

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of :

PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station,
Units 1 and 2)

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH
: Nos. 50-352 and 50-353

COMMENTS OF THE INTERVENOR, GRATERFORD PRISONERS,
WITH RESPECT TO THE JULY 23, 1985 ORDER
OF THE NUCLEAR REGULATORY COMMISSION

I. INTRODUCTION

Intervenor Graterford inmates, through their attorney, Angus R. Love, hereby submit the following comments with respect to the Nuclear Regulatory Commission's Order of July 23, 1985. Said order requested comments related to the contentions on the emergency plans for the State Correctional Institute at Graterford. The comments are made in relation to the Atomic Safety and Licensing Board's authorization to issue a full power operating license for the Limerick Generating Station from the director of the nuclear reactor regulation. The comments to be made will trace the procedural history and the many hurdles that have faced the intervenor Graterford inmates, address the merits of their proposed seven revised contentions, and certain procedural concerns. In conclusion, the inmates will request that a full power license not be issued for the Limerick Generating Station until the intervenor inmates receive their due process rights and until a reasonable assurance has been provided that all seven of their contentions have been addressed.

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II. PROCEDURAL HISTORY

Although the procedural history of this matter has been recited in numerous previous filings with this Commission, the Graterford inmates would like to trace this history once again in order to show the numerous hurdles that they have faced in this proceeding to date. They also intent to trace this history in order to show further evidence of their claim that the Licensing Board expressed a lack of concern for their contentions, thereby denying their right to an impartial tribunal which is guaranteed by 10 C.F.R. 2.718, and the Fifth and Fourteenth Amendments of the United States Constitution.

The Graterford inmates filed a petition to intervene pursuant to 10 C.F.R. 2.714 in September of 1981. After a supplemental petition and the filing of affidavits from 19 long-term inmates at the State Correctional Institute at Graterford, they were granted status as intervenors in June of 1982. Despite numerous assurances that a plan was soon forthcoming, no further movement occurred until December 14, 1984. On that date, the inmates received a document that purported to be the Radiological Emergency Response Plan for the State Correctional Institute at Graterford. Said document was 26 pages in length and heavily censored. After a review with the inmates' expert, Major John Case, Field Director of the Pennsylvania Prison Society, it was decided that the plan was incomprehensible and additional disclosure was required. Said request was made to the Licensing Board in late January of 1985. The Licensing Board rejected the inmates' claim for additional disclosure even under the auspices of a protective order and further denied the inmates' stay request and ordered that they submit their contentions within twenty days of that date. The inmates

complied with the directive of the Licensing Board and filed their contentions within the twenty day time period and also took an appeal with respect to the disclosure issue. After an opinion was rendered by the Appeals Board, a compromise was reached with the aid of their direction, and the inmates and their expert were allowed to view a second, more comprehensive plan in March of 1985. Said review was done by inmates' attorney, Angus R. Love, and their expert, Major Case, at the State Correctional Institute under the auspices of a protective order of the court. Plan 2 contained 87 pages and only minor deletions. Thus, the inmates' contention with respect to disclosure was satisfied.

When the inmates attempted to revise their contentions based upon the review of the second plan, they were once again met with a hostile Licensing Board who refused to allow any revisions of the original contentions and subsequently dismissed the inmates from the proceeding by its order of April 12, 1985. In that decision, the Board noted, "We have sought to determine from this party what special expertise it would bring to this proceeding. It has repeatedly failed and there is no reason to expect that this party will exercise its responsibility to set out with as much particularity as possible, the precise issues it plans to cover, identify its prospective witnesses, and to summarize their proposed testimony. In reviewing the inmates' responses at the conferences, and the total of all its pleadings in this proceeding, we find little, if any, indication of a desire to assist in developing this record." The inmates appealed this decision which was reversed by the Appeals Board in its May 1, 1985 order, docketed as ALAB-806. This order reinstated the inmates as a

