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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Appeal Board

In the Matter of :

PHILADELPHIA ELECTRIC COMPANY :

Limerick Generating Station  
Units 1 and 2

: NOS. 50-352 and 50-353 *OL*

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

NOTICE OF APPEAL FROM THE LICENSING BOARD'S MEMORANDUM  
AND ORDER ON GRATERFORD PRISONERS' PROPOSED CONTENTIONS

I. INTRODUCTION

The inmates of the State Correctional Institute at Graterford, through their counsel, Angus R. Love, Esquire, hereby request a review by the Atomic Safety and Licensing Appeal Board of a recent decision by the Atomic Safety and Licensing Board issued on April 12, 1985, entitled Memorandum and Order on Graterford Prisoners' Proposed Contentions. The inmates request a review of said Order which denied all contentions which were filed on their behalf before the Licensing Board. The inmates note that they currently have an appeal pending before the Nuclear Regulatory Commission which involves similar issues to the issues raised in this appeal. The reason for the first appeal was a request for further disclosure of the Radiological Emergency Response Plan for Graterford. Initially, the inmates' counsel was shown a plan entitled, The Unsanitized Plan, also known as Plan 1, which contained little, if no useful information in determining the viability of the evacuation plan. The inmates

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requested further disclosure in their appeal. Such disclosure was finally permitted after a suggestion by this Appeal Panel that the parties attempt to work under the auspices of a protective order of the court. A second less sanitized version of the plan, called Plan 2, was made available to the inmates and counsel under a protective order of the court on March 18, 1985. When the inmates appealed the initial refusal to disclose any information beyond the contents of Plan 1, they requested a stay of their requirement to file their contentions within twenty days of receipt of Plan 1. The Licensing Board ruled against the stay and ordered the inmates to file their contentions within the mandated twenty days. The inmates did so on February 15, 1985. After obtaining the desired additional disclosures of Plan 2 on March 18, 1985, the inmates, through counsel, requested that they be allowed to update or restyle their contentions based upon the additional information obtained in Plan 2. At a conference on March 22nd, Helen Hoyt, Chairman of the Atomic Safety and Licensing Board refused to allow the inmates to add any further information to their contentions and held them to the February 15th filing. The inmates contend that this ruling goes against the grain of one of the most fundamental legal principles of our society, which is due process of law. Thus, they will continue to appeal this denial which is currently pending before the Nuclear Regulatory Commission. The remainder of this appeal will deal with the denial of the inmates' February 15th contentions as they were presented in the Board's Memorandum and Order of April 12, 1985.

## II. HISTORY OF THE CASE

On September 18, 1981, the inmates at the State Correctional Institute at Graterford, through their attorney, filed a petition with the Licensing Board to intervene in the above-captioned matter. On October 14, 1981, the Board required the filing of a supplemental memorandum to address additional concerns. On June 1, 1982, the Board admitted the inmates as a party to this proceeding after the filing of their supplemental memorandum. On April 20, 1984, the Board further ordered the inmates to file contentions within twenty days of receipt of the Radiological Emergency Response Plan for Graterford. On December 13, 1984, the inmates, through their counsel, Angus R. Love, who had replaced Don Bronstein, received a sanitized copy of said plan, heretofore referred to as Plan 1. Plan 1, which is attached to the inmates initial appeal to this Board, was approximately 27 pages in length and was so censored as to be virtually unreadable. At this point the inmates, after consultation with their expert, Major John Case, field director of the Pennsylvania Prison Society, decided to appeal the decision and request for further disclosure. As part of the appeal, the inmates requested a stay of their obligation to file contentions within twenty days pursuant to the Board's order of April 20, 1984. Said stay was denied by the Board on January 29, 1985. The inmates filed their contentions on February 15, 1985 based upon information available in Plan 1. As the Licensing Board pointed out in Footnote 4 of page 4 of the order of April 15, 1985:

"We find these contentions to be the sole issues of the inmates. We reject any attempt by the inmates to reserve the right to file additional contentions...if access to an unsanitized plan was granted."

This appeal concerns the Appeal Board's dismissals of the originally filed contentions of February 15, 1985. The appeal currently pending before the Nuclear Regulatory Commission will concern itself with the inmates' attempt to refile their contentions or to restyle the basis for their contentions based upon a viewing of the second plan.

III. ARGUMENT- The Intervenor Inmates at the State Correctional Institute at Graterford Should Be Permitted to Participate as a Party before the Licensing Board in the Above-Captioned Matter.

