELL: All right. I had understood him
23 a little differently and of course Mr. Love can speak for
24 himself. I had understood Mr. Love to be saying that he was
25 in effect doing some respecifying today in effect by what

1 we were getting to after he identified what had been satisfied.
2 I am just saying that I had a slightly different understanding.

3 JUDGE HOYT: I think if what you had wanted to do
4 had not resulted in what I feared it would do and which Mr. Love
5 tells us now he fully intended to do had he been given that
6 opportunity, that is where we will not go along with him. That
7 is where you will not be allowed to make that respecification
8 because you are simply taking two conferences now having
9 received all the information that has been disclosed to you
10 and now respecified the basis for the two contentions that
11 are exactly the same two contentions that you started out with
12 initially.

13 So we have gained nothing. You have eliminated some
14 of the concerns, some of the basis and you have sharply focused
15 it into the one issue of the medical matter and that is it.
16 I don't see that there is really anything that you can respecify
17 and if you do start to respecify as I understand you, what you
18 intend to do is to expand upon those concerns which you have
19 now found that you want to generate by virtue of these
20 conferences.

21 MR. LOVE: No, by virtue of finally getting the
22 disclosure of the plan.

23 JUDGE HOYT: You don't get disclosure and then get to
24 go back and get another indictment to fix yourself up. If you
25 get your indictment and you haven't got it done right, you are

1 out of court.

2 MR. LOVE: Let me just backtrack a little bit. I saw
3 the first plan. I was forced to file the initial contentions.

4 JUDGE HOYT: No, sir. You were never forced.

5 MR. LOVE: My stay was denied pending full disclosure.

6 JUDGE HOYT: You had the choice to file or not to
7 file. You elected to file.

8 MR. LOVE: I didn't have an option.

9 JUDGE HOYT: You certainly did. You could have not
10 filed the contentions. That was your option, to file or not
11 to file which is always what your options are in these cases.

12 Now the one thing is the medical and what can we do
13 with that. I don't know. Perhaps in the April 1, 1985 pleading
14 that you will file, the applicant and the staff and PEMA will
15 file, you may wish to treat whether or not this matter of
16 the accreditation is a legal issue or not.

17 If you want to address that in a separate pleading,
18 Mr. Love, you may.

19 MR. LOVE: Maybe I will just wait and see how I make
20 out on appeal.

21 JUDGE HOYT: As you choose but I wanted to present you
22 with the option of having that if you wished to have an input
23 into it. That medical issue I think is well stated in the basis
24 already and that is the only one remaining.

25 JUDGE HARBOUR: Is it a legal issue?

1 JUDGE HOYT: We are going to take a brief on whether
2 or not it is a legal issue. That is the April 1 submission.

3 MR. RADER: Your Honor, if I may, I believe you meant
4 to say that is the April 5th brief. The April 1st brief is
5 responses regarding the exemption motion.

6 JUDGE HOYT: I beg your pardon. The exemption motion
7 is on the 1st and you are correct, Mr. Rader. My apologies
8 to the parties here. It is April 5th instead of the 1st because
9 we want to dispose of the motion on the exemption first.

10 I don't think that we will need to put out any order
11 since we have not yet ruled on the two remaining contentions.
12 I am going to take that record, the record that we have comprised
13 here, as being your pleading of withdrawing the third contention,
14 Mr. Love. Am I correct in that?

15 MR. LOVE: Excuse me? What was that?

16 JUDGE HOYT: As I understood you, you had withdrawn
17 the third contention, contention "C."

18 MR. LOVE: Yes.

19 JUDGE HOYT: That is, "There is no reasonable
20 assurance that the evacuation plan will provide for a safe
21 and secure return." You have withdrawn from that contention.

22 MR. LOVE: In the sense that the plan does provide
23 for safe and secure return whereas the first plan didn't but
24 I can't comment on anything other than the first plan, I don't
25 see how I can withdraw it.

1 JUDGE HOYT: You can comment on any plan you wish to,
2 Mr. Love.

3 MR. LOVE: You said that discovery was not to be
4 utilized in respecifying my contentions.

5 JUDGE HOYT: You said that you wanted to respecify
6 and that is where the difference is. If you wished to comment
7 on it, you may recomment on the second plan but you are not
8 going to respecify.