party and gave them fifteen days to file their contentions based upon the new information available in Plan 2. The inmates' efforts to comply with this order were once again thwarted by the Licensing Board which granted the applicant's request for an exemption from this proceeding on May 9, 1985, six days prior to the deadline for the revised contentions to be filed. See ASLBP No. 81-465-07 OL. In that decision, the Licensing Board once again commented on the merits of the contentions of the Graterford inmates. The Board stated that "Any deficiencies presently known are not of a significant nature." See p. 5 supra. The Board further sympathized with the applicant's plight when it stated, "For an applicant who has been caught on the horns of other's dilemma." p. 3, supra. They went on to justify the exemption due to the enormous costs to the applicant of any further delay in the issuance of a full power license. See p. 7 supra.

After the inmates filed their contentions prior to the May 15, 1985 deadline set by the Appeal Board, they filed an appeal of the granting of the exemption to PECO by the Licensing Board. Said appeal was answered by the Nuclear Regulatory Commission itself by way of a Memorandum and Order issued on June 11, 1985. Said order stated a concern that "important questions regarding the hearing rights of the inmates of the State Correctional Institute at Graterford have not yet been resolved." The order further instructed the Appeal Board to take steps consistent with this opinion and to give "expeditious effect to those rights." See p. 2, Memorandum and Order CLI-85-11. This represented the third successful appeal of the inmates of prior rulings of this Licensing Board. Pursuant to the orders of the Nuclear Regulatory Commission and a

subsequent order issued by the Appeal Board, the Licensing Board held a telephone conference on June 17, 1985 in order to discuss the procedural aspects for potential hearings with respect to the Graterford issue. The Licensing Board had admitted two of the eight contentions filed by the Graterford inmates and scheduled hearings on July 15, 1985 to hear the two admitted contentions. Said contentions were litigated during the week of July 15, 1985, despite an extremely expeditious schedule that caused many procedural problems for inmates' counsel. Due to applicant's counsel's repeated attempts to intimidate inmates' witnesses and counsel, misrepresentations made with respect to deposition schedules, and their refusal to agree to any stipulations or extensions requested by inmates' counsel, the inmates were not able to present all testimony that they had originally requested to present. Said expeditious schedule also severely curtailed numerous procedural time frames guaranteed by Chapter 10 of the Code of Federal Regulations, further hampering the inmates' ability to develop a sound record with respect to the merits of the two admitted contentions. In particular, the inmates refer to the June 18, 1985 Memorandum memorializing the June 17, 1985 conference call, at which time the applicant agreed to depose inmate witness Thomas Martin at the State Correctional Institute at Graterford. The applicant later reneged upon this promise, thereby reintroducing the availability problem with respect to Mr. Martin. The inmates' attorney attempted to submit a statement which was mailed to the Licensing Board on July 5, 1985, however, said statement was also rejected by the Licensing Board during the hearings. Thus, the only voice of the inmates in this case was not heard. The applicant further solicited an ex parte subpoena for a potential

witness of the inmates prior to his agreeing to testify. Robert L. Morris was served said subpoena, despite assurances from inmates' counsel as to his availability for a deposition on July 3, 1985. The applicant had a prior commitment before the Delaware River Water Basin and felt that their concerns superceded any and all considerations with respect to the Graterford inmates and this issue. The applicant further contributed to the atmosphere of intimidation by their almost daily public statements through PE spokesman, L. Ron Harper, that said litigation was costing the applicant 1.5 million dollars per day. The inmates note that the Appeals Council ruled in their May 1, 1985 order that any delay could not be laid at the feet of the Graterford inmates. Thus, the inmates were being falsely portrayed as persons who were costing the applicant and future rate payers a substantial amount of money in their pursuit of their lawful rights under the emergency planning regulations of 10 C.F.R. 50.47.

During the hearings of the week of July 15, 1985, the inmates did manage to present the testimony of Major John Case and to submit the deposition of Robert L. Morris with respect to the merits of their claims. Much to no one's surprise, the Licensing Board paid little heed to either expert and dismissed the inmates' contentions shortly after the conclusion of the hearings on July 18, 1985. The inmates contend that this Licensing Board's prior record with respect to this issue shows an inherent prejudice and inability to conduct a fair and impartial hearing, pursuant to the guidelines of 10 C.F.R. 2.718.