In order to continue to participate as a party as mandated by 10 C.F.R. 2.714(b), an intervenor must file at least one contention that satisfies the aforementioned requirements. In order for a contention to be accepted, it must fall within the scope of issues set forth in the Federal Register Notice of Opportunity for Hearing. See 46 Federal Register 42557, August 21, 1981. See also Duquesne Light Company (Beaver Valley, Unit No. 1), ALAB-109, 6 AEC 243-245 (1973). Pursuant to 10 C.F.R. 2.714(b), said intervenor is required to file "a list of contentions which petitioners seek to have litigated in the matter, and the basis for each contention set forth with reasonable specificity." See Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 686 (1980). An intervenor that fails to file at least one contention that satisfies the requirements of 2.714(b) will not be permitted to participate as a party.

An intervenor's contention in order to be admitted must also meet the specificity requirements. See Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460,467 (1982). In addition to the aforementioned requirements that a contention must meet, it must also meet all the factors in 10 C.F.R. 2.714(a)1, including the three-part test for good cause as outlined in the Catawba Appeal Board's decision on whether to admit contentions filed late because they are based solely on information available in relevant documents that were unavailable until a short time before the contentions were filed. See Duke Power Company et al (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1,041, 1,045 (1983). This involves a five-part balancing test by the Licensing Board in order to determine if said contention should be admitted. These five factors include good cause, availability of other means, assist in developing of a sound record, representation of existing parties, delay and broadening of the issues. After a review of these five factors, the Board should balance these various factors in determining whether or not to admit a late filed contention. Thus, this is the applicable law with which the inmates' contentions should be judged.

The inmates initially presented three contentions in their February 15th filing. The first reads: "There is no reasonable assurance that the evacuation plan will protect the staff and inmates at the State Correctional Institute at Graterford." The second contention reads: "There is no reasonable assurance that the evacuation plan will provide a safe and secure evacuation from the State Correctional Institute at Graterford." The third contention regarding the



return to Graterford has been dropped by agreement of parties. Following the discussions of two closed conferences with all concerned parties in Harrisburg, the inmates were satisfied on a number of issues that the February 15th filing had raised, and thus dropped all bases for the above-mentioned contentions except their insistence that there is no reasonable assurance that medical services will be provided to individuals contaminated by radiation; that there is no reasonable assurance that SCIG personnel, bus drivers and the Pennsylvania State Police will receive any training in preparedness for a nuclear emergency at SCIG, and finally, there is no reasonable assurance that the general concept of evacuation as outlined in Attachment A, page E-1-A-1 will provide for the safety and security of inmates and SCIG personnel during said evacuation. The inmates contend that their two contentions and the three specific bases for contentions meet the above-mentioned requirements regarding the admissibility of these contentions and of themselves as an intervenor in the licensing process.

The inmates contend that the Licensing Board has failed to apply the proper standard in determining the admissibility of their contentions. At the pleading stage of a proceeding, contentions need only identify the reasons for each contention. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC 542, 548 (1980); Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30 12 NRC 683, 688 (1980). Accordingly, in the Licensing Board's examination of the contentions and the basis therefore, the Board may not reach the merits of contentions. See Philadelphia Electric Company (Peachbottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20 through 21 (1974). It is the

inmates allegation that the Licensing Board has overstepped its authority and gone to the merits of the inmates' contentions prior to determining the admissibility of such in accordance with established caselaw. Furthermore, the inmates contend that they have met the aforementioned requirements as to the admissibility of their contentions. With regard to the standards applicable to late filed contentions, the inmates point out the following:

1. Good cause. The first factor the Board must consider is good cause for failure to file on time. 10 C.F.R. 2.714 Al(i). The inmates point out that they were granted intervenor status on October 14, 1981. At that time they were fully ready to pursue this matter in its entirety. Unfortunately, they waited over three years until December 13, 1984 before receiving a copy of the evacuation plan for SCIG. The inmates contend that this delay was through no fault of their own and should not be held against them in this present litigation. Upon receipt of the filing, the inmates did, in accordance with the Board's order of April 20, 1984, file their contentions within the twenty day time period as mandated by the Board's order. Thus, the inmates contend that they have satisfied this initial requirement.

2. Availability of other means. The second factor for consideration before the Board is the availability of other means to protect the petitioners' interests. See 10 C.F.R. 2.714(a)1(ii). It is the inmates' contention that there are no other available means for protecting their interests. The inmates take issue with the Board's ruling, in particular, their assertion on page 12 that two state agencies, the Pennsylvania Emergency Management Agency and the

Department of Corrections, will represent the inmates' interests. In light of the fact that the Department of Corrections was the party responsible for the development of the emergency radiological response plan, the inmates fail to see how these persons can be representative of their complaints about a plan that was developed by the Bureau itself. With regard to the Pennsylvania Emergency Management Agency, the inmates contend that this organization has little or no experience or contact with the correctional field and thus does not have standing to represent their interests.