9 MR. RADER: One final matter, Judge Hoyt, if we are
10 correct that the medical services contention or bases is the
11 only one remaining I think it logically follows that there would
12 be only one contention which it would support which would mean
13 that I don't know whether it is "A" or "B" of the general
14 contentions would be eliminated but logically one of them would
15 be.

16 JUDGE HOYT: That is the difficulty I had with it
17 as well, Mr. Rader, is I didn't know which one of the basis
18 applied to which one of the contentions and now in getting to
19 this point, we may be able to determine that. Mr. Love, do you
20 want to look at this with us and see if the medical bases is the
21 only one that is left here --

22 MR. LOVE: I think that could go to "A" and "B."

23 JUDGE HOYT: There is your answer, Mr. Rader.

24 MR. RADER: In that case either "A" or "B" is
25 redundant at best.

1 If both contentions have a common bases, then
2 obviously one of them is unnecessary.

3 MR. HASSELL: As I recall Mr. Love also had the
4 concern, what I have been calling the residual concern of
5 the estimated time of evacuation. My notes reflect that it
6 was not just medical services.

7 MR. RADER: But I think the Board ruled that that
8 was not one of the stated contentions and therefore would not
9 be admitted in any event.

10 JUDGE HOYT: The training of the drivers, I think,
11 is what that reflects. Is that what you are talking about?

12 MR. HASSEL: No.

13 JUDGE HOYT: I am sorry. I can't hear you back here.

14 MR. HASSEL: Hopefully that will be resolved by a
15 letter. I don't know if I have the details because I don't
16 know how specifically Mr. Love stated but I recall him saying
17 that he was still somewhat concerned about the estimated time
18 of evacuation and maybe Mr. Love can further lay that out.
19 But as I recall that was still an open item, "J" and I don't
20 recall an exact quote.

21 MR. LOVE: Correct.

22 MR. RADER: I certainly don't see that stated in "J"
23 as any concern regarding the time estimate for evacuating the
24 prisoners.

25 MR. HASSELL: Like I say, Mr. Rader, I characterized

1 it as a residual concern, a refinement if you will. I am just
2 stating what I think is a more accurate representation of
3 what Mr. Love still considers to be left over after we went
4 through the February document.

5 MR. RADER: It may accurately represent what Mr. Love
6 said but I repeat, the Board stated that that particular matter
7 was not a part of the originally pleaded contentions unless I
8 misunderstood the Board.

9 MR. HASSELL: Fine. We will be responding in writing
10 so I will have a chance to review the record.

11 MS. FERKIN: In any event, Your Honor, I believe it
12 was my understanding from the discussion that we have had here
13 today that Mr. Love understood the guidance in NUREG-0654 and
14 on that basis was no longer concerned with the time of
15 evacuation. If I am incorrect, so be it.

16 MR. LOVE: That is not my remembrance.

17 MR. HASSELL: That is why we have a record.

18 JUDGE HOYT: Yes.

19 MR. HASSELL: I was going to move on to another
20 matter.

21 JUDGE HOYT: That's fine.

22 MR. HASSELL: That was going to be the issue of
23 particularly since the region states or I see further pleadings
24 that indeed may be based on this in-camera session, I must
25 admit that there have been at least an informal consultation

1 and I am not sure if I am the proper party to move but I think
2 it is important now to get on the table whether there is really
3 any need for these incamera sessions to stay in camera in terms
4 of how the information just in the records is going to be
5 treated. I think it would be a lot easier if the parties filed
6 pleadings that were not limited to the protection of information
7 that perhaps the Department of Correction would agree does not
8 need the kind of protection that is called for in the
9 protective order and the non-disclosure affidavit.

10 I just raise the question now whether it might be
11 useful to spend a few minutes resolving that.

12 MR. OTTO: In terms of what we have discussed today
13 on the record, I don't think there is any problem but the point
14 is though that we are going to end up having to use possibly
15 parts of plan two in the pleading and we certainly would not
16 want those to be made public.

17 MR. HASSELL: No question about it. To the extent
18 that a pleading involves protected information, there is a
19 procedure laid out as to how we have to protect the pleading.
20 I am just talking about now solely the two in-camera sessions.
21 That is all.