III. MERITS OF THE CONTENTIONS CURRENTLY UNDER APPEAL

Pursuant to the Appeal Board's order of May 1, 1985, the Graterford inmates filed eight proposed revised contentions on May 13, 1985. On June 12, 1985, the Licensing Board issued an order Admitting Certain Revised Contentions of the Graterford Inmates and Denying Others. See ASLBP No. 81-465-07 OL. This order of the Licensing Board admitted two contentions and rejected six. The two admitted contentions involved the methodology of the estimated time of evacuation for the Graterford institution, and the offering of training to civilian personnel to be utilized in the evacuation. The Board rejected the six contentions regarding manpower mobilization, medical services, monitoring, simulated evacuation plan exercise, input from the guards' union, and the panic factor. The inmates filed exceptions to the Board's order on June 12, 1985 and requested a reconsideration by the Licensing Board. On July 2, 1985, the Licensing Board denied the reconsideration petition. The inmates then filed an appeal with this Board on July 11, 1985. This Board's order of July 15, 1985 indicated that the appeal was premature and interlocutory and dismissed it at that time. See Memorandum and Order of the Atomic Safety and Licensing Appeal Board, July 15, 1985. The inmates, in their appeal, pursued five of the six rejected contentions, omitting the contention regarding monitoring. Thus, the inmates currently have seven of their eight proposed revised contentions before the Appeal Board pending disposition.

The inmates contend with respect to the two admitted and litigated contentions that the presentations of their expert witnesses, Major John Case, Field Director of the Pennsylvania Prison Society, and Robert L. Morris, traffic

control expert, provided ample evidence which contradicted the assertions of the state and prison officials that a reasonable assurance that bus driver training will in fact occur, and that the methodology utilized to compile the estimated time of evacuation was adequate. The inmate intervenor's two expert witnesses who volunteered their services free of charge, presented a wealth of experience and expertise regarding the two issues before the Licensing Board. Major Case spent 22 years in the United States Marine Corps, during which time he served as Brig Commander for two penal facilities and also was involved in the planning and mobilization of large troop movements during the Korean conflict. After his military service he became warden of the Bucks County Prison and later director of the Bucks County Department of Corrections. He is currently the field director of the Pennsylvania Prison Society, an organization founded in 1787 by one of the signers of the Declaration of Independence, Dr. Benjamin Rush. Major Case's testimony indicated that the overall estimated time of evacuation could just as easily be 12 to 20 hours as it could be 8 to 10 hours, as testified to by Superintendent Zimmerman. See Tr. 20,948. The state and prison authorities offered three different estimated times of evacuation. Their initial filing four years ago which was submitted and rejected as Graterford Inmates' Exhibit No. 1, states that the evacuation could take place within 5 hours and 30 minutes under daylight conditions only. A second estimated time of evacuation was submitted in the applicant's first exemption request of January 31, 1985 in an affidavit attached as an exhibit to said request, on paragraph 13, which states, "Once notification to evacuate the prison has been given, it is expected it will take 6 to 10 hours before the last prisoner is ready to leave." This estimated