3. Assist in Development of a Sound Record. The inmates contend that their participation in this proceeding and their retention of Major John Case, field director of the Pennsylvania Prison Society, will aid in the development of a sound record in this licensing process. They stress the unique nature of this particular intervenor in that a maximum security facility such as Graterford has never been included in the evacuation planning requirement for the 10 mile radius surrounding a nuclear power plant. The presence of a 2,500 man maximum security facility within the 10 mile radius presents a challenging problem for the emergency planners to resolve. The inmates contend that they should have some input into this unique situation.

4. Representation by Existing Parties. The inmates contend that there are no other parties who may directly represent the interests of the Graterford prisoners in this proceeding. See previously mentioned comments regarding the Board's assertion that PEMA and the Bureau of Corrections will represent their interests in this proceeding.



5. Delay and Broadening of the Issues. The inmates point out with regard to this issue that there have been many of their concerns which have already been resolved and a few more which were on the verge of resolution prior to the entry of the Board's order of April 12, 1985. While the inmates are well aware of the Applicant's desire to go to full power, they must insist that their rights not be denied due to delays which were beyond their control. The inmates were ready to proceed in 1981, however, a three year delay was caused by the Bureau of Corrections due to their failure to develop a suitable plan in an adequate time frame. The Board insists that the admission of any late filed contentions at this point would delay and broaden the issue since hearings on all off-site emergency planning contentions were completed by January 29, 1985. In view of the fact that the inmates did not submit their contentions until February 15, 1985 in compliance with the Board's order, the inmates find it hard to believe that they are delaying this process further. Such an assertion defies all logic and rational thought.

It is the duty of this Appeal Board to balance these five factors in order to determine whether or not the inmates have met the criteria for the filing of late contentions. If it is found that the factors weigh in the favor of the inmates, the Court must then look to the specific bases with which the contentions are framed. Section 2.714 of the NRC's Rules of Practice do not permit "the filing of a vague, unparticularized contention, followed by an endeavor to flush out through discovery against the applicant or staff." Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-687, 16 NRC 460,

468 (1982). The inmates contend that the matters they have presented to the Licensing Board are not vague, unparticularized contentions, but are specific concerns raised in response to the first Radiological Emergency Response Plan. The inmates' two primary contentions involve the lack of a reasonable assurance that the evacuation plan will protect inmates and staff, and secondly, that said plan will not provide a reasonable assurance that the evacuation will be safe and secure. In order to further specify and particularize these two admittedly general contentions, the inmates submitted numerous specific bases for these contentions. Although many of these are no longer at issue, the three mentioned in the Board's decision, including medical services training, and the general concept of evacuation provide additional data regarding the merits of their claims. In particular, the medical services claim contends that there are no medical services as mandated by 10 C.F.R. 50.47(b)12 for the treatment of individuals contaminated by radiation. A debate has arisen regarding the standards with which hospitals are charged and the inmates contend that this debate should continue when the merits of their contentions are discussed. The inmates are at loss to understand how one can get any more specific in this regard. The second basis which is still pending for their contentions regards the training of bus drivers. The inmates contend that the civilian bus drivers should be afforded the same opportunity as civilian bus drivers evacuating school children and other such persons in the EPZ. This would involve the opportunity for them to undergo training with regard to radiological preparedness in the event of nuclear emergency. Once again the inmates fail to

see how they could be any more specific in this regard. The third basis for the contentions entitled, General Concept of Evacuation, is admittedly broader than the first two, however, this basis was in response to the first plan, page E-1-A-1 which was approximately 90% censored, thus giving the inmates absolutely no idea what the general concept of evacuation was. Thus, the inmates contend that they have met the specificity requirements and should be allowed to proceed in this matter.

The inmates further contend that they also meet the requirements of 10 C.F.R. 2.714(b) which states that a contention must be rejected where:

1. It constitutes an attack on applicable statutory requirements;
2. It challenges the basic structure of the Commission's Regulatory process, or is an attack on the regulations;
3. It is nothing more than a generalization regarding the intervenors' particular view of what applicable policies ought to be;
4. It seeks to raise an issue which is not proper for adjudication in the proceeding, or does not apply to the facility in question;  
or,
5. It seeks to raise an issue which is not concrete.

