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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

BEFORE ADMINISTRATIVE JUDGES:
Helen F. Hoyt, Chairperson
Dr. Richard F. Cole
Dr. Jerry Harbour

DOCKETED
USNRC

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

Docket Nos. 50-352-OL
50-353-OL

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

ASLBP No. 81-465-07 OL

June 12, 1985

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ORDER

ADMITTING CERTAIN REVISED CONTENTIONS OF THE
GRATERFORD INMATES AND DENYING OTHERS¹

By order of the Appeal Board on May 1, 1985, the Graterford inmates were reinstated as a party to this proceeding and permitted to submit revised contentions. On May 13, 1985 the Graterford inmates filed Proposed Revised Contentions of the Graterford Inmates with Regard to the Radiological Response Plan. Responses to these proposed revised contentions were received from the Philadelphia Electric Company (Applicant) (May 22, 1985), Commonwealth of Pennsylvania (Commonwealth)

¹ The Graterford inmates' participation and contentions have been the subject of numerous reviews in this proceeding. We need not recite this activity again in this order. See Board Order of May 1, 1985 and a five page review of the 14 decisions, orders, and briefs which is accurately detailed in the NRC Staff Response to the Proposed Revised Contentions of the Graterford Inmates with Regard to the Radiological Emergency Response Plan, June 3, 1985, pp. 1-5.

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(May 24, 1985), and the NRC Staff (June 3, 1985). In reaching our decision on the admissibility of the proposed revised contentions, the Board has taken into consideration all the views of the parties expressed in their pleadings noted above.

The Inmates Contentions

The "Proposed Revised Contentions" filed by the inmates are, in fact, one contention with eight bases. The issues left to this Board in ruling on these proposed revised contentions are "whether [the contentions] have adequate bases and specificity."²

The Board discusses in our Memorandum and Order of April 12, 1985 the legal principles governing admission of contentions and these will not be repeated here.³

The inmates' contention provides:

There is no reasonable assurance that the Radiological Emergency Response Plan for the State Correctional Institute at Graterford will protect the staff and inmates at said institution in the event of a nuclear emergency at the Limerick Generating Station.

Whether the eight stated bases meet the reasonable specificity requirement of 10 CFR § 2.714(b) will be discussed seriatim.

² ALAB-806 at 18.

³ Board Order, April 12, 1985, pp. 6-10. See also NRC Staff Response of June 3, 1985, pp. 6-8.

BasesA. Manpower Mobilization

In this basis the inmates question whether the commercial telephone line call up system used to mobilize the institution's manpower would be adequate in an emergency. Their second concern is their belief that a "viable" back-up system is needed and cite 10 CFR § 50.47(b)(6) and 10 CFR § 50.47(b)(5) and NUREG-0654 Criterion E as support for the basis. Applicant, Commonwealth and NRC Staff oppose admission of this basis.

The Board agrees. The support the inmates seek to draw on was the testimony of a township supervisor that emergencies are not engineered into the way telephone service is provided. The inmates point to delays during a flood which occurred eleven years ago as supportive of their argument.

There is no prohibition in NRC or FEMA emergency planning requirements or guidance against use of commercial telephone lines. This Board in its Third Partial Initial Decision in Finding No. 612 (p. 271) disposed of the township supervisor's concern, and we found that "the postulated unavailability of commercial telephone lines in an actual emergency would not delay activation of necessary EOC personnel." We find here that the prison staff is in a much better notification position than the local EOC personnel and will be notified by five dedicated telephone lines including a direct connection with the Pennsylvania State Police. In the event of a problem with commercial telephone lines, as unlikely as that may be, the State Police will act as a back up to conduct notification of off duty personnel.

The inmates second concern of a "viable back-up system" other than commercial telephone communications is based on their reading of 10 CFR § 50.47(b)(5). There is, however, no allegation or claim by the inmates that procedures for alerting, notifying and mobilizing emergency response personnel have not been established. Therefore, this basis has not been established with reasonable specificity. The parties have not been alerted to those matters they must defend against.

Neither the requirements of 10 CFR § 50.47(b)(6) nor NUREG-0654/Criterion II.F.1 require an alternative to commercial telephone lines. This intervenor has simply misinterpreted the requirements cited to the plan for Graterford. The provisions for prompt communications among principal response organizations to emergency personnel and to the public has been understood to mean those emergency response organizations that "initiate response actions." Under the Commonwealth's radiological emergency response plan, the Department of Corrections is designated a support organization. The NUREG-0654 provision calling for a telephone link and alternate, in this Board's opinion, does not apply to the Graterford Plan.