22 MR. OTTO: In terms of the two in-camera sessions,
23 no, we don't have any need to keep them in-camera I don't think,
24 particularly this one.

25 JUDGE COLE: Release the transcripts.

1 MR. OTTO: Yes.

2 JUDGE HOYT: That would be very helpful. I think
3 we will have to get something to the reporting service so that
4 you can get copies of these transcripts if you wish to have
5 them. The only copy now in existence is the one that I have
6 in my office that has been used by the parties with the
7 assurance that we would execute that affidavit today and it has
8 been done. The plan, however, must still remain confidential.
9 I believe that the only plan in Washington is going to be
10 the one I have in my office and I can arrange for you to use
11 that office for the viewing of the plan and provide you space
12 and I am speaking to Mr. Hassell and Mr. Rutberg when I say,
13 that we can get this for your benefit.

14 That doesn't cover the applicant and you don't have
15 a copy of the plan so we will make the same provisions for you.

16 MR. RADER: As a matter of fact, we do at this time,
17 yes.

18 MR. OTTO: I will be collecting them at the end of the
19 conference.

20 MR. RADER: All right. I misunderstood you then,
21 Mr. Otto. I am sorry.

22 MR. OTTO: Those were for the purposes of this
23 conference.

24 JUDGE HOYT: That was my understanding, except I get
25 to keep my copy, right?

1 MR. OTTO: Yes.

2 JUDGE HOYT: The same opportunity then for the use
3 of the plan in my office and the Board, Dr. Harbour and Dr.
4 Cole, if I am not there would be able to provide you with the
5 space and place for the use of the report.

6 MR. RADER: Your Honor, under the circumstances
7 where the protective order does provide for the keeping of the
8 plan in a locked filed cabinet or container, could we not
9 obtain a copy of the plan which we could keep in such a
10 container at our offices, our offices being secured facilities
11 within the meaning of the protective order?

12 JUDGE HOYT: We had ruled that we were only going to
13 have the one copy in Washington really at the request of the
14 Department of Correction. If you have any wish to do otherwise,
15 Mr. Otto, to allow a copy to be retained by the Applicant and
16 by the staff now that they are officially under the affidavit
17 of non-disclosure and also the protective order --

18 (No response.)

19 JUDGE HOYT: Let's not require you to give a response
20 today.

21 MR. OTTO: I would appreciate that.

22 JUDGE HOYT: Let's have it sometime next week if you
23 will.

24 MR. RADER: As a practical matter we will need a
25 copy of the plan at some point if the contentions are admitted.

1 We will simply have to get a copy.

2 MR. RUTBERG: I don't believe the protective order
3 ever contemplated that the actual plan would leave the facility
4 of the Department of Correction, that notes and things like
5 that you could take back to your office.

6 JUDGE HOYT: That is correct. The only copy is the
7 one that the Board has.

8 MR. RUTBERG: Of course, that could be changed.

9 MR. RADER: I would appreciate then if Mr. Otto
10 would consider our request that we be able to keep a copy.

11 JUDGE HOYT: It is merely a request, Mr. Otto,
12 because the Board will take no position on it but will tell
13 the parties that are in Washington and need to have the plan
14 for purposes of preparing for hearing that they may use the
15 copy that we retain in our offices. It has been viewed there
16 by at least one counsel and used. We can provide you with a
17 facility and a place to view it if you are down our way, Mr. Love.

18 MR. HASSELL: Mr. Otto, I was a little unclear on
19 whether you thought the transcript from the first in-camera
20 session should be disclosed. It could be that you need some time
21 to review it again. I don't know. But as I recall your
22 response, it just went to this session and not the first one.

23 MR. OTTO: Quite frankly, Mr. Love and I had access
24 to that transcript on the 18th and neither of us saw it necessary
25 to open it at that time so I did not review it. If I can look

1 at it after this meeting for a few minutes, I am sure I can
2 give you an answer regarding the first conference. This one
3 I have a very good recollection of the hearing and I certainly
4 don't think that we have any reason to hold in confidence.

5 JUDGE HOYT: I would also like to take this conference
6 transcript as well and release it. I think the parties want
7 that.