time of evacuation was compiled by the Department of Corrections Commissioner Glen Jeffes. See Tr. 2,770. Superintendent Zimmerman of the State Correctional Institute at Graterford compiled a third estimated time of evacuation which involved an 8 to 10 hour estimate. See Tr. 20,768 through 20,769. Superintendent Zimmerman's time estimates were derived independent of Commissioner Jeffes' estimates. See Tr. 20,769. Superintendent Zimmerman based his estimate upon ideal conditions according to Major John Case, who based his 12 to 20 hour estimate upon realistic conditions. See Tr. 20,935. Superintendent Zimmerman also acknowledged that he has no training in traffic engineering (see Tr. 20,766), and deferred to PEMA authorities with respect to the ingress and egress of vehicles such as the buses, vans, and ambulances necessary to transport the individuals and the autos of the manpower necessary to mobilize the personnel required for the evacuation. See Tr. 20,844. Superintendent Zimmerman based his 2 to 4 hour estimate on vehicle entry upon assurances from the Department of Corrections that the buses would in fact be there at that time frame. See Tr. 20,846. Superintendent Zimmerman also testified that he foresaw no problems for vehicles entering the EPZ due to the corresponding public evacuation. See Tr. 20, 816 and 20,844. The inmates contend that the methodology utilized to determine the estimated time of evacuation is lacking when compared with the standards of Appendix 4 NUREG 0654. It is lacking because of the inconsistencies of three different ETE's, the delegation of authority for several key aspects of Superintendent Zimmerman's flow chart to personnel who did not testify at the hearing and explain how these conclusions were reached, his reliance upon executing similar tasks under normal

routine and not taking into account any additional emergency considerations, his reliability upon commercial phone lines which may not be available during an emergency, and the unreliability of the population estimates utilized to compile the plan.

Superintendent Zimmerman stated that an addendum would be added to the inmate handbook in order to meet Major Case's concerns about inmate knowledge and subsequent cooperation. See Tr. 20,834 and 20,946 and case deposition p. 28. This offer, while a step in the right direction, fails to provide a reasonable assurance that the inmates will be briefed as to the mechanics of the evacuation procedure. The inmates point out that 60% of the population is illiterate and another 10% is Spanish speaking only. The inmate handbook is never explained to the inmates upon reception. The inmates contend that drill in addition to the addendum is the best method to achieve cooperation from the inmates during an evacuation. See Tr. 20,943.

The inmates' witness, Robert L. Morris, a traffic control expert who has previously worked on such projects as the design of the District of Columbia Metro System, the ingress and egress routes for the Baltimore Revitalization Project, and has testified previously before the Nuclear Regulatory Commission, stated that the estimated time of evacuation components dealing with traffic are seriously inadequate. In particular, he stated that he seriously questions whether the vehicles could reach the institution within the 2 to 4 hour time frame suggested by Superintendent Zimmerman's flow chart. See Morris deposition, p. 78. Morris further testified that the methodology which should have been utilized to comprise the time estimates with respect to vehicle

movement, should have included the potential for accidents, the potential for panic among the members of the public who are evacuating, meteorological conditions for the area, and the potential that a radioactive release and corresponding wind conditions could close a corridor to evacuees. See Morris deposition, p. 42 through 44. Superintendent Zimmerman on the other hand stated that his estimates were based upon assurances from the Department of Corrections and PEMA officials who were not called to testify. Based upon this testimony, the inmates contend that the traffic segments of the flow chart which involved the 2 to 4 hour vehicle entry and the 1 to 2 manpower mobilization are lacking in factual bases and there is no reasonable assurance that has been offered to date to prove the reliability of these figures. On the contrary, Mr. Morris' testimony indicates that these estimates are lacking in many respects and are dubious at best.

With respect to the issue of civilian training, the inmates contend that the mailing of one two-paragraph form letter (attached to this document as Exhibit A) to six private bus companies on April 4, 1985 fails to provide a reasonable assurance that such training will in fact occur. See Tr. 20,863. The mailing of this letter is the only step that has been taken with respect to civilian bus driver training. The inmates find the conclusions of the Licensing Board that this mailing represents a reasonable assurance that said training will in fact occur to be absurd. Common sense indicates another result. The individuals who will be trained are civilians who are employed by private bus companies whose distances are up to 190 miles from the Limerick facility. It is the inmates' contention that the lack of responses to date indicates an opposite