This "basis" lacks specificity required by 10 CFR § 2.714(b).

B. Input of Correctional Officers (AFSME)

The inmates allege that "there is no reasonable assurance that the correctional officers union is aware of the Bureau of Corrections concept of operations and its relationship to the total effort."

Applicant, NRC Staff and Commonwealth oppose admission.

The Board agrees. No provision in NRC regulations requires that a union, in this case the American Federation of State, County and Municipal Employees, be factored into consideration for the planning purposes of an emergency plan. These correctional officers are employees of the Pennsylvania Department of Corrections and as such are obligated to perform their designated functions whether or not the correctional officers union is aware of what the concept of that plan is.

There is no basis provided for this assertion. The union is neither a reviewing agency for the plan nor is the union an emergency response organization under NUREG-0654. It has no emergency response function by law or executive orders and its approval is not necessary on such documents as letters of agreement. There is a failure of the inmates to provide any basis for union participation.

C. Training

The inmates allege there is no reasonable assurance that emergency training will be offered to civilian personnel who will be involved in the emergency response plans such as civilian bus and ambulance drivers, rescue squads, and any other such personnel.

Applicant and Commonwealth oppose admission of this contention. NRC Staff does not object to that portion of the proffered basis that states that PEMA should offer training to the identified civilian support personnel, such as bus and ambulance drivers and rescue squad personnel, that will assist at Graterford in the event of a radiological emergency in accordance with NUREG-0654/Criterion 0.1.b. because it is

reasonably specific and has an adequate basis. "Any other such personnel" is much too vague to litigate however.⁴

The Board agrees in part with the NRC Staff. This Board has, in accepting part of this basis, found the definition of civilian personnel to mean those non-state employees identified in Plan 2 of the RERP for the State Correctional Institute at Graterford as having a role in the emergency response in the event of a radiological emergency at Limerick. Thus, the Board admits so much of contention basis C that deals with the personnel encompassed by our definition.

D. Medical Services

The inmates allege that there is no reasonable assurance that adequate medical services will be provided to those contaminated and/or injured individuals in the event of a nuclear emergency at Limerick Generating Station because: (1) there has been no ascertainment of hospital capacity at the primary facility, Montgomery Hospital, and there has been no designation of a back-up facility in accordance with 10 CFR § 50.47(b)(12) and NUREG-0654 Criterion L.1.; (2) there have been no provisions for transportation to the medical facility; and (3) there have been no provisions for radiation monitoring in the ambulances.

The Applicant, Commonwealth and NRC Staff oppose admission of this contention.

⁴ The Board finds Petitioner did not specify that "rescue squads" would be called upon in an evacuation and we find no role for this group referenced in Plan 2 for Graterford.

The Board agrees. The claim by the inmates that a failure to address the capacity of Montgomery Hospital to provide Medical Services for contaminated injured individuals renders medical services planning inadequate is not supported by the cited San Onofre case⁵ which called for planning to handle 25 such persons. There is no requirement that each hospital handle a specific number of contaminated injured persons. We are left in the dark as to what capacity it is that the inmates have in mind. Thus, there is an absence of reasonable specific basis.

Whether Dr. Roger E. Linnemann is more detailed in his testimony or his affidavit is no basis for litigation. It is only whether this claimed difference indicates any deficiency in the Graterford Plan. It does not. As a result of many of the discussions on March 22, 1985 in the Board Conference with these parties, Dr. Linnemann submitted an affidavit which explicitly stated that Montgomery Hospital has "specific supplies and equipment set aside for "contaminated injured parties." This affidavit does not discuss transportation to Montgomery Hospital. This, however, does not constitute a reasonably specific basis as required by 10 CFR § 2.714(b) since it does not show or indicate any deficiency in the Graterford Plan 2. Likewise, that the affidavit fails to address monitoring in ambulances does not now present an issue.

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Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-690, 16 NRC 127, 137 (1982); Southern California Edison Co., et al. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-83-10, 17 NRC 528, 532 (1983).