8 MS. FERKIN: We have no objection.

9 JUDGE HOYT: Fine. Is there anything else we can
10 do as Judge Cotter frequently puts it for the good of the order?
11 I have never understood what order it was?

12 (No response.)

13 JUDGE HOYT: The problem with that District of
14 Columbia decision as I see it is they tell us fine, you need
15 something else but how much more is something more than a list.
16 I don't know. Is it a paragraph? Is it a very detailed
17 statement. I think we are all going to have to be in this case
18 shooting from the hip and I think it is going to be very
19 difficult for the Board to try to discern from that opinion
20 what it is you need to have in addition to a statement from
21 what the hospital has available.

22 I think the pleadings that we have before us and the
23 letters that Mr. Otto has provided certainly do show us that
24 this hospital has something more than just a mere list of
25 facilities. It has a treatment capability which is entirely

1 different than a mere listing of facilities that may or may not
2 have current capabilities. When they subscribe to those
3 standards, you have a lot of good information before you.

4 I think impressive too is the fact that the
5 Department of Corrections has placed this particular thing as
6 an addenda to their contract with the hospital. It certainly
7 shows that the prisoners are going to get that type of
8 treatment that is acceptable in the profession for radiological
9 exposure.

10 I am just talking along here while Mr. Otto is making
11 his examination of this. If anybody else has any words of
12 wisdom, we would love to hear them.

13 MR. RADER: Can I ask Mr. Otto a quick question and
14 I really don't want to interrupt your review of the transcript?
15 Did you say at the last conference that the Department of
16 Correction has an agreement with RMC or an arrangement with RMC?

17 MR. OTTO: What is RMC?

18 MS. FERKIN: Radiation Management Corporation.

19 JUDGE COLE: That is Dr. Linnemann's organization.

20 MR. RADER: Did you have any connection with them?

21 MR. OTTO: I have no knowledge one way or another
22 quite frankly.

23 MS. FERKIN: I am not aware of it.

24 MR. RADER: Do you know whether any of your hospitals
25 do?

1 MR. OTTO: No, I have no knowledge at all. It was
2 my understanding at the last conference that if our hospitals
3 met the JCAH standards for radiological treatment that
4 that would be sufficient.

5 MS. FERKIN: To be honest, that was my reading of
6 the Board's partial initial decision which is why I tried to
7 make that point earlier in our conference today. Mr. Love
8 doesn't seem to agree.

9 MR. RADER: I fully agree with what you say. I just
10 wanted to take it a step further and try to find a way to
11 resolve Mr. Love's concern.

12 MS. FERKIN: We can certainly find out that informa-
13 tion, whether they have an arrangement with RMC or any other
14 comparable organization and we would certainly add that
15 information to whatever responsive pleading we would make.

16 JUDGE HOYT: If Dr. Linnemann, Mr. Love, were to tell
17 you that the facilities that would be utilized by the Department
18 of Correction had the treatment capabilities needed, would
19 that suffice?

20 MR. LOVE: As long as it is not in Pittsburgh.

21 JUDGE HOYT: This is what you do, Mr. Love. You
22 didn't listen to what I said. If those institutions --

23 MR. LOVE: It is also the distance.

24 JUDGE HOYT: Those institutions, medical institutions,
25 in which the State Correctional Institution at Graterford have

1 a medical contract to treat the inmates of Graterford were to
2 be indicated to you by Dr. Linnemann as being acceptable for
3 the treatment of radiation, would that satisfy you?

4 MR. LOVE: If the hospital were in the general
5 vicinity.

6 JUDGE HOYT: Mr. Love, I don't know if you are just
7 being obtuse or I am just being thick but I keep telling you,
8 these are the institutions that would be treating the prisoners
9 if they scratch their fingernail or if they broke their arm,
10 those institutions are in the area of the correctional
11 institution.

12 MR. LOVE: All right. If they are the same
13 institutions that the inmates go to on a regular basis, yes,
14 because it would either be Montgomery Hospital or Pottstown,
15 sure.