See Philadelphia Electric Company (Peachbottom Atomic Power Station, Units 2 and 3) ALAB-216, 8 AEC 13, 20 through 21 (1974); 10 C.F.R. Section 2.758(a). In that we are at the pleading stage, contentions need only identify the reasons for each contention. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station Unit 1), ALAB-590, 11 NRC 542, 548 (1980).

Furthermore, the basis stated for each contention need not "detail the evidence which will be offered in support of each contention." See Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973). Inmates contend that they have met this test and that they have been open and frank in their discussions regarding not only the contentions themselves, but have gone further and discussed the various merits of their claims (see transcripts of two in-camera proceedings with all parties involved, in Harrisburg, Pa. on February 27, 1985, and on March 22, 1985). Clearly, there is no attempt to attack the applicable statutory requirements nor the basic structure of the regulatory process. The issues raised are concrete and are properly before the Board, per the Board's own order, and do in fact represent the inmates' concerns regarding the Bureau's evacuation plan and how it applies to their safety. Thus, the inmates contend that they have satisfied these requirements, therefore their contentions should be admitted.

#### IV. CONCLUSION

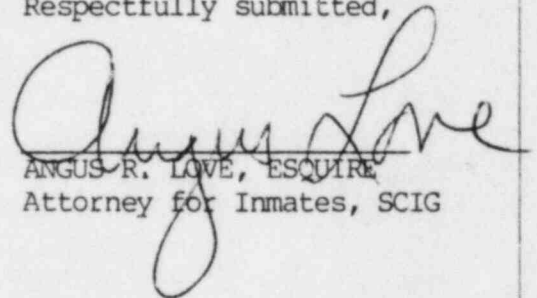
The inmates contend that the Licensing Board's decision of April 12, 1985 has prematurely cut off their opportunity to participate in the licensing process regarding the above-captioned matter. They further contend that the Licensing Board has failed in its duty to analyze their contentions according to the established caselaw and applicable regulations of the Nuclear Regulatory Commission. The obvious discussions regarding the merits of these contentions should be disregarded as this issue is not properly before the Licensing Board.



The inmates deeply regret that they have had to wait since 1981 to have the opportunity to participate in this licensing procedure, however, they point out that this occurrence was no fault of their own. In fact, the delay is primarily due to the Bureau of Corrections' failure to compile the requisite evacuation plan until December of 1984. The inmates contend that they have met the specificity requirements regarding their contentions, that they have met the late filing balancing test regarding their contentions, and that they have fully complied with the regulations of 10 C.F.R. 2.714(b). The inmates once again point out the unique nature of this particular problem. The emergency planning requirements which were enacted in response to the Three Mile Island accident and are embodied in 10 C.F.R. 50.47, authorize participation of concerned individuals within the 10 mile EPZ regarding evacuation plans in the event of a nuclear emergency. The State Correctional Institute at Graterford represents a 2,500 inmate maximum security facility within the Pennsylvania state correctional system and is located 8.3 miles from the nuclear facility. As mandated by the regulations, the Bureau of Corrections has developed an evacuation plan for the institution. Due to the inherent difficulties in running an institution such as Graterford, the inmates request a voice in the development of the radiological evacuation plan and request the opportunity to provide input into the decision-making process. As this is the first such instance that has arisen since the development of 10 C.F.R. 50.47, the inmates request the Appeal Board to give this matter serious consideration. The fact

that the Applicant is anxious to proceed to full power should not cut short this important issue. For these reasons the inmates request that the Appeal Board overturn the Board's decision and allow them to participate as a party in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Angus Love". The signature is written in dark ink and is positioned above the printed name and title.

ANGUS R. LOVE, ESQUIRE  
Attorney for Inmates, SCIG

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Appeal Board

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

OFFICE OF SECRETARY  
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BRANCH

CERTIFICATE OF SERVICE

I, Angus R. Love, attorney for the Inmates at the State Correctional Institute at Graterford, hereby certify that a true and accurate copy of the Notice of Appeal from the Licensing Board's Memorandum and Order on Graterford Prisoners' Proposed Contentions in reference to the above-captioned matter, was mailed to the following list, first class, postage prepaid, on April 18, 1985.

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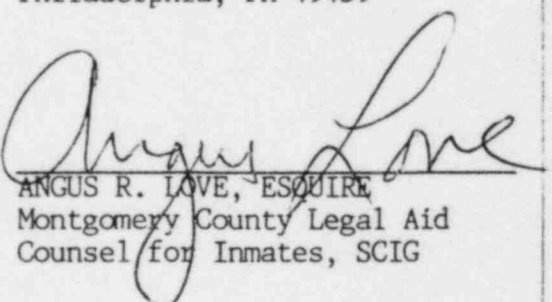
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