The claim that the Department of Corrections has not provided a back-up facility to Montgomery Hospital is also without merit. The Department of Corrections has entered into agreements with several hospitals that provide medical services that comply with the Joint Commission on Accreditation of Hospitals (JCAH) standard for treating radioactively contaminated injured individuals. The Board in its Second Partial Initial Decision found this accreditation acceptable.⁶ The inmates have not set forth a reasonably specific basis that provides sufficient foundation warranting further inquiry into this accreditation.

There is no regulatory requirement for a primary and back-up facility to treat contaminated injured individuals at the relocation centers. Nor have the inmates identified any reasons for such planning. In short, the inmates have not alleged that the Department of Corrections has failed to do what is required. It simply is not an acceptable basis for litigation.

The inmates fail on these bases.

E. Estimated Time of Evacuation

The inmates contend that there is no reasonable assurance that the estimated time of evacuation of six-to-ten hours can be achieved.

All parties oppose this contention.

⁶ Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-84-31, 20 NRC 446, 531-536 (1984).

The Board, however, admits only that portion of these intervenor's allegations that deals with the sufficiency of the methodology used to arrive at the six-to-ten hour evacuation time. Whether the six-to-ten hour estimate is in the plan, or not, does not require litigation. Reading of the plan will reveal its presence or absence. If absent, it will be inserted.

The evidentiary record is not sufficient to determine this specific issue, i.e., adequacy of the methodology used to arrive at the evacuation time estimate. The issue is not whether evacuation of the State Correctional Institute at Graterford will take more, or less, time than estimated, but whether the time estimate is an adequate basis for planning appropriate protective actions for Graterford personnel.

The Applicant's argument that the wording of NUREG-0654 Appendix 4, Paragraph II.C. (p. 4-3),⁷ by its own terms does not require preparation of separate time estimates for special facility populations is untenable. App'l. Response, p. 15, n. 31. We read the operative word "usually" (emphasis supplied by the Applicant) in that paragraph as

⁷ Paragraph II.C. in its entirety reads:

C. Special Facility Population

An estimate for this special population group shall usually be done on an institution-by-institution basis. The means of transportation are also highly individualized and shall be described. Schools shall be included in this segment.

meaning "in most cases, and depending reasonably upon the needs and facts surrounding the specific facility population." Because of the many special conditions required to evacuate a maximum security prison, including a longer evacuation time than for the general public, we believe it is clearly reasonable to require preparation of a separate evacuation time estimate, which the Pennsylvania authorities have done and will rely upon for taking appropriate protective actions.

F. Monitoring

The inmates allege that there is no reasonable assurance that adequate monitoring will be conducted at the Limerick Generating Station in the event of a radiological emergency.

This is a "one more time" sort of basis which the inmates have raised in these revised contentions. The Board and the parties, including the Applicant, officials of the Commonwealth of Pennsylvania and the NRC Staff spent considerable time and effort to respond to this allegation in the Conferences, in particular the March 22, 1985 Conference. Again, this monitoring is the responsibility of the Department of Energy (DOE) team who will monitor the radioactive plume in the event sheltering is implemented as a protective action for Graterford. There are in the plan identified field monitoring activities of the Commonwealth.

There is no particularized deficiency identified in existing plume monitoring capabilities for Graterford. There is no litigable issue. Dismissed.

G. Simulated Evacuation Plan Exercise

Inmates allege that there is no reasonable assurance that the tabletop exercise of the evacuation plan, conducted on March 7, 1985, was adequate in terms of 10 CFR § 50.47(b)(14).⁸

Applicant, NRC Staff and Commonwealth oppose this contention. We agree.

The Board rejects the contention basis because (1) it lacks regulatory basis; (2) it did not specify any deficiency in the scenarios used in the tabletop exercise or justify any requirement for inclusion of possible scenarios from NUREG-0654, Criterion N.3; and (3) petitioner did not identify any reason it believed FEMA's confirmation of the validity of the tabletop exercise was invalid or faulty.

The March 7, 1985 tabletop exercise was a remedial exercise to correct deficiencies previously found by FEMA, per § 50.47(b)(14). According to FEMA, it was successful.

Failure to identify persons by name in the plan (Plan 2) has nothing to do with success or failure of the exercise.

The Board rejects this basis.

H. Panic Factor

The inmates allege that there is no reasonable assurance the the RERP for Graterford will prevent a spontaneous evacuation on either the guards or inmates part, i.e. panic.

⁸ Apparently inmates cited 10 CFR § 50.4714(b) in error and intended § 50.47(b)(14).