conclusion. See Tr. 20,863 and 20,878. The fact that the letter that went out to the bus companies indicated that bus drivers would be required to transport inmates from state correctional institute during a nuclear emergency at the Limerick Station. The fact that not even a phone call was received in response to this letter indicates to the inmates that there is a reasonable assurance that nothing further will be done with respect to this issue. The inmates further believe that the twin dangers of transporting dangerous inmates during a nuclear emergency will be enough to deter many of the potential civilian personnel. Major John Case suggested the possibility of the use of financial incentives to encourage the participation of said drivers. See Tr. 20,951 and Tr. 20,938 through 20,939. The testimony of PEMA indicates that at some future date like training will be offered to ambulance drivers and that he will personally attempt to "sell" this program to said companies in the near future. He further rejected the idea of the use of financial incentives. See Tr. 20,863 through 20,864. One witness even testified that said training could result in personnel deciding not to participate in the evacuation. See Tr. 20,998. Based upon this knowledge, the inmates find it extremely difficult to believe that any training will ever occur. The inmates further contend that if a full power license is issued prior to the completion of these various promises, there will be even less incentive for the personnel to follow through with the assertions that are currently being made.

With respect to the contentions which were initially rejected, the inmates would like to point out the following. One of the contentions that was rejected involved the call up system necessary to complete the manpower mobilization

aspects of the evacuation plan. As Superintendent Zimmerman testified, it will take 1 to 2 hours to mobilize the manpower necessary to move the inmate population from the State Correctional Institute at Graterford. See Tr. 20,808. The method by which the personnel would be contacted is a call up system. Briefly, the call up system involves one person calling ten others, and each of those persons calling ten more people. The basis for the phone calls will be the use of commercial telephone lines. See Tr. 20,808. The inmates' contention was rejected initially, despite prior testimony on the record from an AT&T technician from Lower Providence Township, Rick Brown, who stated that dial tone delays took up to thirty minutes during the Hurricane Agnes floods of 1972. See Tr. 18,226. The inmates further submitted precedent from the Cincinatti Gas and Electric Company (William H. Zimmer) case, which is located at 15 NRC 1549 at 1576 (1982) which also questioned the reliability of the use of commercial telephone lines during an emergency. Despite these assertions by the inmates, the Licensing Board rejected this contention in its order of July 12, 1985, docketed as ASLBP No. 81-465-07 OL. In their never ending struggle to bend over backwards in order to please the applicant, they misstated the facts of this issue and gave the State Correctional Institute five dedicated phone lines instead of the one dedicated phone line that the Commonwealth stated that it had in its responsive pleading. See p. 3, supra. When Superintendent Zimmerman testified with respect to the call up system at the hearings on July 15, 1985 (see Tr. 20,808), he stated that the call up system was adequate for manpower mobilization purposes. When the inmates attempted to raise the issue regarding the fallibility of the system that he had just stated was infallible, the applicant

objected and the Board sustained the objection, once again denying any opportunity of the inmates to present valid conflicting testimony to Superintendent Zimmerman's assertions. See Tr. 70,809, 811. This is further evidence of the Board's lack of concern for sound record, partiality to the applicant and hostility to the intervenors.

The inmates also contend that the Board misconstrued the burden of proof with respect to several of the rejected contentions. As evidence of this assertion, the inmates point to the order of July 12, 1985 admitting certain revised contentions of the Graterford inmates and denying others, p. 12, in which they state, "We assume (a) the guards will do their duty and (b) that the inmates will be restrained from evacuating spontaneously. The inmates contend that such assertions are clearly conclusions of law which cannot be made until there is the opportunity to litigate the contentions at issue.

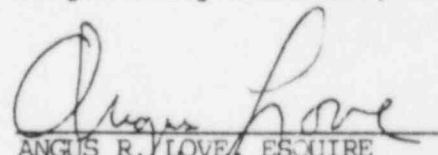
IV. CONCLUSION

Despite the fact that the inmates have been in this proceeding since June of 1981, the majority of the litigation has been conducted since January 1 of 1985. Over that period of time, numerous issues have been discussed and some progress has been made. Unfortunately, due to several rulings by the Licensing Board regarding procedural matters, the issues have not yet been completely resolved. It is the inmates position that there is a need for further development with respect to the Radiological Emergency Response Plan for the State Correctional Institute at Graterford. Unfortunately, the inmates question whether such development can be conducted under the guidance of the current