16 JUDGE HOYT: That is what I was saying.

17 MS. FERKIN: That was the representation that we made
18 earlier.

19 MR. LOVE: All right. I misunderstood that portion
20 of it.

21 JUDGE HOYT: Could you get that piece of information?

22 MS. FERKIN: Whether RMC has an arrangement with
23 Department of Corrections, yes. I can do that.

24 JUDGE HOYT: All right. Do you understand what we
25 are saying, Mr. Love, that if the facility --

1 MR. LOVE: If Dr. Linnemann suggests that this
2 facility is adequate, then it is adequate. Is that what you
3 are saying?

4 MS. FERKIN: So what we are looking for is some kind
5 of representation from Dr. Linnemann in his position or in the
6 capacity in which he testified earlier in this proceeding that
7 these facilities have the capability to treat radiologically
8 contaminated injured individuals.

9 MR. LOVE: As contemplated by the regulations, 50.47.

10 MS. FERKIN: That is regardless of whether these
11 particular facilities happen to have a specialized arrangement
12 with Dr. Linnemann's corporation.

13 MR. LOVE: Right.

14 MS. FERKIN: I would suggest to you, Mr. Love, that
15 that is already clearly established on this record.

16 MR. LOVE: How so?

17 MS. FERKIN: In the second partial initial decision
18 issued by this Board.

19 JUDGE HOYT: Did anybody happen to think to bring
20 that with them?

21 (No response.)

22 MR. LOVE: Which says?

23 MS. FERKIN: I cannot quote you chapter and verse.

24 MR. LOVE: It says that this particular hospital is
25 equipped?

1 MS. FERKIN: Not this particular hospital, no, but
2 the capability of hospitals that are JCAH accredited.

3 MR. LOVE: That is not what I gleaned from his
4 testimony.

5 JUDGE COLE: Under accreditation.

6 MS. FERKIN: Fine. Are you looking for an affidavit
7 from Dr. Linnemann?

8 MR. LOVE: That would suffice.

9 MS. FERKIN: I think between ourselves and the
10 applicant we can make that available to you or at least attempt
11 to.

12 MR. LOVE: I think that would go a long way to
13 addressing my concerns. I would have to see what it says
14 and if I re-read the transcript, perhaps I misread it, perhaps
15 I took it out of context but the statements I have read to
16 date don't seem to indicate that.

17 MS. FERKIN: I would think that if we could present
18 you a reading of the transcript that would support this
19 position, I don't think any additional information from
20 Dr. Linnemann would be necessary.

21 MR. LOVE: Unless it is inconsistent with the portion
22 of the transcript that I read to you that supports my position.

23 JUDGE HOYT: Ms. Ferkin, plug both holes. Get the
24 affidavit. Get the transcript. That is the last concern that
25 you have, right, Mr. Love?

1 MR. LOVE: Wrong.

2 JUDGE HOYT: The bus driver.

3 MR. LOVE: That will be addressed with the letter.

4 I still have ETE concerns. I still have panic concerns. I
5 still want input from the guards union.

6 JUDGE HOYT: That you are not going to get, Mr. Love.

7 MR. LOVE: Well, you asked me what my concerns were.

8 JUDGE HOYT: I will tell you that right off the bat.

9 No way are we going to get the guards union in this. They are
10 not admitted as a party and we will litigate in this setting
11 only the contentions of the inmates at Graterford.

12 MR. LOVE: Do you want to hear my concerns? It is
13 quite simple; the estimated time of evacuation, the panic
14 factor, the hospital issue, training for the bus drivers, give
15 me the FEMA Report, input from the guards union and I am still
16 not convinced the call-up system based on the use of commercial
17 phone lines will work. That is it.

18 MS. FERKIN: Your Honor, my understanding is that we
19 need to vacate this room as soon as possible.

20 JUDGE HOYT: Let's do because I think we have
21 reached the end of any useful participation. We thank you
22 again for your cooperation and consideration and again, I think
23 we have gotten some work done today. We are adjourned.

24 (Whereupon, at 3:05 o'clock p.m., the conference was
25 adjourned.)

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station,
Units 1 and 2)

DOCKET NO.: 50-352-OL; 50-353-OL

PLACE: HARRISBURG, PENNSYLVANIA

DATE: FRIDAY, MARCH 22, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) Marilyn Nations/rym
(TYPED)

MARILYN NATIONS
Official Reporter
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Reporter's Affiliation