The Applicant, NRC Staff and Commonwealth oppose admitting. We agree.

There is no provision of the Graterford Plan or any document in this proceeding that suggests that Department of Corrections authorities could not handle potential disturbances.

We assume (a) the guards will do their duty; and (b) that the inmates will be restrained from evacuating spontaneously.

The "limited appearance" sought by the Graterford inmates is an inappropriate procedure. As the NRC Staff noted in their response, "the time for submitting information or other support for the inmates proffered contention has expired. See 10 CFR § 2.714(b); Limerick ALAB-806 at 18." We also note in agreement that the inmates are asking to make this basis sufficiently specific through discovery contrary to the requirement that it be sufficiently specific at the outset.

The Board rejects the contention basis for the reasons stated.

Conclusions

The Board accepts for litigation in this proceeding the restated contention and only those restated bases of the contention as are contained in Basis C-Training and Basis E-Estimated Time of Evacuation and as attached to this order as an Appendix.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Helen F. Hoyt

Helen F. Hoyt, Chairperson
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,
this 12th day of June 1985

APPENDIX
CONTENTION OF THE INMATES AT THE
STATE CORRECTIONAL INSTITUTE AT GRATERFORD

There is no reasonable assurance that the Radiological Emergency Response Plans for the State Correctional Institute at Graterford will protect the inmates at said institution in the event of a nuclear emergency at the Limerick Generating Station.

Basis C-Training

There is no reasonable assurance that emergency response training will be offered to civilian personnel who will be involved in the emergency response plans, such as civilian bus and ambulance drivers.

The inmates contend that emergency response training be offered to civilian personnel who will be assisting the Bureau of Corrections, the state police, and the National Guard in the appropriate response to an accident at Limerick Generating Station. Pursuant to further discussions, held during the closed conference in Harrisburg, the Commonwealth of Pennsylvania has attempted to address the inmates' concern by the offering of said emergency response training to civilian bus drivers. The method by which the Commonwealth has suggested to achieve this purpose is a letter to all bus providers which is attached to the Commonwealth's "Answer of the Commonwealth of Pennsylvania to Proposed Contentions of the Graterford Inmates with Regard to the Evacuation Plan" dated April 4, 1985 as Exhibit B. This letter, addressed to the employers of the bus drivers, offers a two hour course explaining the proper use of dosimetry by the Pennsylvania Emergency Management Agency. The inmates find this letter inadequate in several respects. Initially, there is no guarantee that the employees will ever

receive any notice of the opportunity to avail themselves of this training program. Furthermore, the training envisioned by the inmates was a broader, more comprehensive program, such as the training offered to the school bus drivers. See the Third Partial Initial Decision on Offsite Emergency Planning by the Licensing Board, Section 333, page 155, which reads, "The training program for bus drivers offers a general orientation and overview of radiation principles, emergency management principles, susceptibility of children to radiation and additional background information." The inmates contend that the two hour course offered by PEMA is not as comprehensive as the one offered to the bus drivers of school children and is therefore inadequate in this respect.

Basis E- Estimated Time of Evacuation

There is no reasonable assurance that the estimated time of evacuation of six-to-ten hours can be achieved.

Appendix 4 of NUREG-0654 provides details regarding evacuation time estimates within the plume exposure pathway. II.C. Special Facility Populations states, "An estimate for this special population group shall usually be done on an institution by institution basis. The means of transportation are also highly individualized and shall be described." Section IV.B. of Appendix 4 entitled Methodology states, "The method for computing total evacuation time shall be specified. Two approaches are acceptable. The simplest approach is to assume that events are sequential. That is to say, for example, that no one begins to move until all persons are warned and prepared to leave before anyone starts moving. The time is estimated by simply adding the maximum time for

each component. This approach tends to overestimate the evacuation time. The second approach, which is more complex and will be discussed further, is to combine the distribution functions for the various evacuation time components. This second approach may result in reduced time estimates due to a more realistic assumption." The inmates contend that the failure to specifically address this estimated time of evacuation in the plan and the mere mention in a footnote of the Applicant's request for an exemption fails to meet the criteria as suggested by Appendix 4. The inmates are concerned that the six-to-ten hour estimate does not include a breakdown of the various sequential events as prescribed in NUREG-0654, Appendix 4.IV.B. necessary to accomplish the task. The inmates contend that such a breakdown is necessary.