Licensing Board. It is for these reasons that the inmates respectfully request the Nuclear Regulatory Commission to deny the applicant's motion for a full power license. The history of the litigation and the nature of the issues indicates to the inmates that little, if nothing, will be done with respect to these issues after a full power license has been granted. The emergency planning mandate of 10 C.F.R. 50.47 given by the United States Congress, calls for reasonable assurances of the public safety prior to the issuance of such a license. Graterford inmates are clearly within the definition of the public with respect to this issue. The prison being juxtaposition with a nuclear power plant presents a novel legal fact pattern which has never occurred before. In order to live up to the mandate and spirit of the emergency planning regulations, the inmates contend that more than a mere paper chain or use of form letters is needed to provide the reasonable assurances with respect to public safety. Unfortunately, the applicant's investment of 7.23 billion dollars has hindered the inmates' attempt to get a full hearing with respect to this issue. The inmates point to the numerous procedural changes that were made with respect to their case as evidence of such. For example, under normal circumstances, the intervenor is granted 45 days to submit findings of fact and conclusions of law at the end of the hearings on contentions. See 10 C.F.R. 2.754. In this instance, the inmate intervenor's attorney had approximately 23 hours to compile said document. As the Appeal Board noted in its May 1, 1985 ruling, any delays in this proceeding cannot be laid at the feet of the Graterford inmates. Thus, the inmates should not be held to a lesser standard than other intervenors. The expedited hearing schedule caused numerous

procedural problems which could have been worked out through cooperation with applicant's counsel, however, such cooperation was lacking. Instead, the applicant chose to mount a public relations campaign stressing its financial obligations and the need for a hearing and resolution of this matter as soon as possible. The inmates did the best job they could under the circumstances, however, it is their feeling that there is still many issues remaining and much work to be done before the Radiological Emergency Response Plan for Graterford can be deemed to provide reasonable assurances as to the safety of the inmates. The inmates contend that if a license is issued at this point, there is little or no guarantee as to a follow up of the many promises that have been made. The inmates contend that all aspects of emergency planning with respect to this issue and any others which are currently incomplete, should be dealt with in their entirety before before the issuance of a full power license. The inmates protest the applicant's frequent resort to exemptions to cover their mistakes in planning. For these reasons, the inmates respectfully request a decision in accordance with their comments.

Respectfully submitted,


ANGUS R. LOVE, ESQUIRE
Counsel for Inmates, SCIG



PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
P.O. BOX 3321
HARRISBURG, PENNSYLVANIA 17105-3321



THIS LETTER IS ONE SENT TO ALL BUS COMPANIES PROVIDING THE
DEPARTMENT OF CORRECTIONS WITH BUSES.

Gentlemen:

Some of your employees may be involved in driving buses carrying inmates from the State Correctional Institution at Graterford in the event of an accident at the nuclear generating plant located in Limerick, Montgomery County. Because of this possibility, these drivers may want to take some training regarding the proper use of dosimetry.

The Pennsylvania Emergency Management Agency (PEMA) hereby offers to you and your employees a 2-hour course explaining the proper use of dosimetry. We are prepared to conduct this course at a location and time to be selected by you and your employees. We ask only that you coordinate this scheduling with us to avoid any conflicts with our regular schedule of activities.

You may write to me at the address listed above, or you may telephone me at 717-783-8150.

With kind regards, I am

Sincerely,

Donald F. Taylor
Director
Office of Training and Education

DFT:tjl (Tel: 717-783-8150)

Exhibit "A"

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of :
PHILADELPHIA ELECTRIC COMPANY :
(Limerick Generating Station :
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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 COMMENTS OF THE INTERVENOR, GRATERFORD INMATES, WITH RESPECT TO THE JULY 23, 1985 ORDER OF THE NUCLEAR REGULATORY COMMISSION was mailed to the following list on Friday, July 26, 1985, by first class mail, postage prepaid.

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